

**Regulatory Impact Analysis**  
**Duties of Parties, Representatives, and Attorneys (11 NCAC 23G .0104)**

Agency:	North Carolina Industrial Commission
Contact:	Gina Cammarano – (919) 807-2524
Rule proposed for amendment:	11 NCAC 23G .0104 (see Appendix 1)
State Impact:	Yes
Local Impact:	Yes
Private Impact:	Yes
Substantial Economic Impact:	No
Statutory Authority:	G.S. §§ 97-80; 143-296; 143-300; Rule 4 of <i>Rules for Mediated Settlement Conferences and other Settlement Procedures in Superior Court Civil Actions</i> .

**A. Background and Purpose of Proposed Rule Amendment:**

This proposed rule amendment is necessitated by a recent North Carolina Supreme Court Order amending the *Rules for Mediated Settlement Conferences and other Settlement Procedures in Superior Court Civil Actions* and by the North Carolina Workers' Compensation Act which mandates, in G.S. §97-80(c), that the Industrial Commission's mediation rules shall be "substantially similar" to the rules approved by the North Carolina Supreme Court for use in the Superior Court division.

The recent North Carolina Supreme Court Order (ordered by the Court in Conference on June 3, 2020) changed the presumptive attendance requirement for mediations in Superior Court civil actions from presumptive in-person attendance to presumptive remote attendance. This change to the Supreme Court's rule was prompted by public health and safety concerns due to the COVID-19 pandemic.

The Industrial Commission's permanent Rule 11 NCAC 23G .0104, in its current form, makes in-person attendance at mediations the presumptive requirement. Therefore, the Industrial Commission's current permanent rule is not substantially similar to the current rule approved by the North Carolina Supreme Court for use in the Superior Court division regarding the manner of attendance (in-person versus remote).<sup>1</sup>

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<sup>1</sup> The Industrial Commission undertook emergency and temporary rulemaking to amend Rule 11 NCAC 23G .0104 to make remote mediation attendance the presumptive requirement due to the serious and unforeseen threat to the public health and safety that would result from in-person attendance being presumptively required during the COVID-19 pandemic and in order to make the Industrial Commission's rule substantially similar to the rule approved by the Supreme Court for use in the Superior Court division regarding the manner of attendance. The emergency rule was approved by the Codifier of Rules and went into effect June 16, 2020. The temporary rule was approved by the Rules Review Commission and went into effect August 28, 2020.

## **B. Proposed Rule Amendment and Its Estimated Economic Impact:**

While there are economic impacts due to the proposed rule amendment, which are discussed below starting with Subsection B(2), there also are some areas where little or no economic impact has been seen or is expected.

### **1. Public Health Benefits to All Mediation Participants**

Protecting the health and safety of all mediation participants is the primary benefit of remote mediations. Several mediators relayed anecdotes about actual cases where one of the mediation participants was diagnosed with COVID-19 shortly after the scheduled mediation. They pointed out that had the mediation taken place in person, all of the mediation participants likely would have been exposed to the virus for the following reasons: (1) mediations often take place in offices where the air does not circulate freely; (2) mediations require multiple extended conversations between the mediator and the other mediation participants while the mediator is attempting to help the opposing parties reach a resolution in the case; and (3) mediations usually last for several hours.

Due to these factors that are characteristic of most, if not all, mediations, participants are concerned about in-person mediations turning into super-spreader events and about the mediators themselves (some of whom do two mediations a day, five days a week) becoming super-spreaders of the virus as they move from mediation participant to mediation participant, from office to office, and from mediation to mediation. Conducting mediations remotely reduces the risk of spreading communicable diseases such as COVID-19.

