

1 **4 NCAC 10G .0101 is proposed for amendment as follows:**

2 **SUBCHAPTER 10G – NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED**
3 **SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES**

4 **SECTION .0100 – MEDIATION AND SETTLEMENT**

5 **4 NCAC 10G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE**

6 (a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or state tort claim
7 agree to mediate ~~their~~ the claim, ~~they~~ the parties may schedule and proceed with mediation on their own, or ~~they~~ the
8 parties may submit a request for a mediation order pursuant to ~~Rule 1(d). Paragraph (d) of this Rule.~~ No order from
9 the Commission is necessary if the parties mutually agree to ~~mediate,~~ mediate the claim, but the mediator shall file a
10 report of mediation with the Commission as required by ~~Rule 6(b)(4). Paragraph (g) of Rule .0106 of this~~
11 Subchapter. If the parties proceed with mediation in the absence of an order from the ~~Commission,~~ Commission and
12 the Commission thereafter enters a mediation order, the parties shall ~~timely~~ notify the Commission that ~~they~~ the
13 parties have agreed upon the selection of a mediator or, if the ~~mediation~~ mediated settlement conference has been
14 completed, that ~~they~~ the parties request to be excused from any further mediation obligations pursuant to ~~Rule 1(g).~~
15 Paragraph (f) of this Rule.

16 (b) Referral Upon Receipt of a Form 33 ~~Request for Hearing.~~ Request that Claim be Assigned for Hearing. In any
17 case in which the Commission receives a Form 33 ~~Request for Hearing~~ Request that Claim be Assigned for Hearing,
18 the Commission shall order ~~that disputed~~ the case to a mediated settlement ~~conference.~~ conference unless doing so
19 would be contrary to the interest of justice.

20 (c) By Order of the Commission. Commissioners, Deputy Commissioners, the Commission's Dispute Resolution
21 Coordinator, and such other employees as the Commission Chair ~~may~~ designates ~~from time to time~~ may, by written
22 order, require the parties and their representatives to attend a mediated settlement conference concerning a dispute
23 within the ~~tort and~~ workers' compensation and state tort claim jurisdiction of the Commission. Requests to dispense
24 with or defer a ~~mediation~~ mediated settlement conference shall be addressed to the Dispute Resolution Coordinator.
25 Unless the context otherwise requires, references to the "Commission" in ~~these~~ the Rules in this Subchapter shall
26 mean the Dispute Resolution Coordinator.

27 (d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a
28 party may move the Commission to order ~~such~~ a conference. ~~Such~~ The motion shall be served on non-moving
29 parties and shall state the reasons why the order should be entered. ~~allowed and, if the case is pending on the~~
30 ~~hearing docket, whether the party prefers for the case to be set for hearing on the next docket, for it to not be heard~~
31 ~~until further notice from the parties, or for it to not be set before a specified date. The motion shall be served on~~
32 ~~non-moving parties.~~ Responses may be filed in writing with the Commission within 10 days after the date of the
33 service of the motion. ~~The Commission may require that any~~ Any motion for a mediation order shall be submitted
34 on a form provided by the Commission.

35 (e) Timing of the Order. The order requiring mediation may be issued whenever it appears that the parties have a
36 dispute arising under the Workers' Compensation Act or the Tort Claims Act.

1 ~~(f) Content of Order. The Commission's order shall (1) require that the mediated settlement conference be held in~~
2 ~~the case, that pertinent documents be exchanged and that any specified discovery be completed prior to the~~
3 ~~conference; (2) establish a deadline for the pre-conference exchange of documents and other discovery, and for the~~
4 ~~completion of the conference; (3) provide a period within which the parties may select a mediator by mutual~~
5 ~~agreement (see Rule 2); (4) state the rate of compensation of the Commission appointed mediator in the event that~~
6 ~~the parties do not exercise their right to select a mediator pursuant to Rule 2; (5) state that the parties shall be~~
7 ~~required to pay the mediator's fee at the conclusion of the settlement conference unless otherwise ordered by the~~
8 ~~Commission (see Rule 7); and, (6) may specify a date for an Industrial Commission hearing should the parties fail to~~
9 ~~reach a settlement.~~

10 ~~(g) (f) Motion to Dispense with or Defer Mediated Settlement Conference. Mediation may be dispensed with or~~
11 ~~canceled by the Commission, but Commission in the interest of justice or judicial economy. As used in this Rule,~~
12 ~~the term "dispensed with" means setting aside or rescinding the mediation order(s) entered in the case, or excusing~~
13 ~~the parties from their obligations under the applicable order(s) or the Rules in this Subchapter. Mediation may not~~
14 ~~be dispensed with or canceled by the parties or the mediator unless the parties have agreed, subject to Commission~~
15 ~~approval, on a full and complete resolution of all disputed issues set forth in the request for hearing filed in the case,~~
16 ~~and the parties have given notice of the settlement to the Dispute Resolution Coordinator. As used herein, the terms~~
17 ~~"dispensed with" and "canceled" shall mean and refer to setting aside or rescinding the mediation order(s) entered in~~
18 ~~the case, or excusing the parties from their obligations under the order(s) or these rules. Within 55 days of the filing~~
19 ~~of a Form 33 Request for Hearing, Request that Claim be Assigned for Hearing, or otherwise within the deadline set~~
20 ~~forth in 21 days of the date of the Commission's order entered pursuant to Rules 1(e) and 1(d), Paragraph (c) or~~
21 ~~Paragraph (d) of this Rule, a party may move to dispense with or defer the mediated settlement conference. Such~~
22 ~~The motion shall state the reasons the relief is sought, sought and must be received by the Dispute Resolution~~
23 ~~Coordinator within the applicable 21 or 55 day deadline. For good cause shown, the Commission may grant the~~
24 ~~motion. However, failure to file a motion to dispense with mediated settlement conference within the above stated~~
25 ~~21 or 55 day deadline and after a mediator has been appointed may result in the moving party or parties, or other~~
26 ~~responsible person, being required to pay an administrative fee of up to \$100.00 to the Commission.~~

27 ~~(h) (g) Exemption from Mediated Settlement Conference. In order to provide for the most efficacious use of~~
28 ~~mediation and neutral evaluation procedures, the Commission may specify, by type or kind, those cases to be~~
29 ~~ordered into or excluded from mediation and neutral evaluation procedures. The State shall not be compelled to~~
30 ~~participate in a mediation or neutral evaluation procedure with a prison inmate.~~

