

Regulatory Impact Analysis
Mediated Settlement and Neutral Evaluation Conferences– 11 NCAC 23G

Agency:	North Carolina Industrial Commission
Contact:	Dana McGhee – (919-807-2674)
Rules proposed for readoption	11 NCAC 23G .0101-.0112
State Impact:	Yes
Local Impact:	Yes
Private Impact:	Yes
Substantial Economic Impact:	No
Statutory Authority	G.S. 97-80(a); 97-80(c); 143-296; 143-300; Rule 7 of Rules for Mediated Settlement Conferences and other Settlement Procedures in Superior Court Civil Actions

Necessity for Rule Change

The North Carolina Industrial Commission (Commission) proposes to readopt 11 NCAC 23G, Mediated Settlement and Neutral Evaluation Conferences, with amendments intended primarily to clarify and update the rules and conform provisions to current Commission practice.

In addition, a proposed amendment to 11 NCAC 23G .0107 would also increase the one-time administrative fee paid to mediators appointed by the Commission from \$150 to \$175 per case to match the current administrative fee paid to mediators appointed in Superior Court cases. The Workers' Compensation Act (in [G.S. 97-80](#)) and State Tort Claims Act (in [G.S. 143-296](#)) require the Commission's mediation rules to be substantially similar to the rules approved by the Supreme Court for use in the Superior Court division.

Regulatory Baseline

Under existing Rule 11 NCAC 23G .0107, a mediator appointed by the Commission receives a one-time administrative fee of \$150 per case. The *administrative* fee is meant to compensate the mediator for case-related administrative activities, including scheduling, document review, communication with parties, and preparation for the mediated settlement conference.

The existing rule also provides for a \$150 hourly *conference* fee for mediation services. That fee is not changed by the proposed amendments.

Proposed Changes and Impact Analysis

11 NCAC 23G .0101 – Order for Mediated Settlement Conference

The proposed amendments are primarily clarifying and formatting changes, including updating rule and form references and reorganizing selected provisions for clarity. No material incremental costs or benefits are expected.

11 NCAC 23G .0102 – Designation and Appointment of Mediator

The proposed amendments clarify existing provisions regarding the designation and appointment of mediators, align the rule with current Commission practices, and introduce clear guidance for mediators on the procedures to follow if they wish to withdraw from a case. No material incremental costs or benefits are expected.

11 NCAC 23G .0103 – The Mediated Settlement Conference

The proposed amendments are mainly clarifying and formatting changes. They also make it explicit that recording of mediation sessions is prohibited, aligning with Superior Court mediation rules. The amendments also provide clear procedures for requesting an extension of the conference completion deadline when a conference is recessed and scheduled to reconvene after the original deadline. No material incremental costs or benefits are anticipated.

11 NCAC 23G .0104 – Duties of Parties, Representatives, and Attorneys

The proposed amendments are primarily clarifying and conforming changes and are not expected to materially alter existing requirements or practices. No material incremental costs or benefits are expected.

11 NCAC 23G .0104A – Foreign Language and Sign Language Interpreters

In addition to clarifying and formatting changes, the proposed amendments add sign language interpreting to the existing provisions governing the use of interpreters and establish requirements for qualified sign language interpreters, including licensure and standards of conduct. Under both the existing and proposed rules, parties may arrange for sign language interpretation when needed, and the cost of the interpreter is the responsibility of the party requesting the interpreter. Therefore, although the proposed rule would codify requirements for the qualifications and conduct of sign language interpreters, it would not create a new cost obligation for the parties or the Commission.

Under the proposed rule, a qualified sign language interpreter would be required to hold a license from the Interpreter and Transliterator Licensing Board and comply with specified standards for performing the role, including interpreting communications without adding comments or otherwise interjecting into the proceeding. These provisions are intended to align the mediation rules with the Commission's other rules governing sign language interpreters and provide greater clarity regarding their qualifications and role. Because the cost of interpretation remains the responsibility of the requesting party, the proposed changes are not expected to result in material incremental costs.

11 NCAC 23G .0105 – Sanctions

The proposed amendments are clarifying and technical and are not expected to materially alter existing requirements or practices.

11 NCAC 23G .0106 – Authority and Duties of Mediators

The proposed amendments are clarifying and technical and are not expected to materially alter existing requirements or practices.

11 NCAC 23G .0107 – Compensation of the Mediator

The proposed amendment would increase the one-time administrative fee paid to a mediator appointed by the Commission from \$150 to \$175 per case. The \$25 increase applies only when the Commission appoints the mediator. When the parties designate a mediator by agreement, compensation is established by agreement between the parties and the mediator.

