

11 NCAC 23G .0106 AUTHORITY AND DUTIES OF MEDIATORS

(a) Control of Conference. The mediator shall at all times be in control of the mediated settlement conference and the procedures to be followed. Except as otherwise set forth in the Rules in this Subchapter with regard to the finalization of the parties' agreement, there shall be no audio, video, electronic or stenographic recording of the mediation process by any participant.

(b) Private Consultation. The mediator may meet and consult privately with any participant prior to or during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.

(c) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the parties, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(d) Information to the Parties. The mediator shall define and describe the following to the parties at the beginning of the mediated settlement conference:

- (1) the process of mediation;
- (2) the differences between mediation and other forms of conflict resolution;
- (3) the costs of the conference;
- (4) the facts that the conference is not a trial or hearing, the mediator is not acting in the capacity of a Commissioner or Deputy Commissioner and shall not act in such capacity in the subject case at any time in the future, and the parties retain their right to a hearing if the parties do not reach a settlement;
- (5) the circumstances under which the mediator may meet alone with any of the parties or with any other person;
- (6) whether and under what conditions, communications with the mediator will be held in confidence during the conference;
- (7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 and Paragraph (f) of Rule. 0103 of this Subchapter;
- (8) the duties and responsibilities of the mediator and the parties; and
- (9) the fact that any agreement reached will be reached by mutual consent of the parties.

(e) Disclosure. The mediator shall be impartial and advise all parties of any circumstances bearing on possible bias, prejudice or partiality.

(f) Declaring Impasse. The mediator shall determine when mediation is not viable, that an impasse exists, or that mediation should end.

(g) Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated voluntarily or pursuant to an order of the Commission, the mediator shall report the results of the mediated settlement conference on a form provided by the Commission. If an agreement was reached, the report shall state whether the issue or matter under mediation will be resolved by Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary dismissal or removal from the hearing docket, and shall identify the persons designated to file or submit for approval the agreement, or dismissal. The mediator shall not attach a copy of the parties' memorandum of agreement to the mediator's report transmitted to the Commission and, except as permitted under the Rules in this Subchapter, or unless deemed necessary in the interests of justice by the Commission, the mediator shall not disclose the terms of settlement in the mediator's report. The Commission shall require the mediator to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the Commission.

(h) Scheduling and Holding the Conference. The mediator shall schedule the mediated settlement conference in consultation with the parties and conduct the conference prior to the completion deadline set out in the Commission's order. Deadlines for completion of the conference shall be observed by the mediator unless the time limits are changed by the Commission.

(i) Standards of Conduct. All mediators conducting mediated settlement conferences pursuant to the Rules in this Subchapter shall adhere to the *Standards of Professional Conduct for Mediators* adopted by the Supreme Court of North Carolina and enforced by the North Carolina Dispute Resolution Commission. The *Standards of Professional Conduct for Mediators* is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the Court's website, http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsofConduct_1-1-12.pdf, or upon request, at the offices of the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00 p.m.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide Mediated Settlement Conference 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; June 1, 2000; Recodified from 04 NCAC 10G .0106 Eff. June 1, 2018.