31 ~~(i) (h) Motion to Authorize the Use of Neutral Evaluation Procedures. The parties may move the Commission to~~
32 ~~authorize the use of a neutral evaluation procedure contained in Rule .0109 of this Subchapter in lieu of a mediated~~
33 ~~settlement conference. The Commission may require that such The motion shall be filed on a form provided by the~~
34 ~~Commission, and such motion shall be filed Commission within 55 days of the filing of a Form 33 Request for~~
35 ~~Hearing, Request that Claim be Assigned for Hearing, or otherwise within 21 days of the order requiring a mediated~~
36 ~~settlement conference the deadline set forth in the Commission's order entered pursuant to Rules 1(e) and 1(d),~~
37 ~~Paragraph (c) or Paragraph (d) of this Rule, and shall state:~~

- 1 (1) ~~that~~ all parties consent to the ~~motion-~~ motion;
- 2 (2) ~~that~~ the neutral evaluator and the parties have agreed upon the selection and all
- 3 terms of compensation of the neutral ~~selected-;~~ selected; and
- 4 (3) the name, address, and telephone number of the neutral evaluator selected by the
- 5 ~~parties;~~ parties.
- 6 (4) ~~the names of all persons and entities the parties have agreed to excuse from~~
- 7 ~~attending the proceeding; and~~
- 8 (5) ~~such other information as may be required by the Commission.~~

9 (i) If the parties are unable to agree to the matters listed in Paragraph (h), ~~selection of a neutral or the persons~~

10 ~~excused from attending, then~~ the Commission shall deny the motion for authorization to use a neutral evaluation

11 procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission.

12 If the parties are able to ~~timely~~ agree on the ~~above~~ matters listed in Paragraph (h), ~~then~~ the Commission ~~may~~ shall

13 order the use of a neutral evaluation ~~proceeding.~~ Proceeding; provided, however, that the Commission

14 ~~will~~ shall not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by

15 counsel.

16 (j) Cases Involving Plaintiffs Not Represented by Counsel. Unless an unrepresented plaintiff requests that the

17 plaintiff's case be mediated, the Commission shall enter an order dispensing with mediation.

18 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 1 of Rules Implementing Statewide

19 Mediated Settlement Conference in Superior Court Civil Actions;

20 *Eff.* January 16, 1996;

21 *Amended Eff.* October 1, 1998;

22 *Recodified from* 4 NCAC 10A .0616;

23 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 **4 NCAC 10G .0102 is proposed for amendment as follows:**

2 **4 NCAC 10G .0102 SELECTION OF MEDIATOR**

3 (a) By Agreement of ~~Parties—Parties~~. The parties in a workers' compensation case or a state tort claims case may,
4 by agreement, choose select a mediator certified by the North Carolina Dispute Resolution Commission by
5 agreement within 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for~~
6 Hearing, or otherwise within the deadline set forth in 21 days after the Commission's order entered pursuant to
7 Rules 1(e) Paragraph (c) and or 1(d), Paragraph (d) of Rule .0101 of this Subchapter, unless otherwise specified
8 therein, subject to the Commission's authority to remove the mediator selected by the parties ~~for specific reasonable~~
9 cause. due to a conflict of interest. Such The stipulation may be transmitted by either party, shall be dated as of the
10 date it is transmitted to the Commission, and must be received by the Dispute Resolution Coordinator within 55 days
11 of the filing of a Form 33 ~~Request for Hearing, Request that Claim be Assigned for Hearing, or otherwise within 21~~
12 days of the mediation the deadline set forth in the Commission's order entered pursuant to Rules 1(e) and 1(d).
13 Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter. The scheduled date of the ~~mediation mediated~~
14 settlement conference shall be within 120 days of the mediation order. The stipulation shall include the date of the
15 scheduled mediation, the name, address and telephone number of the mediator selected by agreement, and shall
16 confirm that the mediator is certified by the Dispute Resolution Commission. The ~~21 or 55 day applicable~~
17 may shall be extended by the Dispute Resolution Coordinator upon request of the parties. Any party may waive the
18 ~~21 or 55 day periods applicable deadline~~ for the selection and suggestion of mediators and request that the
19 Commission ~~immediately~~ appoint a mediator, ~~from the Commission's appointed list.~~

20 (b) Appointment by ~~Commission—Commission~~. If the parties fail to notify the Commission of ~~their the parties'~~
21 selection of a mediator within 55 days of the filing of a Form 33 ~~Request for Hearing, Request that Claim be~~
22 Assigned for Hearing, or otherwise within 21 days of a mediation the deadline set forth in the Commission's order
23 entered pursuant to Rules 1(e) and 1(d), Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter, as set forth
24 above, the Commission shall appoint a mediator to hold a mediated settlement conference in ~~that the~~ the case. The
25 Commission shall appoint a mediator mediators from a list of mediators eligible for appointment maintained by the
26 Commission which shall consist of those mediators who attain meets the qualifications in Rule 8 and request
27 inclusion on such list. requirements in Paragraph (b) of Rule .0108 of this Subchapter. In the absence of any
28 suggestions by the parties with regard to the appointment of mediators, the Commission mediators shall generally be
29 selected select the mediator for specific the cases case by random order, or by a system which attempts to assign
30 each mediator to an equal number of cases over a period of time, unless the Commission determines in its discretion
31 that, because of unusual circumstances, a particular mediator should be chosen appointed in a particular case. If the
32 parties request the approval of a selected mediator after the appointment of another mediator by the Commission, the
33 Commission may require one or more of the parties, or other responsible person(s), to pay a substitution of mediator
34 fee to the Commission of up to \$100.00.

35 (c) Mediator Lists—To assist parties in the selection of mediators by agreement, the Commission shall maintain a
36 list of mediators eligible for appointment by the Commission in compensation and tort cases, and a list of mediators
37 who are not eligible for appointment, but who may be selected by the parties and approved by the Commission. The

1 ~~Commission shall provide copies of these lists to parties on request, and may charge a reasonable fee for~~
2 ~~maintaining and distributing these lists.~~

3 (d) (c) Disqualification of ~~Mediator~~— Mediator. Any party may move the Commission for an order disqualifying a
4 mediator. For good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered for
5 the selection of a replacement mediator pursuant to this Rule, 2. Nothing in this ~~provision~~ Paragraph shall preclude
6 mediators from disqualifying themselves.