### **2. Areas of Little or No Observed or Expected Economic Impact**

#### **Unrepresented Plaintiffs**

The proposed rule amendment is expected to have little or no economic impact on unrepresented plaintiffs because Rule 11 NCAC 23G .0101(j) states: “Unless an unrepresented plaintiff requests that the plaintiff’s case be mediated, the Commission shall enter an order dispensing with mediation.” According to the Commission’s Dispute Resolution Coordinator, it is very rare for an unrepresented plaintiff to request a mediation. Further, even if a mediation is requested by an unrepresented plaintiff, the case will not proceed to mediation unless the Dispute Resolution Coordinator is satisfied, following a careful inquiry, that the unrepresented plaintiff fully understands the mediation process and that the case is appropriate for mediation. According to the Dispute Resolution Coordinator, this process results in an extremely small number of cases, if any, going to mediation in a given year where the plaintiff is unrepresented. Therefore, the proposed rule amendment should have little or no economic impact on unrepresented plaintiffs.

**Outcome of Mediation Process (Number of Cases Referred to Mediation and Mediation Settlement Rate)**

The proposed rule amendment also is expected to have little or no effect on the outcome of the mediation process in terms of the number of cases referred to mediation and the mediation settlement rate, based on the available data.

The data shows that in Fiscal Year 2019-2020 (which included nearly four months during which nearly all mediations took place remotely instead of in person due to the COVID-19 pandemic), the number of cases referred to mediation was 9,671 and the mediation settlement rate was 73.19%.

As a comparison, in Fiscal Year 2018-19 (when nearly all mediations took place in person), the number of cases referred to mediation was 9,275 and the mediation settlement rate was 73.04%, and in Fiscal Year 2017-18 (again, when nearly all mediations took place in person), the number of cases referred to mediation was 9,677 and the mediation settlement rate was 72.9%.

Further, 2,454 mediations were convened in the last four months of Fiscal Year 2019-20 (March 1, 2020 through June 30, 2020) as compared to an average of 2,445 mediations convened in the last four months of the two prior fiscal years.

There are no known factors in Fiscal Year 2019-20 that would have resulted in the Fiscal Year 2019-20 data being so close to the data in the previous two fiscal years if the switch to remote mediations had caused any appreciable decrease in the number of cases referred to mediation and/or the mediation settlement rate.

Therefore, it can be inferred that having remote instead of in-person attendance at Industrial Commission mediations since the start of the COVID-19 pandemic has not had an appreciable effect on the outcome of the mediation process in terms of the number of cases referred to mediation and the mediation settlement rate. This inference is supported by the information provided by mediators and other mediation participants. By and large, in their experience so far, conducting mediations remotely during the COVID-19 pandemic has not had any noteworthy effect on the number of cases mediated or on the mediation settlement rate.

**Length of Mediation (Includes Travel Time and Time in Mediation Conference)**

The proposed rule amendment is expected to have little or no effect on the total length of each mediation (which includes travel time plus the time in the mediation conference).

While there is a travel time savings for remote mediations because travel generally is not necessary, all mediation participants interviewed for this fiscal note reported that in their experience remote mediations are taking, on average, up to 25% more time than in-person mediations in terms of the amount of time spent in the

mediation conference. The mediation participants attributed this extra time to the fact that it takes longer to sign a Mediated Settlement Agreement remotely than in person due to the logistics of circulating the document remotely.

Therefore, it appears that, on average, the total length of time attributable to a mediation (travel time plus the time in the mediation conference) is approximately the same whether the mediation is held remotely or in person. As a result, the amount of money that is saved by some mediation participants<sup>2</sup> and lost by other mediation participants<sup>3</sup> as a result of the general elimination of travel time associated with conducting a mediation remotely would appear to be offset by the longer period of time spent in the remote mediation conference when an agreement is reached and signed.

### **3. Areas of Observed or Expected Economic Impact**

#### **Industrial Commission**

##### ***Costs***

For every case referred to mediation, a Report of Mediator must be filed with the Industrial Commission by the mediator. The filing of this Report of Mediator generates a filing fee for the Industrial Commission.

Because the data indicates that the manner of attendance at mediation (in-person versus remote) has had no appreciable effect on the number of cases referred to mediation and because there is no reason to think that this will change in the future, the proposed rule amendment should result in no appreciable costs to the Industrial Commission in terms of any loss in form filing fees. There are no other known potential costs to the Industrial Commission resulting from the proposed rule amendment.