The proposed rule would also incorporate by reference the conference and administrative fees established in Rule 7 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, including subsequent amendments and editions. The current Superior Court *administrative* fee is \$175, while the hourly *conference* fee is \$150. Thus, the proposed amendment will not result in a change to the current \$150 hourly conference fee.

The proposed amendments also add specificity regarding postponements and define "good cause" for purposes of determining whether a mediated settlement conference may be postponed. These provisions codify current practice and align with Superior Court rules and do not establish materially different requirements.

Increase in Administrative Fee

The proposed change would increase the cost of each Commission-appointed mediation by \$25. Commission data on the number of cases ordered to mediation in the two most recent fiscal years are as follows:

Fiscal Year	Commission-Appointed Mediations	Additional Cost at \$25 per Case
FY 2024-25	270	\$6,750
FY 2025-26	232	\$5,800

Based on these two years of data, the proposed administrative fee increase would result in approximately \$5,800 to \$6,750 in additional annual costs if the number of Commission-appointed mediations remains within the observed range. The actual future impact will depend on the number of Commission appointments and the number of cases for which the administrative fee is ultimately paid.

Parties Affected

The additional \$25 administrative fee would be paid by the parties responsible for mediator compensation under 11 NCAC 23G .0107(d). Depending on the type of case, these parties may include private entities (both on the defense and plaintiff side), State agencies, and local governments,

In workers' compensation cases, the defendant pays the plaintiff's share of mediation costs in addition to its own share up front, but the defendant is entitled to reimbursement from the plaintiff of one-half of the mediation costs, unless the parties otherwise agree in the settlement agreement. In State Tort Claims Act cases, the defendant State agency is responsible for its applicable share of the costs.

Commission data for FY 2024-25 and FY 2025-26 identify cases ordered to mediation by defendant type as follows:

Defendant Type	FY 2024-25	FY 2025-26
Private	177	171
State Government	71	41
Local Government	11	11
Local/State Government*	11	9
Total	270	232

**The Local/State Government category consists of cases involving the North Carolina Department of Public Instruction and a county board of education. The Department of Public Instruction was responsible for the mediator costs in these cases.*

Based on the two years of data, private defendants account for the largest share of Commission-appointed mediations, representing approximately 66% of cases in FY 2024-25 and 74% in FY 2025-26. State government defendants accounted for approximately 26% and 18%, respectively, while local government defendants accounted for approximately 4% to 5%. The remaining 4% in FY 2024-25 and 4% in FY 2025-26 involved the Local/State Government category. Additionally, for workers' compensation cases in which the plaintiff does not negotiate an agreement to not have to reimburse the defendant for the plaintiff's one-half share of the mediation costs, these plaintiffs will have to pay half of the mediator appointment cost. However, it is estimated that in at least 90% of workers' cases or more, the parties agree that the plaintiff will not have to reimburse the defendants for the plaintiff's share of the mediation costs. Thus, private defendants would be expected to bear the largest share of the additional costs associated with the \$25 fee increase, with State government defendants bearing the next largest share and local governments accounting for a relatively small portion. However, the data reflect cases ordered to mediation rather than the actual allocation of mediator costs among defendants and other parties, so the proportions should be viewed as an indication of the relative distribution of affected cases rather than the precise distribution of costs.

Rationale for the Proposed Fee Level

The proposed \$175 administrative fee would align the Commission's fee with the current administrative fee for Superior Court-appointed mediators. The Superior Court administrative fee was increased from \$150 to \$175 in 2020¹ and has remained at \$175 since that time. Maintaining the same administrative fee as the Superior Court may help ensure that qualified mediators remain willing to accept Commission appointments.

The proposed incorporation of the Superior Court fees, including subsequent amendments and editions, would allow the Commission's fees to adjust automatically when the corresponding Superior Court fees change, rather than requiring a separate Commission rulemaking for each fee adjustment. This would allow any corresponding fee increases for Commission-appointed mediators to take effect sooner, without the delay associated with a separate rulemaking process. Based on the Superior Court's fee history, substantial or frequent changes are not expected.

¹ <https://appellate.nccourts.org/RMSC/Order-Amending-the-Rules-for-MS-C-and-OSP-in-Superior-Court-Civil-Actions-Approved-3-June-2020.pdf>

11 NCAC 23G .0108 – Mediator Certification and Decertification

The proposed amendments are primarily clarifying and technical and are not expected to materially alter existing requirements or practices.

11 NCAC 23G .0109 – Neutral Evaluation

The proposed amendments are primarily clarifying and technical and are not expected to materially alter existing requirements or practices. They also make it explicit that recording of conferences is prohibited, aligning with Superior Court mediation rules.

11 NCAC 23G .0110 – Waiver or Variance of Rules

The proposed amendments are clarifying and technical and are not expected to materially alter existing requirements or practices.

11 NCAC 23G .0111 – Motions

The proposed amendments are clarifying and technical and are not expected to materially alter existing requirements or practices.