7 *History Note:* Authority G.S. 97-80(a), (c); G.S. 143-296; 143-300; Rule 2 of Rules Implementing
8 Statewide Mediated Settlement Conference in Superior Court Civil Actions;

9 *Eff.* January 16, 1996;

10 *Amended Eff.* October 1, 1998;

11 *Recodified from* 4 NCAC 10A .0616;

12 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 **4 NCAC 10G .0103 is proposed for amendment as follows:**

2 **4 NCAC 10G .0103 THE MEDIATED SETTLEMENT CONFERENCE**

3 (a) Where Conference Is to Be ~~Held~~ Held. Unless all parties in a workers' compensation case or a state tort
4 claims case and the mediator otherwise agree, the mediated settlement conference shall be held in the county where
5 the case is pending. The mediator shall ~~be responsible for reserving~~ reserve a place and ~~making~~ make arrangements
6 for the conference and ~~for giving~~ give ~~timely~~ notice to all attorneys and unrepresented parties of the time and
7 location of the conference.

8 (b) When Conference Is to Be ~~Held~~ Held. ~~Subject to the Commission's orders,~~ The conference shall be held at the
9 time agreed to by the parties and the mediator, or if the parties do not agree, at the time specified by the mediator.

10 (c) Request to Extend Date of ~~Completion~~ Completion. ~~A party, or the mediator, may request that the~~
11 ~~Commission~~ In the interest of justice, the Commission may extend the deadline for completion of the ~~conference.~~
12 conference upon the Commission's own motion, a motion or stipulation of the parties or the suggestion of the
13 mediator. The Commission may grant the request and extend the completion deadline by written order.

14 (d) ~~Recesses~~ Recesses. The mediator may recess the conference at any time and may set times for reconvening.
15 ~~No further notification is required for persons present at the recessed conference.~~ If the time for reconvening is set
16 before the conference is recessed, no further notification is required for persons present at the recessed conference.

17 (e) The Mediated Settlement Conference Is Not to Delay Other ~~Proceedings~~ Proceedings. A mediated settlement
18 conference ~~shall~~ is not be cause for the delay of other proceedings in the case, including the completion of
19 ~~discovery,~~ discovery and the filing or hearing of motions, ~~except by order of the Commission.~~ unless ordered by the
20 Commission in the interest of justice. However, No depositions shall be taken following a Commission order
21 requiring mediation until mediation is concluded, except by agreement of the parties or order of the ~~Commission.~~
22 Commission in the interest of justice.

23 (f) Inadmissibility of Negotiations by Parties and Attorneys. Evidence of statements made and conduct occurring in
24 a mediated settlement conference or other settlement proceeding conducted ~~under these rules,~~ pursuant to the Rules
25 in this Subchapter, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the
26 settlement conference or proceeding, ~~shall~~ are not be subject to discovery and shall be inadmissible in any
27 proceeding in the action or other actions on the same claim, except:

- 28 (1) ~~In~~ proceedings for sanctions for violations of the attendance or payment of mediation fee
29 provisions ~~of Rules 4 and 7;~~ contained in Rule .0104 and Rule .0107 of this Subchapter;
- 30 (2) ~~In~~ proceedings to enforce or rescind a settlement of the action;
- 31 (3) ~~In~~ disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards
32 of conduct for mediators or other neutrals, including the ~~Industrial~~-Commission; or
- 33 (4) ~~In~~ proceedings to enforce laws concerning juvenile or elder abuse. ~~As used in these rules, the term~~
34 ~~"neutral observer" includes persons seeking mediator certification, persons studying dispute~~
35 ~~resolution processes, and persons acting as interpreters. No settlement agreement to resolve any or~~
36 ~~all issues reached at the proceeding conducted under this subsection or during its recesses shall be~~
37 ~~enforceable unless it has been reduced to writing and signed by the parties. No evidence~~

1 ~~otherwise discoverable shall be inadmissible merely because it is presented and discussed in a~~
2 ~~mediated settlement conference or other settlement proceeding.~~

3 (g) No settlement agreement to resolve any or all issues reached at the settlement conference or proceeding
4 conducted under this Subchapter or reached during a recess in the conference or proceeding shall be enforceable
5 unless the settlement agreement has been reduced to writing and signed by the parties. No evidence otherwise
6 discoverable shall be inadmissible solely because the evidence is presented or discussed in a mediated settlement
7 conference or other settlement proceeding.

8 ~~(g)~~ (h) Inadmissibility of Mediator Testimony. No mediator, other neutral, or neutral observer present at a
9 settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct
10 occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement
11 proceeding conducted pursuant to these rules the Rules in this Subchapter in any Industrial Commission case or civil
12 proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except: to attest
13 to the signing of any agreements, and except proceedings for sanctions for violations of the attendance or payment
14 of mediation fee provisions of Rules 4 and 7, disciplinary hearings before the State Bar or any agency enforcing
15 standards of conduct for mediators or other neutrals, including the Industrial Commission, and proceedings to
16 enforce laws concerning juvenile or elder abuse.

17 (1) to attest to the signing of any settlement agreements;

18 (2) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions
19 of Rules contained in Rule .0104 and Rule .0107 of this Subchapter;

20 (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of
21 conduct for mediators or other neutrals, including the Commission; and

22 (4) proceedings to enforce laws concerning juvenile or elder abuse.

23 (i) As used in this Subchapter, the term “neutral observer” includes persons seeking mediator certification, persons
24 studying dispute resolution processes, and persons acting as interpreters.

25 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 3 of Rules Implementing Statewide
26 Mediated Settlement Conference in Superior Court Civil Actions;

27 *Eff.* January 16, 1996;

28 *Amended Eff.* October 1, 1998

29 *Recodified from* 4 NCAC 10A .0616;

30 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 **4 NCAC 10G .0104 is proposed for amendment as follows:**

2 **4 NCAC 10G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

3 (a) ~~Attendance~~— Attendance. The following persons shall physically attend a the mediated settlement conference:

4 ~~(1) Parties.~~

5 ~~(A) (1) All~~ all individual parties;

6 ~~(B) (2) Employers.~~ in a workers' compensation case, a representative of the employer at the time of
7 injury ~~is required to attend only if:~~ (1) the employer, instead of or in addition to the insurance
8 company or administrator, has decision-making authority with respect to settlement; or (2) the
9 employer is offering the claimant employment and the suitability of that employment is in issue;
10 or (3) the employer and the claimant have agreed to simultaneously mediate non-compensation
11 issues arising from the injury; or (4) the Commission orders the employer representative to attend
12 the mediation conference.

