

SUBCHAPTER 23G – NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES

SECTION .0100 – MEDIATION AND SETTLEMENT

11 NCAC 23G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE

(a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim agree to mediate the claim, the parties may schedule and proceed with mediation on their own, or the parties may submit a request for a mediation order pursuant to Paragraph (d) of this Rule. No order from the Commission is necessary if the parties mutually agree to mediate the claim, but the mediator shall file a report of mediation with the Commission as required by Paragraph (g) of Rule .0106 of this Subchapter. If the parties proceed with mediation in the absence of an order from the Commission and the Commission thereafter enters a mediation order, the parties shall notify the Commission that the parties have agreed upon the selection of a mediator or, if the mediated settlement conference has been completed, that the parties request to be excused from any further mediation obligations pursuant to Paragraph (f) of this Rule.

(b) Referral Upon Receipt of a Form 33 Request that Claim be Assigned for Hearing. In any case in which the Commission receives a Form 33 Request that Claim be Assigned for Hearing, the Commission shall order the case to a mediated settlement conference unless doing so would be contrary to the interests of justice.

(c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution Coordinator, and such other employees as the Commission Chair designates may, by written order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute within the workers' compensation and state tort claim jurisdiction of the Commission. Requests to dispense with or defer a mediated settlement conference shall be addressed to the Dispute Resolution Coordinator. Unless the context otherwise requires, references to the "Commission" in the rules in this Subchapter shall mean the Dispute Resolution Coordinator.

(d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a party may move the Commission to order a conference. The motion shall be served on non-moving parties and shall state the reasons why the order should be entered. Responses may be filed in writing with the Commission within 10 days after the date of the service of the motion. Any motion for a mediation order shall be submitted on a form provided by the Commission.

(e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a dispute arising under the Workers' Compensation Act or the Tort Claims Act.

(f) Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with by the Commission in the interests of justice or judicial economy. As used in this Rule, the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or excusing the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation may not be dispensed with by the parties or the mediator unless the parties have agreed, subject to Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. Within 55 days of the filing of a Form 33 Request that Claim be Assigned for Hearing, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of this Rule, a party may move to dispense with or defer the mediated settlement conference. The motion shall state the reasons the relief is sought and must be received by the Dispute Resolution Coordinator within the applicable deadline.

(g) Exemption from Mediated Settlement Conference. The State shall not be compelled to participate in a mediation or neutral evaluation procedure with a prison inmate.

(h) Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated settlement conference. The motion shall be filed on a form provided by the Commission within 55 days of the filing of a Form 33 Request that Claim be Assigned for Hearing, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of this Rule, and shall state:

- (1) that all parties consent to the motion;
- (2) that the neutral evaluator and the parties have agreed upon the selection and all terms of compensation of the neutral selected; and
- (3) the name, address, and telephone number of the neutral evaluator selected by the parties.

(i) If the parties are unable to agree to the matters listed in Paragraph (h), the Commission shall deny the motion for authorization to use a neutral evaluation procedure, and the parties shall attend the mediated settlement conference

as originally ordered by the Commission. If the parties are able to agree on the matters listed in Paragraph (h), the Commission shall order the use of a neutral evaluation proceeding; provided, however, that the Commission shall not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by counsel.

(j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the plaintiff's case be mediated, the Commission shall enter an order dispensing with mediation.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 1 of Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions; Eff. January 16, 1996; Amended Eff. October 1, 1998; Recodified from 04 NCAC 10A .0616; Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000; Recodified from 04 NCAC 10G .0101 Eff. June 1, 2018.