11 NCAC 23G .0112 – Computation of Time Periods

The proposed amendments are clarifying and technical and are not expected to materially alter existing requirements or practices.

Summary of Costs

The proposed amendment to 11 NCAC 23G .0107 would increase the one-time administrative fee paid to Commission-appointed mediators from \$150 to \$175 per case. The \$25 increase would apply only when the Commission appoints the mediator and would not affect the \$150 hourly conference fee.

Based on 232 to 270 Commission-appointed mediations in FY 2025-26 and FY 2024-25, respectively, the proposed increase would have resulted in approximately \$5,800 to \$6,750 in additional annual costs. The actual impact going forward will depend on the number of Commission appointments and the number of cases for which the administrative fee is ultimately paid.

The additional costs would be borne by the parties responsible for mediator compensation, which include private entities (both on the defense and plaintiff side), State agencies, and local governments, depending on the type of case and applicable cost allocation provisions. Based on the distribution of cases in the two most recent fiscal years, private defendants accounted for approximately 66% to 74% of Commission-appointed mediations, while State government defendants accounted for approximately 18% to 26%. And for all cases, the plaintiff side is a private entity (the injured worker or their counsel of record, if any) since the only time a plaintiff is a public sector entity in cases under the Commission's jurisdiction is when the plaintiff is the Industrial Commission (represented by the North Carolina Department of Justice) in an uninsured employer case, and those cases are not mediated unless they are associated with a workers' compensation claim filed by an injured worker (or their counsel of record, if any). Local government defendants accounted for approximately 4% to 5% of cases. These percentages indicate the relative distribution of affected cases by defendant type, but do not

represent the precise distribution of costs because mediator appointment costs may be allocated among multiple parties under the applicable cost allocation provisions, specifically those found in Rule 11 NCAC 23G .0107(c).

The remaining proposed amendments primarily clarify existing requirements, codify current Commission practices, or make other technical and conforming changes. These changes are not expected to result in material incremental costs.

Summary of Benefits

The proposed amendments are expected to provide administrative and procedural benefits by improving the clarity and consistency of the rules governing mediated settlements. Incorporating the Superior Court mediation fees, and including subsequent amendments and editions, would allow Commission mediator compensation to remain aligned with Superior Court compensation without requiring a separate Commission rulemaking each time the Superior Court updates its fees. Aligning the fees may also support the continued availability of qualified mediators willing to accept Commission appointments.

The proposed amendments would also provide greater clarity regarding existing procedures and practices, including by defining "good cause" for purposes of postponing a mediated settlement conference and providing additional specificity concerning the duties and procedures applicable to parties and mediators. More generally, updating the rules to reflect current Commission practice and alignment with Superior Court mediation rules should reduce uncertainty for mediators, parties, and attorneys regarding the requirements applicable to mediated settlement conferences.

1 11 NCAC 23G .0101 is proposed for readoption with substantive changes as follows:

2
3 **SUBCHAPTER 23G –~~NORTH CAROLINA INDUSTRIAL COMMISSION RULES FOR MEDIATED~~**
4 **SETTLEMENT AND NEUTRAL EVALUATION CONFERENCES**

5
6 **SECTION .0100 – MEDIATION AND SETTLEMENT**

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8 **11 NCAC 23G .0101 ORDER FOR MEDIATED SETTLEMENT CONFERENCE**

9 (a) Mediation Upon Agreement of the Parties. If the parties to a workers' compensation claim or ~~state~~State tort claim
10 agree to mediate the claim, the parties may schedule and proceed with mediation on their own, or the parties may
11 submit a request for a mediation order pursuant to Paragraph (d) of this Rule. ~~No~~ An order from the Commission is
12 ~~not necessary required~~ if the parties mutually agree to mediate the claim, but the mediator shall file a report of
13 mediation with the Commission as required by ~~Paragraph (g) of Rule .0106.0106(g)~~ of this Subchapter. ~~If the parties~~
14 ~~proceed with mediation in the absence of an order from the Commission and the Commission thereafter enters a~~
15 ~~mediation order, the parties shall notify the Commission that the parties have agreed upon the selection of a mediator~~
16 ~~or, if the mediated settlement conference has been completed, that the parties request to be excused from any further~~
17 ~~mediation obligations pursuant to Paragraph (f) of this Rule.~~

18 (b) Referral Upon Receipt of a Form ~~33. 33 Request that Claim be Assigned for Hearing.~~ In any case in which the
19 Commission receives a Form 33 Request that Claim be Assigned for Hearing, ~~as set forth in 11 NCAC 23L .0123,~~ the
20 Commission shall order the case to a mediated settlement conference unless ~~the case involves a non-insured defendant,~~
21 ~~a medical motion pursuant to G.S. 97-25(f)(2), or an administrative appeal pursuant to 11 NCAC 23A .0702, doing so~~
22 ~~would be contrary to the interests of justice.~~

