

1 11 NCAC 23G .0104 is amended with changes as published in 37:6 NCR 441-443 as follows:

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3 **11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

4 (a) Attendance. The following persons shall attend the mediated settlement conference:

- 5 (1) all individual parties;
- 6 (2) in a workers' compensation case, a representative of the employer at the time of injury if:
- 7 (A) the employer, instead of or in addition to the insurance company or administrator, has
- 8 decision-making authority with respect to settlement;
- 9 (B) the employer is offering the claimant employment and the suitability of that employment
- 10 is in at issue; issue; or
- 11 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
- 12 issues arising from the injury; or injury.
- 13 ~~(D) the Commission orders the employer representative to attend the conference if the~~
- 14 ~~representative's attendance is necessary to resolve matters in dispute in the subject action;~~
- 15 (3) an officer, employee, or agent of any party party, that is not a natural person or a governmental
- 16 entity entity, who is not the party's outside counsel and who has the authority to decide on behalf of
- 17 the party whether and on what terms to settle the action;
- 18 (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity
- 19 who is not the party's outside counsel or Attorney General's counsel responsible for the case and
- 20 who has the authority to decide on behalf of the party whether and on what terms to settle the action;
- 21 (5) when the governing law prescribes that the terms of a proposed settlement may be approved only
- 22 by a Board board, an employee or agent who is not the party's outside counsel or Attorney General's
- 23 counsel responsible for the case and who has the authority to negotiate on behalf of and to make a
- 24 recommendation to the Board board. Pursuant to In claims with settlements subject to the review
- 25 and approval by the Industrial Commission under G.S. 143-295, an employee or agent of the named
- 26 governmental entity or agency is not required to attend the mediated settlement conference. The
- 27 Attorney General shall attempt to make an employee or agent of the named governmental entity or
- 28 agency in a State tort claim available via telecommunication, and mediation shall not be delayed
- 29 due to the absence or unavailability of the employee or agent of the named governmental entity or
- 30 agency;
- 31 (6) the counsels of record. Appearance by counsel does not dispense with or waive the required
- 32 attendance of the parties listed in Subparagraphs (1) through (4);(5):
- 33 (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or
- 34 self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier
- 35 or self-insured shall be represented at the conference by an officer, employee, or agent who is not
- 36 the party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured
- 37 whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of

1 the carrier or self-insured and can communicate during the conference with persons who have the
2 decision making ~~authority; and authority.~~

3 (8) ~~by order of the Commission, other representatives of parties, employers, or carriers, who may be~~
4 ~~obligated to pay all or part of any claim presented in the action and who are not required to attend~~
5 ~~the conference pursuant to Subparagraphs (1) through (6) of this Paragraph, if the Commission~~
6 ~~determines that the representative's attendance is necessary for purposes of resolving the matters in~~
7 ~~dispute in the subject action. Any any~~ employer or carrier who may be obligated to pay all or part
8 of any claim presented in the action and who is not required to attend the mediated settlement
9 conference pursuant to Subparagraphs (1) through ~~(6) (7)~~ of this Paragraph ~~or by Commission~~
10 ~~orders,~~ may attend the conference if the employer or carrier elects to attend. If, during the
11 conference, the mediator determines that the attendance of one or more additional persons is
12 necessary to resolve the matters in dispute in the subject action, the mediator may recess the
13 conference and reconvene the conference at a later date and time to allow the additional person or
14 persons to attend.

15 (b) Any party or person required to attend a mediated settlement conference shall attend the conference until an
16 agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been
17 declared. ~~"Attendance" shall mean in person attendance whenever the mediation rules approved by the North Carolina~~
18 ~~Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require in person~~
19 ~~attendance. During any time that attendance means in person attendance, any party or person, including the mediator,~~
20 ~~may have the in person attendance requirement excused or modified by agreement of all the parties and persons~~
21 ~~required to attend the mediation conference, including the mediator, or by order of the Commission in the interests of~~
22 ~~justice upon motion of a party and notice to all parties and persons required to attend the conference, including the~~
23 ~~mediator. "Attendance" shall mean attendance using remote technology whenever the mediation rules approved by~~
24 ~~the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division~~
25 ~~require attendance through the use of remote technology. During any time that attendance means attendance through~~
26 ~~the use of remote technology, any party or person required to attend the conference, including the mediator, may have~~
27 ~~the remote technology attendance requirement excused or modified by agreement of all parties and persons required~~
28 ~~to attend the conference, including the mediator, or by order of the Commission in the interests of justice upon motion~~
29 ~~of a party and notice to all parties and persons required to attend the conference, including the mediator. The attendance~~
30 ~~method for Industrial Commission mediations shall be the same as the attendance method set forth in the mediation~~
31 ~~rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the~~
32 ~~Superior Court division. Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures~~
33 ~~in Superior Court Civil Actions, which is hereby incorporated by reference and includes subsequent amendments and~~
34 ~~editions. A copy of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior~~
35 ~~Court Civil Actions may be obtained at no charge from the North Carolina Judicial Branch website, at~~
36 ~~<https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other->~~
37 ~~[settlement-procedures-in-superior-court-civil-actions](https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-), or upon request at the main office of the Industrial Commission.~~