##### ***Benefits***

There also is a benefit in having a rule that is flexible in terms of ensuring that the rule always remains “substantially similar” to the Supreme Court rule regarding the presumptive manner of attendance at mediations, as required by statute. The proposed rule amendment achieves this flexibility by creating a definition of “attendance” for mediations that tracks the way “attendance” is defined in the *Rules for Mediated Settlement Conferences and other Settlement Procedures in Superior Court Civil Actions*.

Under the proposed rule amendment, if the North Carolina Supreme Court amends its rules for use in the Superior Court division after the pandemic is over to make in-person attendance the presumptive mediation attendance requirement, the Industrial Commission

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<sup>2</sup> The typical mediation participants saving money would be private sector entities who would have been billed by their attorneys for travel time.

<sup>3</sup> The typical mediation participants losing money would be private sector defense attorneys who would have been able to bill their clients for travel time.

rule automatically will revert back to presumptive in-person attendance. This will ensure that the Industrial Commission rule always remains “substantially similar” to the Supreme Court rule and it will help the Industrial Commission avoid the need for future rulemaking whenever the Supreme Court changes the presumptive manner of attendance requirement.

### **Mediators**

#### ***Costs***

The remote mediations taking place since the pandemic began have, almost exclusively, been taking place via Zoom. The mediators and other mediation participants like the Zoom platform, and they find that Zoom mediations are easy to access via all devices (laptops, smart phones, and tablets).

Across the board, mediators report having purchased a Zoom membership, which costs \$15 per month, for a yearly cost of \$180. While Zoom offers a free service, the free service only allows the Zoom calls to last 40 minutes when there is a group of people participating. It would be extremely rare for a mediation to be completed within 40 minutes, so the free service is not a feasible option.

All of the mediators also have reported purchasing a DocuSign membership, which costs \$25 per month, for a yearly cost of \$300. DocuSign is used by the parties at the end of the mediation to sign any Mediated Settlement Agreement that has been reached.

According to the Industrial Commission’s Dispute Resolution Coordinator, there currently are about 170 mediators who mediate Industrial Commission cases. Assuming all of these mediators purchase both a Zoom membership and a DocuSign membership, the yearly cost to all of these mediators as a whole for Zoom and DocuSign memberships would be \$81,600 ( $\$480 \times 170$ ).

However, many of these mediators also mediate cases outside of the Industrial Commission mediation program in venues such as Superior Court, District Court, the federal courts, and administrative agencies (such as the Office of Administrative Hearings).

Because these mediators can use the Zoom and DocuSign memberships to mediate cases in these other venues, the entire cost of these memberships should not be attributed to Industrial Commission mediations.

#### ***Benefits***

When mediations are held remotely, mediators also benefit from travel time and travel expense savings. While travel time savings are offset by longer mediations, avoiding travel is a quality-of-life benefit which has value to the mediators.

## **State and Local Government**

### ***Costs***

The representatives of State and Local Government who were interviewed for this fiscal note indicated that all attorneys who represent them<sup>4</sup> in mediations already had employer-issued laptops equipped with cameras and microphones before the pandemic began, enabling them to participate in mediations remotely on their existing laptops.

In some cases, State and Local Government will also have an adjuster or other risk management or human resources representative attend a mediation. While it is possible that a particular adjuster or other representative may have only had a desktop when the pandemic began (or still may only have a desktop), and while desktops are normally not equipped with a camera and microphone, no specific examples were given where State or Local Government had to purchase a laptop for a remote mediation. Therefore, remote mediations do not appear to present appreciable cost to State or Local Government with regard to computer equipment, and there are no other known potential costs.

### ***Benefits***

The savings of mileage reimbursement expenses when mediations are held remotely is a potential benefit to State and Local Government. Because the mileage varies so much from mediation to mediation, however, it is not possible to reliably quantify the mileage reimbursement savings.

## **Private Sector Attorneys and Private Sector Carriers, Third-Party Administrators, and Self-Insured Employers**

### **Plaintiff Attorneys**

#### ***Costs***

Most plaintiff attorneys already had multiple laptops equipped with cameras and microphones in their offices before the pandemic. A very small number of plaintiff attorneys only had desktops in their offices before the pandemic, but this is the exception and not the rule.