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

29 (d) Mediation Upon Request of a Party. If a case is not otherwise ordered to a mediated settlement conference, a party
30 may move the Commission to order a conference. The motion shall be served on the non-moving parties and shall
31 state the reasons why the order should be entered. Responses may be filed in writing with the Commission within 10
32 days after the date of the service of the motion. Any motion for a mediation order shall be submitted on ~~a form~~ a Form
33 MSC2 Petition for Order Referring Case to Mediated Settlement Conference, as set forth in 11 NCAC 23L .0401
34 provided by the Commission.

35 (e) Deadline for Completion of Conference. The scheduled date of the mediated settlement conference shall be within
36 120 days of the Mediation Order. Timing of the Order. The order requiring mediation may be issued whenever it
37 appears that the parties have a dispute arising under the Workers' Compensation Act or the Tort Claims Act.

(f) Motion to Dispense with ~~or Defer~~ Mediated Settlement Conference. Any party may move to dispense with the mediated settlement conference. A motion shall state with particularity the grounds on which the relief is sought and the opposing party's position, if known. Service shall be made on all opposing attorneys of record, or on all opposing parties if not represented. The Commission Mediation may be dispensed ~~dispense~~ with mediation by the Commission in the interests of justice or judicial economy. As used in this Rule, the term "~~dispensed~~" ~~dispense~~ with" means ~~setting to~~ set aside or ~~rescind~~ ~~reseinding the any~~ mediation order(s) ~~order~~ entered in the ~~case, case~~ or ~~to excuse~~ ~~excusing~~ the parties from their obligations under ~~the any~~ applicable ~~order(s)~~ orders or the ~~Rules~~ rules in this Subchapter. ~~Mediation may not be dispensed with by the parties or the mediator unless the parties have agreed, subject to Commission approval, on a full and complete resolution of all disputed issues set forth in the request for hearing filed in the case, and the parties have given notice of the settlement to the Dispute Resolution Coordinator. Within 55 days of the filing of a Form 33 Request that Claim be Assigned for Hearing, or otherwise within the deadline set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of this Rule, a party may move to dispense with or defer the mediated settlement conference. The motion shall state the reasons the relief is sought and must be received by the Dispute Resolution Coordinator within the applicable deadline.~~

(g) Dispensing with Mediation by Agreement Upon Resolution. Upon resolving all disputed issues set forth in the request for hearing, the parties may agree to dispense with mediation, subject to Commission approval. The parties shall notify the Dispute Resolution Coordinator of the resolution and their agreement to dispense with mediation.

~~(g)~~(h) Exemption from Mediated Settlement Conference. The State shall not be compelled to participate in a mediation or neutral evaluation procedure with a prison inmate.

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

- (1) that all parties consent to the motion;
- (2) that the neutral evaluator and the parties have agreed upon the selection and all terms of compensation of the neutral selected; and
- (3) the name, address, and telephone number of the neutral evaluator selected by the parties.

~~(i)~~(j) If the parties are unable to agree to the matters listed in Paragraph ~~(h);(i) of this Rule,~~ the Commission shall deny the motion for authorization to use a neutral evaluation procedure, and the parties shall attend the mediated settlement conference as originally ordered by the Commission. If the parties ~~are able to~~ agree on the matters listed in Paragraph ~~(h);(i) of this Rule,~~ the Commission shall order the use of a neutral evaluation proceeding; provided, however, that the Commission shall not order the use of a neutral evaluation proceeding in any case in which the plaintiff is not represented by counsel.

~~(j)~~(k) Cases Involving Plaintiffs Not Represented by Counsel. ~~Unless an unrepresented plaintiff requests that the plaintiff's case be mediated, the Commission shall enter an order dispensing with mediation. In a case involving a plaintiff who is not represented by counsel, the parties shall have 55 days from the filing of the request for hearing to~~

1 notify the Commission that they agree to mediate. If the parties do not provide notice within 55 days, the case shall
2 be assigned for hearing.