13 (A) the employer, instead of or in addition to the insurance company or administrator, has
14 decision-making authority with respect to settlement;

15 (B) the employer is offering the claimant employment and the suitability of that employment
16 is in issue;

17 (C) the employer and the claimant have agreed to simultaneously mediate non-compensation
18 issues arising from the injury; or

19 (D) the Commission orders the employer representative to attend the conference if the
20 representative's physical attendance is necessary to resolve matters in dispute in the
21 subject action;

22 ~~(C)(3)~~ an officer, employee or agent of any party that is not a natural person or a governmental entity
23 shall be represented at the conference by an officer, employee or agent who is not such party's
24 outside counsel and who has been the authorized authority to decide on behalf of such party
25 whether and on what terms to settle the action; and

26 ~~(D) (4)~~ in a workers' compensation case, an employee or agent of any party that is a governmental entity
27 shall be represented at the conference by an employee or agent who is not such party's outside
28 counsel or Attorney General's counsel responsible for the case and who has the authority to decide
29 on behalf of such party and on what terms to settle the action; action. provided if under law,

30 (5) When the governing law prescribes that the terms of a proposed settlement terms can may
31 be approved only by a Board, the representative shall have an employee or agent who is not such
32 party's outside counsel or Attorney General's counsel responsible for the case and who has the
33 authority to negotiate on behalf of the party and to make a recommendation to that the Board.

34 Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of
35 governmental entities and agencies for state tort claims, an employee or agent of the named
36 governmental entity or agency is not required to attend the mediated settlement conference; the
37 Attorney General shall attempt to make every effort to make an employee or agent of the named

1 governmental entity or agency in a state tort claim available via telecommunication, and mediation
2 shall not be delayed due to the absence or unavailability of the employee or agent of the named
3 governmental entity or agency.

4 ~~(2) (6)~~ Attorneys. the parties' counsel of record; provided, that appearance by counsel does not dispense
5 with or waive the required attendance of the parties listed ~~above;~~ in Subparagraphs (1) through (4);

6 ~~(3) (7)~~ Insurance Company Representatives. A representative of each defendant's primary workers'
7 compensation or liability insurance carrier or self-insured which may be obligated to pay all or
8 part of any claim presented in the action. Each ~~such~~ carrier or self-insured shall be represented at
9 the conference by an officer, employee or agent who is not such party's outside counsel and who
10 has the authority to ~~make a decision~~ decide on behalf of ~~such~~ the carrier or self-insured whether
11 and on what terms to settle the action, or who has been authorized to negotiate on behalf of such
12 carrier or self-insured and can ~~promptly~~ communicate during the conference with persons who
13 have such decision making authority; and

14 ~~(4) (8)~~ Other Parties and Persons. by order of the Commission, other representatives of parties,
15 employers ~~or,~~ or carriers, who may be obligated to pay all or part of any claim presented in the
16 action and who are not required to attend the conference pursuant to ~~the above rules~~
17 Subparagraphs (1) through (6) of this Rule, may be required to attend the conference if the
18 Commission determines that the ~~person's representative's~~ attendance ~~may be~~ is necessary for
19 purposes of resolving the matters in dispute in the subject action. All ~~(i)~~ Any employer ~~employers~~
20 and (ii) or carriers ~~carrier~~ who may be obligated to pay all or part of any claim presented in the
21 action and who ~~are~~ is not required to physically attend a the mediation mediated settlement
22 conference pursuant to ~~these rules~~ Subparagraphs (1) through (6) of this Rule or by Commission
23 orders, are nevertheless allowed to may attend the ~~mediation~~ conference if ~~they~~ the employer or
24 carrier elects to do so. attend. If, during a the mediation conference, the mediator determines that
25 the physical attendance of one or more additional persons is necessary to resolve the matters in
26 dispute in the subject action, the mediator may recess the ~~conference,~~ conference and ~~then~~
27 reconvene the conference at a later date and time ~~in order~~ to allow ~~for the attendance of the~~
28 additional person or ~~persons.~~ persons to physically attend.

29 ~~(b) Waiver of Attendance Requirement.~~

30 ~~(+)~~ (b) Any party or person required to attend a mediated settlement conference shall physically attend the
31 conference until an agreement is reduced to writing and signed as provided in Paragraph (f) of this Rule, 4(d),
32 or until an impasse has been declared. Any such party or person may have the physical attendance requirement
33 excused or ~~modified, including the allowance of that party's or person's participation without physical~~
34 ~~attendance;~~ modified by agreement of all parties and persons required to attend the conference and the
35 mediator, or by order of the Commission in the interest of justice upon motion of a party and notice to all parties
36 and persons required to attend the conference.

1 (A) ~~— In the absence of an order by the Dispute Resolution Coordinator, only by agreement of all parties~~
2 ~~and persons required to attend and the mediator; or~~

3 (B) ~~— By order of the Dispute Resolution Coordinator, upon motion of a party and notice to all parties~~
4 ~~and persons required to attend and the mediator.~~

5 (c) Permissible modifications include allowing a party or person to participate in the conference without the party or
6 person being physically present at the conference.

7 ~~(2) (d) Appearance by Telephone: In appropriate cases The Dispute Resolution Coordinator the Commission or~~
8 ~~the mediator, with the consent of the parties, may in appropriate cases allow a party or insurance carrier~~
9 ~~representative who is required to physically attend a mediated settlement conference under these rules this Rule to~~
10 ~~attend the conference by telephone, conference call, or speaker telephone, telephone or videoconferencing; at the~~
11 ~~discretion of the mediator, provided that, the party or person(s) representative so attending shall bear all costs of~~
12 ~~such telephone calls, calls or videoconferencing, that the mediator may communicate directly with the insurance~~
13 ~~representative with regard to the matters discussed in mediation, and that the mediator may set a subsequent~~
14 ~~mediated settlement conference at which all persons parties and representatives shall be required to physically~~
15 ~~attend. The failure to properly appear by telephone or videoconferencing in accordance with this rule Paragraph~~
16 ~~may shall~~ subject the responsible party(ies) or representative(s) to sanctions pursuant to Rule 5. .0105 of this
17 Subchapter.

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

23 ~~(4) (f) Finalizing Agreement— Agreement.~~ If an agreement is reached in the ~~mediation mediated settlement~~
24 conference, the parties shall reduce the agreement to writing, specifying all the terms of their the agreement that
25 bearing bear on the resolution of the dispute before the Industrial Commission, and shall sign it the agreement along
26 with their counsel. The parties may use IC Form MSC8 or MSC9 for this purpose. The Execution by counsel of a
27 mediated settlement agreement for an employer or carrier who does not physically attend the mediation mediated
28 settlement conference shall be deemed to be in compliance with this Rule and Rule 502(3)(b) of the Workers'
29 Compensation Rules of the North Carolina Industrial Commission, 4 NCAC 10A .0502. By stipulation of the
30 parties and at their the parties' expense, the agreement may be electronically or stenographically recorded. All
31 agreements for payment of compensation shall be submitted in proper form for Industrial Commission approval in
32 accordance with 4 NCAC 10A .0502, and shall be filed with the Commission within 20 days of the conclusion of the
33 mediation conference.