These attorneys had to make a one-time purchase of desktop webcam(s) at a cost of about \$50 per webcam. However, due to the small number of plaintiff attorneys who did not already have laptops, due to the relatively low cost of a webcam, and because it is likely that the attorneys use and benefit from the desktop webcams for other work-related remote activities (such as law firm meetings, client meetings, hearings, and depositions, many of which currently are being held remotely due to the pandemic), this does not

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<sup>4</sup> The attorneys who represent State Government work for the North Carolina Department of Justice Attorney General's Office. The attorneys who represent Local Government can be private sector attorneys or attorneys who work for Local Government (such as the City of Raleigh).

appear to be a quantifiable or appreciable cost associated with this proposed rule amendment.

### ***Benefits***

When mediations are conducted in person, they take place almost exclusively in the office of the plaintiff attorney. Therefore, there are no travel time or mileage savings for the plaintiff attorney when mediations are held remotely.

Plaintiff attorneys did, however, mention some non-quantifiable yet important benefits of being able to mediate remotely, including the health and safety benefit of avoiding or reducing in-person contact during the pandemic and the benefit of their clients having the opportunity to participate in the mediation from the comfort of their own homes, which can put the clients at ease and which accommodates clients who suffer from mobility and/or other issues that make it difficult for them to travel to a mediation.

### **Defense Attorneys**

#### ***Costs***

Every defense attorney interviewed for this fiscal note already had an office laptop before the pandemic began, so they already had the equipment needed to participate in remote mediations and did not have to incur any costs to do so.

The defense attorneys mentioned that not having to travel to and from mediations means, in some cases, that they are not paid the travel time by their clients that they otherwise would have been paid in the case. The rate that defense attorneys bill for mediation travel time varies greatly from law firm to law firm and from client to client. And the travel time itself varies greatly from case to case. Also, the attorneys noted that the time saved traveling to and from the mediation may be used to do other billable work.

Therefore, not only is it difficult, if not impossible, to quantify this potential cost, but it appears that the potential cost is likely to be offset, in whole or part, by additional time gained that can be used to do other billable work.

### **Insurance Carriers, Third-Party Administrators, and Self-Insured Employers**

#### ***Costs***

In practice, adjusters who work for carriers and third-party administrators and representatives of self-insured employers usually obtain permission under Paragraph (c) of 11 NCAC 23G .0104 to be excused from having to attend a mediation in person, though the rule states that they must be available to their attorneys and the mediator by telephone, conference call, speaker phone, or videoconference. Therefore, when the mediations are being held remotely, nothing changes for these adjusters and employer representatives. They continue to be available by the same means that they would have

been available by had the mediation been held in person. As a result, there are no known computer costs for these adjusters and employer representatives when the mediations are being held remotely, nor are there any other known potential costs.

### **Individual Private Citizens**

#### **Represented Plaintiffs**

##### ***Costs***

No costs to plaintiffs represented by legal counsel have been observed and none are expected since represented plaintiffs who are not able to participate in a remote mediation from home may travel to their attorneys' offices for remote mediations (just like they do for in-person mediations) and then participate in the mediation remotely from their attorneys' offices.

##### ***Benefits***

Having the option of participating in a mediation from home when the mediation is being held remotely has non-quantifiable, but still important, benefits for plaintiffs. Some plaintiffs feel more comfortable in their own homes, especially those who have mobility issues or may be experiencing pain that is exacerbated by travel.

Not having to travel to and from mediations at attorneys' offices also saves plaintiffs travel expenses. Because this savings varies from case to case, depending on how far the plaintiff lives from the attorney's office, however, and because any travel time savings may be offset by a longer mediation process, it does not appear to be an appreciable cost savings associated with this proposed rule amendment.

### **C. Summary of Aggregate Impact:**

#### **Non-Quantifiable Benefits**

The proposed rule amendment has several non-quantifiable but important benefits. The first is the benefit of having a rule that is flexible enough to allow the Industrial Commission to stay in compliance with the statutory mandate that its mediation rules be "substantially similar" to the rules approved by the North Carolina Supreme Court for use in the Superior Court division.