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4 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 1 of Rules for Mediated Settlement*
5 *Conferences and Other Settlement Procedures in Superior Court Civil Actions;*
6 *Eff. January 16, 1996;*
7 *Amended Eff. October 1, 1998;*
8 *Recodified from 04 NCAC 10A .0616;*
9 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*
10 *Recodified from 04 NCAC 10G .0101 Eff. June 1, ~~2018~~2018;*
11 *Readopted Eff. March 1, 2027.*
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1 **11 NCAC 23G .0102 ~~SELECTION~~DESIGNATION AND APPOINTMENT OF MEDIATOR**

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

16 ~~(b) Appointment by Commission. If the parties fail to notify the Commission of the parties' selection of a mediator~~
17 ~~within 55 days of the filing of a Form 33 Request that Claim be Assigned for Hearing, or otherwise within the deadline~~
18 ~~set forth in the Commission's order entered pursuant to Paragraph (c) or Paragraph (d) of Rule .0101 of this Subchapter,~~
19 ~~the Commission shall appoint a mediator to hold a mediated settlement conference in the case. The Commission shall~~
20 ~~appoint a mediator who meets the requirements in Paragraph (b) of Rule .0108 of this Subchapter. In the absence of~~
21 ~~any suggestions by the parties with regard to the appointment of mediators, the Commission shall select the mediator~~
22 ~~for the case by random order, unless the Commission determines that, because of unusual circumstances, a particular~~
23 ~~mediator should be appointed in a particular case.~~

24 ~~(c) Disqualification of Mediator. Any party may move the Commission for an order disqualifying a mediator. For~~
25 ~~good cause, such order shall be entered. If the mediator is disqualified, an order shall be entered for the selection of a~~
26 ~~replacement mediator pursuant to this Rule. Nothing in this Paragraph shall preclude mediators from disqualifying~~
27 ~~themselves.~~

28 (a) Designation by Agreement of Parties in Cases Ordered to Mediation. In a workers' compensation case or a State
29 tort claims case ordered to mediation by the Commission, the parties may, by agreement, designate a mediator. The
30 parties shall have 55 days from the filing of a Form 33 Request that Claim be Assigned for Hearing, as set forth in 11
31 NCAC 23L .0123, or the deadline set forth in an order entered pursuant to Rule .0101(c) or (d) of this Subchapter, as
32 applicable, to designate a mediator by agreement and file notice of the designation with the Commission. The Dispute
33 Resolution Coordinator shall extend the deadline upon request of all parties. Any party may waive the remaining time
34 to designate a mediator and request that the Commission appoint a mediator.

35 (b) Appointment of Mediator in Cases Ordered to Mediation. If the parties do not designate a mediator by agreement
36 within the applicable deadline, the Commission shall appoint a mediator who meets the requirements in Rule .0108(b)

1 of this Subchapter. Before the Commission appoints a mediator, any party or the parties jointly may suggest one or
2 more mediators for the Commission's consideration.

3 (c) Designation by Agreement in Voluntary Mediations. In a case that has not been ordered to mediation by the
4 Commission, parties that voluntarily agree to mediate shall designate a mediator and file notice of the designation
5 with the Commission before the mediated settlement conference is held.

6 (d) Information Provided to the Commission. Any party may file notice of a designation under Paragraph (a) or (c)
7 of this Rule. The notice shall be provided on a Form MSC4 Designation of Mediator by Agreement of Parties, as set
8 forth in 11 NCAC 23L .0402, and shall include the date and time of the scheduled mediated settlement conference,
9 the mediator's name, email address, and telephone number; and confirmation that the mediator is certified by the North
10 Carolina Dispute Resolution Commission. If the Commission appoints the mediator pursuant to Paragraph (b) of this
11 Rule, the parties shall notify the Commission of the date and time of the scheduled mediated settlement conference.

12 (d) Disqualification or Withdrawal of Mediator. Any party may move the Commission to disqualify a mediator for
13 good cause, including a conflict of interest. The Commission may also disqualify a mediator on its own motion for
14 good cause. A mediator who wishes to withdraw from a case shall file notice of withdrawal with the Commission. If
15 a mediator withdraws or is disqualified, the Commission shall enter an order providing for the designation or
16 appointment of a replacement mediator.

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18 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 2 of Rules for Mediated Settlement*
19 *Conferences and Other Settlement Procedures in Superior Court Civil Actions;*
20 *Eff. January 16, 1996;*
21 *Amended Eff. October 1, 1998;*
22 *Recodified from 04 NCAC 10A .0616;*
23 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*
24 ~~*Eff. January 16, 1996;*~~
25 ~~*Amended Eff. October 1, 1998;*~~
26 ~~*Recodified from 04 NCAC 10A .0616;*~~
27 ~~*Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*~~
28 *Recodified from 04 NCAC 10G .0102 Eff. June 1, 2018.*
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11 NCAC 23G .0103 is proposed for readoption with substantive changes as follows:

11 NCAC 23G .0103 THE MEDIATED SETTLEMENT CONFERENCE

(a) Where Conference Is to Be Held. Unless all parties ~~in a workers' compensation case or a state tort claims case~~ and the mediator ~~otherwise agree, agree otherwise,~~ the mediated settlement conference shall be held in the county where the workers' compensation case or State tort claim is pending. The mediator shall ~~reserve a place and~~ make arrangements for the conference and give notice of the time and location of the conference to all ~~attorneys and unrepresented parties attorneys, unrepresented parties, and other parties required to attend of the time and location of the conference.~~ Nothing in this Paragraph precludes the use of remote technology to conduct a mediated settlement conference.

