

26 NCAC 03 .0207 COMPENSATION OF THE MEDIATOR

(a) **By Agreement.** When the mediator is stipulated to by the parties, compensation shall be as agreed upon between the parties and the mediator.

(b) **By Order.** When the mediator is appointed by the Office of Administrative Hearings, the mediator shall be compensated by the parties at the uniform hourly rate and a one-time, per contested case, administrative fee, due upon appointment, as set by the Chief Administrative Law Judge except as provided by Paragraph (d) of this Rule. The Chief Administrative Law Judge shall set the rate at the same rate set by Rule 7 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.

(c) **Change of Appointed Mediator.** Pursuant to Rule .0202 of this Section, the parties have 21 days to select a mediator. Parties who fail to select a mediator within that time frame and then desire a substitution after the presiding Administrative Law Judge has appointed a mediator, shall obtain approval from the presiding Administrative Law Judge for the substitution. If the presiding Administrative Law Judge approves the substitution, the parties shall pay the presiding Administrative Law Judge's original appointee the one time, per case administrative fee provided for in Paragraph (b) of this Rule.

(d) **Indigent Cases.** No party found to be indigent by the presiding Administrative Law Judge shall be required to pay a mediator fee. Any mediator conducting a settlement conference pursuant to these Rules shall waive the payment of fees from parties found by the presiding Administrative Law Judge to be indigent. Any party may move the presiding Administrative Law Judge for a finding of indigence and to be relieved of the obligation to pay that party's share of the mediator's fee. Such motion shall be heard subsequent to the completion of the conference or, if the parties do not settle their contested case, subsequent to the conclusion of the contested case hearing but prior to the issuance of the Administrative Law Judge's decision. In ruling upon such motions, the presiding Administrative Law Judge shall apply the criteria enumerated in G.S. 1-110(a), but shall take into consideration the outcome of the contested case, and whether a decision was rendered in movant's favor. The presiding Administrative Law Judge shall enter an order granting or denying a party's request.

(e) **Postponement and Fees.** As used in this Paragraph, the term "postponement" shall mean reschedule or not proceed with a settlement conference once a date for the settlement conference has been scheduled by the mediator. After a settlement conference has been scheduled for a specific date, a party may not unilaterally postpone the conference. A conference session may be postponed by the mediator for good cause beyond the control of the moving participant(s) only after notice by the movant to all parties of the reason for the postponement, and a finding of good cause by the mediator. Without a finding of good cause, a mediator may also postpone a scheduled conference session with the consent of all parties. Postponement fees shall be paid by the party requesting the postponement unless otherwise agreed to between the parties. Postponement fees are in addition to the one time, per case administrative fee provided for in Paragraph (b) of this Rule. The Chief Administrative Law Judge will set the rate at the same rate set by Rule 7 of the Rules of the North Carolina Supreme Court Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions.

(f) **Payment of Compensation by Parties.** Unless otherwise agreed to by the parties or ordered by the presiding Administrative Law Judge, mediator's fee shall be paid in equal shares by the parties. For purposes of this Rule, multiple parties shall be considered one party when they are represented by the same counsel. Parties obligated to pay a share of the costs shall pay them equally. Payment shall be due upon completion of the conference unless there is a pending motion for determination of indigency. In such case, payment shall be due upon a ruling on the motion.

*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.*