Another important, non-quantifiable benefit during the current pandemic is the public health and safety benefit resulting from the presumption that mediations be held remotely at this time to eliminate or reduce extended in-person contact between individuals that could contribute to the spread of the novel coronavirus.

There also is a cost savings of mileage reimbursement that accrues to the benefit of State and Local Government when attorneys and other representatives for State and Local Government do not have to travel to and from mediations. This cost savings is not quantifiable in any



reliable way, however, because the mileage to and from mediations varies greatly from case to case.

Likewise, there is a cost savings of avoided travel time for all mediation participants. However, in practice, remote mediations are taking up to 25% more time on average than in-person mediations, due to document review and signing logistics. Therefore, it appears that, on average, the additional time spent in mediation offsets the travel time savings.

### **Quantifiable Costs and Benefits**

The proposed rule amendment results in a yearly cost to all 170 mediators who currently mediate Industrial Commission cases for both Zoom and DocuSign memberships. These memberships currently cost each mediator \$480 per year, for a total cost of \$81,600 (\$480 x. 170). Because many of these mediators also mediate cases outside of the Industrial Commission mediation program in venues such as Superior Court, District Court, the federal courts, and administrative agencies (such as the Office of Administrative Hearings) and because these mediators can use the Zoom and DocuSign memberships to mediate cases in these other venues, the entire cost of these memberships should not be attributed to Industrial Commission mediations. Therefore, the proposed rule amendment's impact is only a portion of the \$81,600 total.

It is expected that mediators will continue to pay for their Zoom and DocuSign memberships, even if the attendance requirement reverts back to presumptive in-person attendance. The reason is twofold: (1) these memberships are not very expensive; and (2) having these memberships gives mediators the ability to easily conduct a remote mediation, should all parties agree to mediate remotely or should the Industrial Commission enter an order granting a party's motion for a remote mediation.

## APPENDIX 1

11 NCAC 23G .0104 is proposed for amendment as follows:

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

- (a) Attendance. The following persons shall ~~physically~~ attend the mediated settlement conference:
- (1) all individual parties;
  - (2) in a workers' compensation case, a representative of the employer at the time of injury if:
    - (A) the employer, instead of or in addition to the insurance company or administrator, has decision-making authority with respect to settlement;
    - (B) the employer is offering the claimant employment and the suitability of that employment is in issue;
    - (C) the employer and the claimant have agreed to simultaneously mediate non-compensation issues arising from the injury; or
    - (D) the Commission orders the employer representative to attend the conference if the representative's ~~physical~~ attendance is necessary to resolve matters in dispute in the subject action;
  - (3) an officer, ~~employee~~ employee, or agent of any party that is not a natural person or a governmental entity who is not ~~such the~~ the party's outside counsel and who has the authority to decide on behalf of ~~such the~~ the party whether and on what terms to settle the action;
  - (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity who is not ~~such the~~ the party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to decide on behalf of ~~such the~~ the party and on what terms to settle the action.
  - (5) when the governing law prescribes that the terms of a proposed settlement may be approved only by a Board, an employee or agent who is not ~~such the~~ the party's outside counsel or Attorney General's counsel responsible for the case and who has the authority to negotiate on behalf of and to make a recommendation to the Board. ~~Because G.S. 143-295 provides the Attorney General with settlement authority on behalf of governmental entities and agencies for state tort claims, Pursuant to G.S. 143-295, an employee or agent of the named governmental entity or agency is not required to attend the mediated settlement conference; conference. The the~~ Attorney General shall attempt to make an employee or agent of the named governmental entity or agency in a ~~state~~ State tort claim available via telecommunication, and mediation shall not be delayed due to the absence or unavailability of the employee or agent of the named governmental entity or agency.
  - (6) ~~The counsels of record; provided, that appearance~~ the counsels of record. Appearance by counsel does not dispense with or waive the required attendance of the parties listed in Subparagraphs (1) through (4);
  - (7) a representative of each defendant's primary workers' compensation or liability insurance carrier or self-insured that may be obligated to pay all or part of any claim presented in the action. Each carrier

or self-insured shall be represented at the conference by an officer, ~~employee~~ employee, or agent who is not ~~such the~~ party's outside counsel and who has the authority to decide on behalf of the carrier or self-insured whether and on what terms to settle the action, or who has been authorized to negotiate on behalf of ~~such the~~ carrier or self-insured and can communicate during the conference with persons who have ~~such the~~ decision making authority; and