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

(c) ~~Request to Extend Date of Extending Deadline for~~ Completion. In the interests of justice, the Commission may extend the deadline for completion of the conference upon the Commission's own motion, a motion or stipulation of the ~~parties parties,~~ or the suggestion of the mediator.

(d) Postponement or Cancellation:

(1) For the purposes of this Subchapter, postponement means rescheduling or otherwise delaying a mediated settlement conference once a date for the conference has been scheduled.

(2) After a conference is scheduled to convene on a specific date, the conference may not be postponed or canceled unless the requesting party notifies all other parties of the grounds for the requested postponement or cancellation and obtains the consent and approval of the mediator or the Dispute Resolution Coordinator. A party may not unilaterally postpone or cancel the conference.

~~(d)(e)~~ Recesses. The mediator may recess the conference at any time and may set times for reconvening. If the time for reconvening is set before the conference is recessed, no further notification is required for persons present at the ~~recessed~~ conference. If the conference is recessed and will reconvene after the deadline for completion, the mediator or any party shall notify the Commission and request an extension of the deadline pursuant to Paragraph (c) of this Rule.

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

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

- (1) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule .0107 of this Subchapter;
- (2) proceedings to enforce or rescind a settlement of the action;
- (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; or
- (4) proceedings to enforce laws concerning juvenile or elder abuse.

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

~~(h)~~(i) Inadmissibility of Mediator Testimony. No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding conducted pursuant to the Rules in this Subchapter in any Commission case or civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except:

- (1) to attest to the signing of any settlement agreements;
- (2) proceedings for sanctions for violations of the attendance or payment of mediation fee provisions contained in Rule .0104 and Rule .0107 of this Subchapter;
- (3) disciplinary proceedings before the North Carolina State Bar or any agency enforcing standards of conduct for mediators or other neutrals, including the Commission; and
- (4) proceedings to enforce laws concerning juvenile or elder abuse.

~~(i)~~(j) As used in this Subchapter, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

(k) No Recordings. There shall be no audio, video, stenographic, or other recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 3 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; 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;

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Recodified from 04 NCAC 10G .0103 Eff. June 1, 2018.

1 **11 NCAC 23G .0104 DUTIES OF PARTIES, REPRESENTATIVES, AND ATTORNEYS**

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

- 3 (1) all individual parties;
- 4 (2) in a workers' compensation case, a representative of the employer at the time of injury if:
- 5 (A) the employer, instead of or in addition to the insurance company or administrator, has
- 6 decision-making authority with respect to settlement;
- 7 (B) the employer is offering the claimant employment and the suitability of that employment
- 8 is at issue; or
- 9 (C) the employer and ~~the~~ claimant have agreed to simultaneously mediate non-compensation
- 10 issues arising from the injury.
- 11 (3) an officer, employee, or agent of any party, that is ~~not~~neither a natural person ~~or~~nor a governmental
- 12 entity, who is not the party's outside counsel and who has the authority to decide on behalf of the
- 13 party whether and on what terms to settle the action;
- 14 (4) in a workers' compensation case, an employee or agent of any party that is a governmental entity
- 15 who is not the party's outside counsel or Attorney General's counsel responsible for the case and
- 16 who has the authority to decide on behalf of the party whether and on what terms to settle the action;
- 17 (5) notwithstanding Subparagraphs (3) and (4) of this Paragraph, when ~~the~~ governing law ~~prescribes~~
- 18 ~~that the terms requires approval~~ of a proposed settlement ~~may be approved only~~ by a board, an
- 19 employee or agent who is not the party's outside counsel or Attorney General's counsel responsible
- 20 for the case and who has the authority to negotiate on behalf of and to make a recommendation to
- 21 the board. In claims ~~with settlements in which a settlement is~~ subject to the review and approval by
- 22 the Industrial Commission under G.S. 143-295, an employee or agent of the named governmental
- 23 entity or agency is not required to attend the mediated settlement conference. ~~The~~Instead, the
- 24 Attorney ~~General~~General's counsel shall attempt to make an employee or agent of the named
- 25 governmental entity or agency ~~in a State tort claim~~ available ~~viaby~~ telecommunication, ~~andbut the~~
- 26 mediation shall not be delayed due to the absence or unavailability of the employee or ~~agent; agent~~
- 27 ~~of the named governmental entity or agency;~~
- 28 (6) ~~the counsels~~ counsel of record. Appearance by counsel does not dispense with or waive the required
- 29 attendance of the ~~parties~~persons listed in Subparagraphs (1) through ~~(5);(5)~~ of this Paragraph;
- 30 (7) a representative of each ~~defendant's~~ primary workers' compensation or liability insurance carrier or
- 31 self-insured employer that may be obligated to pay all or part of any claim presented in the action.
- 32 Each carrier or self-insured employer shall be represented at the conference by an officer, employee,
- 33 or agent who is not the party's outside counsel and who either has the authority to decide ~~on behalf~~
- 34 ~~of the carrier or self-insured~~ whether and on what terms to settle the ~~action;action~~ or ~~who~~ has ~~been~~
- 35 ~~authorized~~authority to negotiate ~~on behalf of the carrier or self-insured~~ and can communicate during
- 36 the conference with ~~persons~~a person who ~~havehas the decision making~~settlement authority.