34 ~~(e) (g) Payment of Mediator's Fee— Fee.~~ The mediator's fee shall be paid at the conclusion of the mediated
35 settlement conference, unless otherwise provided by Rule 7 .0107 of this Subchapter, or by agreement with the
36 mediator. Sanctions may be assessed if the mediator's fee is not paid in a timely fashion.

1 ~~(f)~~ (h) Related Cases— Cases. Upon application by any party or person and upon notice to all parties, the
2 Commission may, in the interest of justice, order ~~that~~ an attorney of record, party or representative of an insurance
3 carrier ~~that who~~ may be liable for all or any part of a claim pending in ~~an Industrial~~ a Commission case ~~shall, upon~~
4 ~~reasonable notice~~, to attend a mediated settlement conference that may be convened in another pending case,
5 regardless of the forum in which the other case may be pending, provided that all parties in the other pending case
6 consent to the attendance ordered pursuant to this ~~rule~~. Paragraph. Any disputed issues concerning such an order
7 shall be addressed to the Commission’s Dispute Resolution Coordinator. Unless otherwise ordered, any attorney,
8 party or carrier representative ~~that who properly~~ attends a mediated settlement conference pursuant to this Paragraph
9 ~~rule~~ shall not be required to pay any of the mediation fees or costs related to that ~~mediation~~ conference. Requests
10 that a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement
11 conference in ~~an Industrial~~ a Commission case shall be addressed to the court or agency in which the related case is
12 pending, provided that all parties in the ~~Industrial~~ Commission case consent to the requested attendance.

13 *History Note:* *Authority* G.S. 97-80(a), (c); 143-295; 143-296; 143-300; Rule 4 of
14 Rules Implementing Statewide Mediated Settlement Conference in Superior Court Civil Actions;
15 *Eff.* January 16, 1996;
16 *Amended Eff.* October 1, 1998;
17 *Recodified from* 4 NCAC 10A .0616;
18 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 **4 NCAC 10G .0104A is proposed for amendment as follows:**

2 **4 NCAC 10G .0104A FOREIGN LANGUAGE INTERPRETERS**

3 (a) ~~Services of Foreign Language Interpreters Required Unless Waived.~~ When a person who does not speak or
4 understand the English language is required to attend a ~~mediation~~ mediated settlement conference, the person shall
5 be assisted by a qualified foreign language interpreter unless the right to an interpreter is waived by ~~both~~ the parties.

6 (b) ~~Qualifications of Interpreters.~~ To qualify as a foreign language interpreter, a person ~~must~~ shall possess
7 sufficient experience and education, or a combination of experience and education, ~~speaking,~~ speaking and
8 understanding English and the foreign language to be interpreted, to qualify as an expert witness pursuant to G.S.
9 8C-1, Rule 702.

10 (c) ~~Notice to Industrial Commission and Opposing Party of Need for Interpreter.~~ Any party who is unable to speak
11 or understand English shall so notify the ~~Industrial~~ Commission and the opposing ~~party(ies),~~ party(ies) in writing,
12 not less than 21 days prior to the date of the ~~mediation~~ mediated settlement conference. The notice shall state ~~with~~
13 specificity the language(s) that ~~must~~ shall be interpreted.

14 (d) ~~Designation of Interpreter.~~ Upon notice of the need for an interpreter, the employer or insurer shall retain a
15 qualified, disinterested interpreter, who possesses the qualifications listed in Paragraph (b) of this Rule, either agreed
16 upon by the parties or approved by the Industrial Commission, to assist at the ~~mediation~~ mediated settlement
17 conference. The parties may select by agreement, or in the absence of an agreement, the Commission may appoint a
18 disinterested interpreter possessing the qualifications listed in Paragraph (b) of this Rule.

19 (e) ~~Interpreter Fees.~~ The interpreter's fee ~~shall~~ constitutes a cost as contemplated by G.S. 97-80. A qualified
20 interpreter who appears at a ~~mediation~~ mediated settlement conference ~~shall be~~ is entitled to payment of the fee
21 agreed upon by the interpreter and the employer or insurer that retained the interpreter. Except in cases where a
22 claim for compensation has been prosecuted without reasonable ground, the fee agreed upon by the interpreter and
23 employer or insurer shall be paid by the employer or insurer. Where ~~it is ultimately determined by~~ the Commission
24 ultimately determines that the request for an interpreter was unfounded, attendant costs ~~may~~ shall be assessed
25 against the movant.

26 (f) ~~Interpreter Ethics.~~ Foreign language interpreters shall abide by the ~~code of ethical conduct for court interpreters~~
27 Code of Conduct and Ethics of Foreign Language Interpreters and Translators, contained in Part 4 of Policies and
28 Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court
29 System and promulgated by the North Carolina Administrative Office of the Courts, and ~~adopted by the Industrial~~
30 ~~Commission~~ shall interpret, as word for word as is practicable, without editing, commenting, or summarizing,
31 testimony or other communications. The Code of Conduct and Ethics of Foreign Language Interpreters and
32 Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be
33 obtained at no charge from the North Carolina Administrative Office of the Court's website,
34 <http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>, or upon request, at the offices of
35 the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the
36 hours of 8:00 a.m. and 5:00 p.m.

37 *History Note:* Authority G.S. 97-80(a), (c); 97-79(b); 143-296; 143-300;

1

Eff. January 1, 2011;

2

Amended Eff. January 1, 2013.

1 **4 NCAC 10G .0106 is proposed for amendment as follows:**

2 **4 NCAC 10G .0106** **AUTHORITY AND DUTIES OF MEDIATORS**

3 ~~(a) Authority of Mediator.~~

4 ~~(1) (a) Control of Conference.~~ The mediator shall at all times be in control of the mediated settlement conference
5 and the procedures to be followed. Except as otherwise set forth in ~~these rules~~ the Rules in this Subchapter with
6 regard to the finalization of the parties' agreement, there shall be no audio, video, electronic or stenographic
7 recording made of the negotiations or discussions that occur at the mediated settlement conference. of the mediation
8 process by any participant.

