

26 NCAC 03 .0206 AUTHORITY AND DUTIES OF MEDIATORS

(a) Authority of Mediator.

- (1) Control of Conference. The mediator shall at all times be in control of the conference and the procedures to be followed.
- (2) Private Consultation. The mediator may communicate privately with any participant or counsel prior to and 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.
- (3) Scheduling the Conference. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

(b) Duties of Mediator.

- (1) The mediator shall define and describe the following at the beginning of the conference:
 - (A) The process of mediation;
 - (B) The differences between mediation and other forms of conflict resolution;
 - (C) The costs of the mediated settlement conference;
 - (D) The fact that the mediated settlement conference is not a hearing, the mediator is not a judge, and the parties retain their right to a hearing if they do not reach settlement;
 - (E) The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - (F) Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - (G) The inadmissibility of conduct and statements as provided by Rule 408 of the North Carolina Rules of Evidence;
 - (H) The duties and responsibilities of the mediator and the participants; and
 - (I) The fact that any agreement reached will be reached by mutual consent.
- (2) Disclosure. The mediator shall be impartial and advise all participants of any circumstances bearing on possible bias, prejudice or partiality.
- (3) Declaring Impasse. It is the duty of the mediator to determine that an impasse exists, and that the conference should end.
- (4) Reporting Results of Conference. The mediator shall file a written report with the parties and presiding Administrative Law Judge within 10 days as to whether or not agreement was reached by the parties. If an agreement was reached, the report shall state whether the action will be concluded by consent judgment, voluntary dismissal, or withdrawal of petition and shall identify the persons designated to file such pleadings. The mediator's report shall inform the presiding Administrative Law Judge of the absence of any party, attorney, or insurance representative known to the mediator to have been absent from the mediated settlement conference without permission.
- (5) Scheduling and Holding the Conference. The mediator shall schedule the conference and conduct it prior to the conference completion deadline set out in the Chief Administrative Law Judge's order. Deadlines for completion of the conference shall be observed by the mediator unless said time limit is changed by a written order of the presiding Administrative Law Judge.

History Note: Authority G.S. 7A-751(a); 150B-23.1; Eff. February 1, 1994; Amended Eff. October 1, 2009; April 1, 2001; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 23, 2016.