(8) any employer or carrier ~~whothat~~ may be obligated to pay all or part of ~~anya~~ claim presented in the action and ~~who~~ is not required to attend ~~the mediated settlement conference~~ pursuant to Subparagraphs (1) through (7) of this Paragraph may ~~elect to attend the conference. conference if the employer or carrier elects to attend.~~

If, during the conference, the mediator determines that the 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 attend.

(b) Any party or person required to attend a mediated settlement conference shall 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. The attendance method for Industrial Commission mediations shall be the same as the attendance method set forth in Rule 4 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, which is hereby incorporated by reference and includes subsequent amendments and editions. A copy of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions may be obtained at no charge from the North Carolina Judicial Branch website, at ~~<https://www.nccourts.gov/courts/supreme-court/court-rules/rules-for-mediated-settlement-conferences-and-other-settlement-procedures-in-superior-court-civil-actions>~~, <https://www.nccourts.gov/assets/inline-files/Rules%20for%20Mediated%20Settlement%20Conferences%20and%20Other%20Settlement%20Procedures%20in%20Superior%20Court%20Civil%20Actions%20-%20Codified%206%20January%202025.pdf?VersionId=ZvKRmnYJlQgwHJySU19g82LWsgHNGbYf>, or upon request at the ~~main office~~ ~~offices~~ of the Industrial Commission, ~~as set forth in 11 NCAC 23A .0101. located on the 6th floor of the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina 27603, between the hours of 8:00 a.m. and 5:00 p.m. Monday through Friday, excluding holidays established by the State Human Resources Commission. 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 for use in the Superior Court division that are in effect at the time of the mediation. The mediator and all parties and persons required to attend a mediated settlement conference shall comply with all federal, State, and local safety guidelines that are in place for trial court proceedings at the time of the conference.~~

(c) ~~In appropriate cases, the Commission or the~~ The mediator, with the consent of the parties, ~~or the Commission~~ may allow a party or ~~other person, including an~~ insurance carrier ~~representative~~ ~~representative~~, who is required to attend a mediated settlement conference in person under this Rule to attend the conference by ~~telephone, conference call, speaker telephone, or videoconferencing using remote technology.~~ The attending party or ~~representative~~ ~~person attending by remote technology~~ shall bear ~~all~~ ~~any~~ costs ~~of the telephone calls or videoconferencing associated with remote attendance.~~ In addition, the mediator may communicate directly with the insurance representative with regard to matters discussed in mediation, and the ~~The~~ mediator may set a subsequent ~~reconvene the~~ mediated settlement conference at ~~a later date and require the~~ ~~which all parties and representatives~~ ~~persons to~~ shall attend the mediated settlement conference in ~~person. person, subject to Paragraph (b) of this Rule. The failure to appear by telephone or~~

~~videoconferencing~~ Failure to attend by remote technology in accordance with this Paragraph shall subject the responsible party or ~~representative persons~~ to sanctions pursuant to Rule .0105 of this Subchapter.

(d) Excusing the Attendance Requirement. Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of the mediator and all parties and persons required to attend the conference.

~~(d)(e)~~ (e) Notice of Mediation Order. Within seven days after the receipt of an order for a mediated settlement conference, the carrier or self-insured employer named in the order shall provide a copy of the order to the employer and ~~all to any~~ other carriers or employers 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 claims. The carrier or self-insured employer named~~ in the order shall also provide the mediator and the other parties ~~in the action~~ with the name, address, and telephone number of ~~all each~~ such carriers.