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

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

15 ~~(b) Duties of Mediator.~~

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

18 ~~(A) (1)~~ (1) the process of mediation;

19 ~~(B) (2)~~ (2) the differences between mediation and other forms of conflict resolution;

20 ~~(C) (3)~~ (3) the costs of the ~~mediated settlement~~ conference;

21 ~~(D) (4)~~ (4) the facts that the ~~mediated settlement~~ conference is not a trial or hearing, the mediator is not acting
22 in the capacity of a Commissioner or Deputy ~~Commissioner~~, Commissioner and the mediator will
23 shall not act in ~~the such~~ capacity of a ~~Commissioner or Deputy Commissioner~~ in the subject case
24 at any time in the future, and the parties retain their right to a hearing if ~~they~~ the parties do not
25 reach a settlement;

26 ~~(E) (5)~~ (5) the circumstances under which the mediator may meet alone with ~~either~~ any of the parties or with
27 any other person;

28 ~~(F) (6)~~ (6) whether and under what conditions, communications with the mediator ~~will~~ shall be held in
29 confidence during the conference;

30 ~~(G) (7)~~ (7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence
31 Code and Subparagraph 3(f) of this Rule; Paragraph (f) of Rule .0103 of this Subchapter;

32 ~~(H) (8)~~ (8) the duties and responsibilities of the mediator and the parties; ~~and, and~~

33 ~~(I) (9)~~ (9) the fact that any agreement reached ~~will~~ shall be reached by mutual consent of the parties.

34 ~~(2) (e) Disclosure.~~ The mediator ~~has a duty to~~ shall be impartial and ~~to~~ advise all parties of any circumstances
35 bearing on possible bias, prejudice or partiality.

36 ~~(3) (f) Declaring Impasse.~~ ~~It is the duty of~~ The mediator to timely shall determine when mediation is not viable,
37 that an impasse exists, or that mediation should end.

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

12 (5) (h) Scheduling and Holding the Conference. ~~It is the duty of~~ The mediator ~~to~~ shall schedule the mediated
13 settlement conference, ~~conference~~ in consultation with the ~~parties,~~ parties and conduct ~~it~~ the conference prior to the
14 ~~conference completion deadline set out in the Commission's order, and prior to the date of any hearing before a~~
15 ~~Deputy Commissioner if the case is scheduled for hearing after the mediator is appointed.~~ order. Deadlines for
16 completion of the conference shall be ~~strictly~~ observed by the mediator unless ~~said~~ the time limits are changed by
17 the Commission.

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

27 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 6 of Rules Implementing Statewide
28 Mediated Settlement Conference in Superior Court Civil Actions;

29 *Eff.* January 16, 1996;

30 *Amended Eff.* October 1, 1998;

31 *Recodified from* 4 NCAC 10A .0616;

32 *Amended Eff.* January 1, 2013; June 1, 2000.

1 **4 NCAC 10G .0107 is proposed for amendment as follows:**

2 **4 NCAC 10G .0107 COMPENSATION OF THE MEDIATOR**

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

5 (b) By Commission ~~Order.~~ Order. When the mediator is appointed by the Commission, the mediator's
6 compensation shall be as ~~follows.~~ follows:

7 (1) Conference Fees. The mediator shall be paid by the parties at the rate of one hundred fifty dollars
8 (\$150.00) per hour for mediation services provided at the mediated settlement conference.

9 (2) Administrative Fees. The parties shall pay to the mediator a one time, per case administrative fee
10 of one hundred fifty dollars (\$150.00). ~~\$150.00, unless otherwise ordered by the Commission.~~ The
11 mediator's administrative fee shall be paid in full unless, within 10 days after ~~the date that~~ the
12 mediator has been appointed, written notice is given to the mediator and to the Dispute Resolution
13 Coordinator that the issues for which a request for hearing ~~had been~~ was filed have been fully
14 resolved or that the hearing request has been withdrawn.

15 (3) Postponement Fees. As used ~~herein in this Subchapter,~~ the term "postpone" ~~shall~~ means to
16 reschedule or otherwise not proceed with a scheduled ~~mediation~~ mediated settlement conference
17 after ~~that the~~ conference has been scheduled to convene on a specific date. After a conference is
18 scheduled to convene on a specific date, ~~it the conference~~ may not be postponed ~~without~~ unless the
19 requesting party ~~first notifying~~ notifies all other parties ~~concerning~~ of the grounds for the
20 requested ~~postponement, or without~~ postponement and obtains the consent and approval of the
21 mediator or the Dispute Resolution ~~Coordinator.~~ Coordinator that the postponement is for the
22 benefit of the parties. If ~~a mediation~~ the conference is postponed without good cause, the mediator
23 shall be paid a postponement fee, ~~unless, upon application of the party or parties charged with the~~
24 ~~fee, the fee is waived by the Commission.~~ Unless the Commission otherwise orders, The
25 postponement fee shall be two hundred twenty five dollars (\$225.00) three hundred dollars
26 (\$300.00) if the mediation conference is postponed within seven calendar days of the scheduled
27 ~~conference, date,~~ and one hundred twenty five dollars (\$125.00) one hundred fifty dollars
28 (\$150.00) if the mediation conference is postponed more than seven calendar days prior to a the
29 ~~scheduled conference.~~ date. Unless otherwise ordered by the Commission in the interest of
30 justice, postponement fees shall be allocated in equal shares to the party or parties requesting the
31 postponement, ~~unless otherwise ordered by the Commission.~~

32 (4) The settlement of a case prior to the scheduled date ~~for of the mediation~~ mediated settlement
33 conference shall be good cause for a postponement, provided that the mediator was notified of the
34 settlement ~~immediately after it the settlement~~ was reached and that the mediator received notice of
35 the settlement at least ~~fourteen (14)~~ 14 calendar days prior to the date scheduled for mediation.

36 (c) Payment by ~~Parties.~~ Parties. Payment ~~shall be~~ is due upon completion of the mediated settlement conference;
37 provided, that the State shall be billed at the conference and shall pay within 30 days of receipt of the billing, bill,

1 and insurance companies or carriers whose written procedures do not provide for payment of the mediator at the
2 conference may pay within 15 days of the conference. Unless otherwise agreed to by the parties or ordered by the
3 ~~Commission, Commission~~ due to a party or parties violating a Rule in this Subchapter, the costs of the ~~mediated~~
4 ~~settlement~~ conference shall be allocated to the parties, as follows:

- 5 (1) one share by plaintiff(s);
- 6 (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one
7 employer or carrier is involved, or if there is a dispute between employer(s) or carrier(s), one share
8 by each separately represented entity;
- 9 (3) one share by participating third-party tort defendants or their carrier, or if there are conflicting
10 interests among them, one share from each ~~such~~ defendant or group of defendants having shared
11 interests; ~~and, and~~
- 12 (4) one share by the defendant State agency in a ~~State~~-Tort Claims Act case. Parties obligated to pay a
13 share of the costs ~~shall be~~ are responsible for equal shares; provided, however, that in workers'
14 compensation claims the defendant shall pay the plaintiff's share of mediation, postponement, and
15 substitution fees, as well as ~~its own,~~ defendant's own share.