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

(b) Any party or person required to attend a mediated settlement conference shall ~~physically~~ attend the conference until an agreement is reduced to writing and signed as provided in Paragraph (e) of this Rule, or until an impasse has been declared. ~~Any such party or person may have the physical attendance requirement excused or modified by agreement of all parties and persons required to attend the conference and the mediator, or by order of the Commission in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference.~~ “Attendance” shall mean in-person attendance whenever the mediation rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require in-person attendance. During any time that attendance means in-person attendance, any party or person, including the mediator, may have the in-person attendance requirement excused or modified by agreement of all the parties and persons required to attend the mediation conference, including the mediator, or by order of the Commission in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference, including the mediator. “Attendance” shall mean attendance using remote technology whenever the mediation rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division require attendance through the use of remote technology. During any time that attendance means attendance through the use of remote technology, any party or person required to attend the conference, including the mediator, may have the remote technology attendance requirement excused or modified by agreement of all parties and persons required to attend the conference, including the mediator, or by order of the Commission in the interests of justice upon motion of a party and notice to all parties and persons required to attend the conference, including the mediator. All parties and persons required to attend the conference, including the mediator, shall comply with all public health and safety

requirements set forth in the mediation rules approved by the North Carolina Supreme Court that are in effect at the time of the mediation for use in the Superior Court division.

(c) In appropriate ~~eases~~ cases, the Commission or the mediator, with the consent of the parties, may allow a party or insurance carrier representative who is required to ~~physically~~ attend a mediated settlement conference in person under this Rule to attend the conference by telephone, conference call, speaker ~~telephone~~ telephone, or videoconferencing; ~~provided that, the party or representative so attending~~ the attending party or representative shall bear all costs of such ~~the telephone calls or videoconferencing.~~ videoconferencing. In addition, the mediator may communicate directly with the insurance representative with regard to matters discussed in mediation, and the mediator may set a subsequent mediated settlement conference at which all parties and representatives shall ~~physically attend~~ attend the mediated settlement conference in person, subject to the requirements and provisions of Paragraph (b) of this Rule. The failure to properly appear by telephone or videoconferencing in accordance with this Paragraph shall subject the responsible party(ies) or representative(s) to sanctions pursuant to Rule .0105 of this Subchapter.

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

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

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

(g) Related Cases. Upon application by any party or person and upon notice to all parties, the Commission may, in the interests of justice, order an attorney of record, ~~party~~ party, or representative of an insurance carrier who may be liable for all or any part of a claim pending in a Commission case to attend a mediated settlement conference that may be convened in another pending case, regardless of the forum in which the other case may be pending, provided that all parties in the other pending case consent to the attendance ordered pursuant to this Paragraph. Any disputed issues concerning such an order shall be addressed to the Commission's Dispute Resolution Coordinator. Unless otherwise ordered, any attorney, ~~party~~ party, or carrier representative who attends a mediated settlement conference pursuant to this Paragraph shall not be required to pay any of the mediation fees or costs related to that conference. Requests that a party, attorney of record, or insurance carrier representative in a related case attend a mediated settlement conference

in a Commission case shall be addressed to the court or agency in which the related case is pending, provided that all parties in the Commission case consent to the requested attendance.

*History Note:* Authority G.S. ~~97-80(a), (e); 97-80; 143-295; 143-296; 143-300~~; Rule 4 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;  
Recodified from 04 NCAC 10G .0104 Eff. June 1, 2018;  
Emergency Amendment Eff. June 16, 2020;  
Amended Eff. August 1, 2020;  
Temporary Amendment Eff. August 28, 2020;  
Amended Eff. \_\_\_\_\_.