

### **11 NCAC 23G .0103 THE MEDIATED SETTLEMENT CONFERENCE**

- (a) **Where Conference Is to Be Held.** Unless all parties in a workers' compensation case or a state tort claims case and the mediator otherwise agree, the mediated settlement conference shall be held in the county where the case is pending. The mediator shall reserve a place and make arrangements for the conference and give notice to all attorneys and unrepresented parties of the time and location of the conference.
- (b) **When Conference Is to Be Held.** The conference shall be held at the time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.
- (c) **Request to Extend Date of Completion.** In the interests of justice, the Commission may extend the deadline for completion of the conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion of the mediator.
- (d) **Recesses.** The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the recessed conference.
- (e) **The Mediated Settlement Conference Is Not to Delay Other Proceedings.** A mediated settlement conference is not cause for delay of other proceedings in the case, including the completion of discovery and the filing or hearing of motions, unless ordered by the Commission in the interests of justice. No depositions shall be taken following a Commission order requiring mediation until mediation is concluded, except by agreement of the parties or order of the Commission in the interest of justice.
- (f) **Inadmissibility of Negotiations by Parties and Attorneys.** Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted pursuant to the Rules in this Subchapter, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement conference or proceeding, are not subject to discovery and shall be inadmissible in any proceeding in the action or other actions on the same claim, except:
- (1) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule.0107 of this Subchapter;
  - (2) proceedings to enforce or rescind a settlement of the action;
  - (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; or
  - (4) proceedings to enforce laws concerning juvenile or elder abuse.
- (g) No settlement agreement to resolve any or all issues reached at the settlement conference or proceeding conducted under this Subchapter or reached during a recess in the conference or proceeding shall be enforceable unless the settlement agreement has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible solely because the evidence is presented or discussed in a mediated settlement conference or other settlement proceeding.
- (h) **Inadmissibility of Mediator Testimony.** No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding conducted pursuant to the Rules in this Subchapter in any Commission case or civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except:
- (1) to attest to the signing of any settlement agreements;
  - (2) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule .0107 of this Subchapter;
  - (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; and
  - (4) proceedings to enforce laws concerning juvenile or elder abuse.
- (i) As used in this Subchapter, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

*History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 3 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; Eff. January 16, 1996; Amended Eff. October 1, 1998;*

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Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;  
Recodified from 04 NCAC 10G .0103 Eff. June 1, 2018.*