16 (d) Unless the Dispute Resolution Coordinator enters an order allocating such fees to a particular ~~party,~~ party due to
17 the party violating a Rule in this Subchapter, the fees may be taxed as other costs by the Commission. After the case
18 is concluded, the defendant shall be reimbursed for the plaintiff's share of such fees ~~when the case is concluded~~
19 from benefits that may be determined to be due to the plaintiff, and the defendant may withhold funds from any
20 award for this purpose.

21 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 7 of Rules Implementing Statewide
22 Mediated Settlement Conference in Superior Court Civil Actions;

23 *Eff.* January 16, 1996;

24 *Amended Eff.* October 1, 1998;

25 *Recodified from* 4 NCAC 10A .0616

26 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 **4 NCAC 10G .0108 is proposed for amendment as follows:**

2 **4 NCAC 10G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION**

3 (a) ~~Party Selection—~~ Selection. The parties may, by mutual consent, select any North Carolina Dispute Resolution
4 Commission-certified mediator, with or without the qualifications in Paragraph (b) of this Rule, as their the parties'
5 mediator; by mutual consent, with or without the qualifications in (b); provided, that the Commission ~~may~~ shall, for
6 good cause, bar any persons from holding ~~themselves~~ himself or herself out as a mediator of cases within ~~its~~ the
7 Commission's jurisdiction or from receiving a fee for mediation of such cases.

8 (b) ~~Appointment of Mediators—~~ Mediators. If the parties have agreed or been ordered to mediate, and cannot agree
9 on the selection of a mediator, the Commission shall appoint a mediator, ~~from a list of persons~~ who holds current
10 certification from the North Carolina Dispute Resolution Commission that ~~they~~ he or she ~~are~~ is qualified to carry out
11 mandatory mediations in the Superior Courts of the ~~State,~~ State of North Carolina and who ~~have~~ has filed a
12 declaration with the Commission, on forms provided by ~~it~~ the Commission, stating ~~that:~~ that the declarant agrees to
13 accept and perform mediations of disputes before the Commission with reasonable frequency when called upon for
14 the fees and at the rates of payment specified by the Commission. A mediator making this declaration shall notify
15 the commission when any of the facts declared are no longer accurate.

16 (1) ~~— If an attorney, that declarant remains a member in good standing of the North Carolina State Bar;~~

17 (2) ~~— The declarant agrees to accept and perform mediations of disputes before the Commission with~~
18 ~~reasonable frequency when called upon for the fees and at the rates of payment specified by the~~
19 ~~Commission;~~

20 (3) ~~— If the declarant desires to be appointed by the Commission to mediate workers' compensation~~
21 ~~cases, that he or she has completed N.C. State Bar approved continuing legal education course(s)~~
22 ~~on workers' compensation law during the previous two years totaling not less than six hours.~~
23 ~~A mediator making such declaration shall immediately notify the Commission when any of the~~
24 ~~facts declared are no longer accurate. The Commission may require a new declaration on a~~
25 ~~periodic or intermittent basis. The Commission shall delete from such lists any mediator whose~~
26 ~~certification from the Dispute Resolution Commission has expired or been revoked. The~~
27 ~~Commission may charge an administrative fee to defray the costs of maintaining lists and referring~~
28 ~~cases to mediators.~~

29 (c) ~~Mediator Lists—~~ The Commission may maintain and provide to parties separate lists of mediators who have
30 successfully completed mediation training certified by the Dispute Resolution Commission, and who desire to hold
31 mediations in disputes arising under the Workers' Compensation Act and the State Tort Claims Act.

32 (d) (c) ~~Failure of Mediator to Appear at Conference.~~ Conference— ~~In the event that~~ If a mediator fails to appear at a
33 scheduled ~~mediation~~ mediated settlement conference without good cause, the mediator ~~shall~~ is not be entitled to the
34 administrative fee for the case, ~~and may be deleted from the Commission's list of mediators qualified for~~
35 ~~appointments for a period of six months.~~

36 *History Note:* Authority G.S. 97-80(a), (c); 143-296; 143-300; Rule 8 of Rules Implementing Statewide
37 Mediated Settlement Conference in Superior Court Civil Actions;

1 *Eff.* January 16, 1996;
2 *Amended Eff.* October 1, 1998;
3 *Recodified from* 4 NCAC 10A .0616;
4 *Amended Eff.* January 1, 2013; January 1, 2011; June 1, 2000.

1 **4 NCAC 10G .0109 is proposed for amendment as follows:**

2 **4 NCAC 10G .0109** **RULES FOR NEUTRAL EVALUATION**

3 (a) Nature of Neutral ~~Evaluation~~—Evaluation. As used in this Subchapter, neutral evaluation is an ~~informal~~,
4 abbreviated presentation of facts and issues by the parties to ~~an~~ a neutral evaluator at an early stage of the case. The
5 neutral evaluator is responsible for evaluating the strengths and weaknesses of the case, and for providing a candid
6 assessment of liability, settlement value, and a dollar value or range of potential awards if the case proceeds to a
7 hearing. The neutral evaluator is also responsible for identifying areas of agreement and disagreement and
8 suggesting necessary and appropriate discovery.

9 (b) When Conference Is to Be ~~Held~~. ~~Held~~— The provisions applicable to the scheduling of ~~mediation~~ mediated
10 settlement conferences set forth in Rule ~~3(b)~~ .0103 of this Subchapter ~~shall also be applicable~~ apply to neutral
11 evaluation proceedings.

12 (c) Pre-conference ~~Submissions~~. ~~Submissions~~— No later than ~~45~~ 20 days prior to the date established for the neutral
13 evaluation conference to begin, each party may, but is not required to, furnish the evaluator with written information
14 about the case, and shall at the same time certify to the evaluator that ~~they~~ the party has served a copy of such
15 summary on all other parties ~~to~~ in the case. The information provided to the neutral evaluator and the other parties
16 ~~hereunder~~ under this Rule shall be a summary of the ~~significant~~ facts and issues in the ~~party's~~ case, shall not be more
17 than 10 pages in length, and shall ~~have attached to it~~ include as attachments copies of any documents supporting the
18 ~~parties'~~ party's summary. Information provided to the neutral evaluator and to the other parties pursuant to this
19 Paragraph shall not be filed with the Commission.