1 located on the 6th floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, between
2 the hours of 8:00 a.m. and 5 p.m. Monday through Friday, excluding holidays established by the State Human
3 Resources Commission. All parties and persons required to attend the conference, including the mediator, shall comply
4 with all public health and safety requirements set forth in the mediation rules approved by the North Carolina Supreme
5 Court for use in the Superior Court division that are in effect at the time of the mediation mediation. for use in the
6 Superior Court division.

7 (c) In appropriate cases, the Commission or the mediator, with the consent of the parties, may allow a party or
8 insurance carrier representative who is required to attend a mediated settlement conference in person under this Rule
9 to attend the conference by telephone, conference call, speaker telephone, or videoconferencing. videoconferencing;
10 the- The attending party or representative shall bear all costs of the telephone calls or videoconferencing. In addition,
11 the mediator may communicate directly with the insurance representative with regard to matters discussed in
12 mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and
13 representatives shall attend the mediated settlement conference in person, subject to Paragraph (b) of this Rule. The
14 failure to appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible
15 party(ies)- party or representative(s)- representative to sanctions pursuant to Rule .0105 of this Subchapter.

16 (d) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference,
17 the carrier or self-insured named in the order shall provide a copy of the order to the employer and all other carriers
18 who may be obligated to pay all or part of any claim presented in the workers' compensation case or any related third-
19 party tortfeasor claims, and shall provide the mediator and the other parties in the action with the name, address, and
20 telephone number of all such carriers.

21 (e) Finalizing Agreement. If an agreement is reached in the mediated settlement conference, the parties shall reduce
22 the agreement to writing, specifying all terms of the agreement that bear on the resolution of the dispute before the
23 Commission, and shall sign the agreement along with their counsel. The parties may use IC Form MSC8, Mediated
24 Settlement Agreement, or MSC9, Mediated Settlement Agreement – Alternative Form, for this purpose. Execution by
25 counsel of a mediated settlement agreement for an employer or carrier who does not physically attend the mediated
26 settlement conference shall be deemed to be in compliance with this Rule and 11 NCAC 23A .0502. By stipulation of
27 the parties and at the parties' expense, the agreement may be electronically or stenographically recorded. All
28 agreements for payment of compensation shall be submitted for Commission approval in accordance with 11 NCAC
29 23A .0501 and .0502.

30 (f) Payment of Mediator's Fee. The mediator's fee shall be paid at the conclusion of the mediated settlement
31 conference, unless otherwise provided by Rule .0107 of this Subchapter, or by agreement with the mediator.

32 (g) Related Cases. Upon application by any party or any person as defined in G.S. 97-2(4), and upon notice to all
33 parties, the Commission may, in the interests of justice, order an attorney of record, party, or representative of an
34 insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated
35 settlement conference convened in another related pending case, regardless of the forum in which the other case may
36 be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this
37 Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution

1 Coordinator. Unless otherwise ordered, any attorney, party, or carrier representative who attends a mediated settlement
2 conference pursuant to this Paragraph shall not be required to pay any of the mediation fees or costs related to that
3 conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a
4 mediated settlement conference in a Commission case shall be addressed to the court or agency where the related case
5 is pending, provided that all parties in the Commission case consent to the requested attendance.

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7 *History Note:* Authority G.S. 97-80; 143-296; 143-300; ~~Rule 4 of Rules for Mediated Settlement Conferences and~~
8 ~~Other Settlement Procedures in Superior Court Civil Actions;~~
9 Eff. January 16, 1996;
10 Amended Eff. October 1, 1998;
11 Recodified from 04 NCAC 10A .0616;
12 Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;
13 Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;
14 Emergency Amendment Eff. June 16, 2020;
15 Amended Eff. August 1, 2020;
16 Temporary Amendment Eff. August 28, 2020;
17 ~~Amended Eff. February 1, 2023; Amended Eff. March 1, 2021.~~