20 (d) Replies to Pre-conference ~~Submissions~~. ~~Submissions~~— No later than five days prior to the date established for
21 the neutral evaluation conference to begin, any party may, but is not required to, send additional written information
22 ~~not exceeding 5 pages in length~~ to the neutral evaluator, evaluator responding to the submission of an opposing
23 party. The party's response shall not exceed five pages in length, ~~be served on all other parties~~ and the party sending
24 ~~such~~ the response shall ~~certify such service~~ to the neutral evaluator, evaluator that the party has served a copy of the
25 response on all other parties in the case, ~~but such~~ The response shall not be filed with the Commission.

26 (e) Conference ~~Procedure~~. ~~Procedure~~— Prior to a neutral evaluation conference, the neutral evaluator may, if he or
27 she deems it necessary, ~~may~~ request additional written information from any party. At the conference, the neutral
28 evaluator may address questions to the parties and give ~~them~~ the parties an opportunity to complete their summaries
29 with a brief oral statement.

30 (f) Modification of ~~Procedure~~. ~~Procedure~~— Subject to the approval of the neutral evaluator, the parties may agree to
31 modify the procedures for neutral evaluation required by ~~these rules~~ the Rules for neutral evaluation, in this
32 Subchapter, or ~~such~~ the procedures may be modified by order of the ~~Commission~~. Commission in the interest of
33 justice. The modified procedures may include the presentation of submissions in writing or by telephone in lieu of
34 ~~the~~ physical appearance at a neutral evaluation conference, and may also include revisions to the time periods and
35 page limitations concerning the parties' submissions.

36 ~~(g) Evaluator's Duties.~~

1 ~~(f)~~ (g) Evaluator's Opening Statement. At the beginning of the neutral evaluation conference, the neutral evaluator
2 shall define and describe the following points to the parties:

3 ~~(A)~~ (1) the facts that the neutral evaluation:

4 (A) the conference is not a hearing,

5 (B) the neutral evaluator is not acting in the capacity of a Commissioner or

6 Deputy Commissioner, Commissioner and the neutral will shall not act in the such

7 capacity of a Commissioner or Deputy Commissioner in the subject case at any time in

8 the future,

9 (C) the neutral evaluator's opinions are not binding on any party, and

10 (D) the parties retain their right to a hearing if they the parties do not reach a settlement.

11 settlement;

12 ~~(B)~~ (2) the fact that any settlement reached will be only by mutual consent of the parties. parties;

13 ~~(C)~~ (3) the process of the proceeding;

14 ~~(D)~~ (4) the differences between the proceeding and other forms of conflict resolution;

15 ~~(E)~~ (5) the costs of the proceeding;

16 ~~(F)~~ (6) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 of the Evidence

17 Code and Paragraph (f) of Rule .0103 in this Subchapter; Rule 3(f) above of the Rules; and

18 ~~(G)~~ (7) the duties and responsibilities of the neutral evaluator and the participants.

19 ~~(h)~~ (h) Oral Report to Parties by Evaluator. In addition to the written report to the Commission required under ~~these~~
20 ~~rules, the Rules in this Subchapter,~~ at the conclusion of the neutral evaluation conference, the neutral evaluator shall
21 issue an oral report to the parties advising ~~them the parties~~ of ~~his or her the neutral evaluator's opinions~~ opinion of
22 the case. ~~Such~~ The opinion shall include a candid assessment of liability, estimated settlement values and options,
23 and the strengths and ~~weaknesses~~ weaknesses of the parties' claims and defenses if the case proceeds to a hearing.
24 The oral report shall also contain a suggested settlement or disposition of the case and the reasons therefor. The
25 neutral evaluator shall not reduce his or her oral report to ~~writing, writing~~ and shall not inform the Commission
26 thereof.

27 ~~(i)~~ (i) Report of Evaluator to Commission. Within 10 days after the completion of the neutral evaluation
28 conference, the neutral evaluator;

29 (1) shall submit to the Dispute Resolution Coordinator a written report using a form prepared and
30 distributed by the Commission, stating;

31 (A) when and where the conference was held,

32 (B) the names of those persons who attended the conference,

33 (C) whether or not an agreement was reached by the parties, and

34 (D) whether the issue or matter will be resolved by ~~Industrial~~ Commission form agreement,

35 compromise settlement agreement, other settlement agreement, voluntary dismissal or

36 removal from the hearing ~~docket, docket~~ and

37 (2) shall identify the persons designated to file or submit for approval such agreement, or dismissal.

1 **4 NCAC 10G .0110 is proposed for amendment as follows:**

2 **4 NCAC 10G .0110** ~~WAIVER~~ **SUSPENSION OF RULES. RULES**

3 ~~In the interest of justice, or to comply with the law from time to time as it may be amended or declared, the~~
4 ~~Commission may waive any requirement of these rules.~~

5 To prevent manifest injustice to a party, or to expedite a decision in the public interest, the Commission may, except
6 as provided by the Rules in this Subchapter, suspend or vary the requirements or provisions of any of the Rules in
7 this Subchapter in a case pending before the Commission upon application of a party or upon its own initiative, and
8 may order proceedings in accordance with its directions.

9 *History Note:* *Authority* G.S. 97-80(a), (c); 143-296; 143-300;

10 *Eff.* January 16, 1996;

11 *Amended Eff.* October 1, 1998;

12 *Recodified from* 4 NCAC 10A .0616;

13 *Amended Eff.* January 1, 2013; June 1, 2000.

14

1 **4 NCAC 10G .0112 is proposed for amendment as follows:**

2 **4 NCAC 10G .0112 MISCELLANEOUS. MISCELLANEOUS**

3 Throughout ~~these rules~~ the Rules in this Subchapter any reference to the number of days within which any act may
4 be performed shall mean and refer to calendar days, and shall include Saturdays, Sundays and ~~legal holidays.~~
5 holidays established by the State Personnel Commission. Provided, however, that if the last day (a) to file a motion,
6 (b) to give notice of the selection of a mediator, or (c) for a pro se plaintiff to give notice that the plaintiff requests
7 mediation is a Saturday, Sunday or ~~legal holiday,~~ holiday established by the State Personnel Commission, the
8 motion or notice may be filed or given on the next day that is not a Saturday, Sunday or ~~legal holiday.~~ holiday
9 established by the State Personnel Commission.

10 *History Note:* Authority G.S. 97-80(a), (c); G.S. 143-296; G.S. 143-300;

11 *Eff.* January 16, 1996;

12 *Amended Eff.* October 1, 1998;

13 *Recodified from* 4 NCAC 10A .0616;

14 *Amended Eff.* January 1, 2013; June 1, 2000.

15