~~(e)(f)~~ (f) 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, MSC8~~ Mediated Settlement ~~Agreement, Agreement, as set forth in 11 NCAC 23L .0406, or Form MSC9, MSC9~~ Mediated Settlement Agreement – Alternative ~~Form, Form, as set forth in 11 NCAC 23L .0407,~~ for this purpose. Execution by counsel of a mediated settlement agreement ~~for on behalf of~~ an employer or carrier ~~who that~~ does not ~~physically~~ attend the mediated settlement conference in person shall be deemed to ~~be in compliance~~ comply 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)(g)~~ (g) 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)(h)~~ (h) Related Cases. Upon application by any party or any person as defined in G.S. 97-2(4), and upon notice to all parties, the Commission ~~may, in the interests of justice, may~~ order an attorney of record, party, or representative of an insurance carrier who may be liable for all or any part of a claim pending ~~in a before the~~ Commission ~~case~~ to attend a mediated settlement conference ~~convened in another a~~ related pending case, regardless of the forum in which the ~~other related~~ case ~~may be is~~ pending, provided that all parties in the ~~other pending related~~ case consent to the attendance. ~~consent to the attendance ordered pursuant to this Paragraph.~~ Any ~~disputed issues~~ disputes concerning such an order shall be addressed to the ~~Commission's~~ Dispute Resolution Coordinator. Unless otherwise ordered, any attorney, party, or insurance 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 the~~ conference. ~~Requests~~ A request 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 wherein 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; 143-296; 143-300;

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. February 1, 2023; March 1, 2021.

11 NCAC 23G .0104A FOREIGN LANGUAGE AND SIGN LANGUAGE INTERPRETERS

(a) Any party who is unable to speak or understand English or who is speech or hearing impaired shall ~~so~~ notify the Commission, the ~~mediator, mediator or neutral evaluator,~~ and the opposing party or parties in ~~writing, writing~~ not less than 21 days prior to the date of the mediated settlement ~~conference or neutral evaluation~~ conference. The notice shall ~~contain~~state the ~~party's primary language languages to be interpreted~~ and how the party plans to communicate ~~in English~~ during the ~~mediation, mediation or neutral evaluation conference.~~

(b) The party requesting the assistance of a qualified foreign language or sign language interpreter shall bear the costs.

(c) If the ~~certified mediator, mediator or neutral evaluator,~~ in his or her discretion, ~~notifies the parties of the need for~~ ~~determines that~~ a qualified foreign language or sign language interpreter is necessary, the mediator or neutral evaluator ~~shall notify the parties, interpreter, the parties and the party needing the assistance of an interpreter~~ shall retain a disinterested interpreter who possesses the qualifications listed in ~~Paragraph Paragraphs~~ (d) and (e) of this ~~Rule. Rule~~ ~~to assist at the mediated settlement conference. The fee of the foreign language interpreter and any postponement fees necessitated by the need for a qualified foreign language interpreter shall be shared by the parties unless the parties agree otherwise.~~

(d) A qualified foreign language interpreter shall possess sufficient ~~experience and experience,~~ education, or a combination ~~of thereof experience and education,~~ in speaking and understanding English and the foreign language to be ~~interpreted, interpreted~~ to qualify as an expert witness pursuant to G.S. 8C-1, Rule 702.

(e) A qualified sign language interpreter shall possess a license from the Interpreter and Transliterator Licensing Board, under Chapter 90D of the North Carolina General Statutes.

~~(e) Qualified foreign Foreign~~ language interpreters shall abide by the ~~Code of Conduct and Ethics of Foreign Language Interpreters and Translators, Code of Ethics and Professional Conduct for Court Interpreters~~ contained in ~~Part 4 of Policies and Best Practices for the Use of Foreign Language Interpreting and Translating Services in the North Carolina Court System Section 11 of Standards for Language Access Services in North Carolina Courts~~ and promulgated by the North Carolina Administrative Office of the Courts, and shall ~~interpret, as interpret~~ word for word as is ~~practicable, practicable~~ without editing, commenting, or ~~summarizing, testimony or other summarizing~~ communications. The Code of ~~Conduct and~~ Ethics and Professional Conduct for Court of Foreign Language Interpreters and Translators is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the North Carolina Administrative Office of the ~~Court's Courts'~~ website, ~~<http://www.nccourts.org/Citizens/CPrograms/Foreign/Documents/guidelines.pdf>,~~ ~~<https://www.nccourts.gov/assets/documents/publications/NCAOC-Language-Access-Standards-07-2024.pdf?VersionId=n5TwbJFTGat3fYaRbwKE5GUZzg3raaDF>,~~ or upon ~~request, request~~ at the offices of the ~~Commission, Commission~~ as set forth in Rule 11 NCAC 23A .0101.

(f) Sign language interpreters shall interpret word for word as is practicable without editing, commenting, or summarizing communications. Sign language interpreters shall abide by the National Association of the Deaf and the Registry of Interpreters for the Deaf, Inc. (NAD-RID) Code of Professional Conduct. The NAD-RID Code of Professional Conduct is hereby incorporated by reference and includes subsequent amendments and editions. A copy may be obtained at no charge from the Registry of Interpreters for the Deaf website at

1 [https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ausc%3AUS%3A154885ef-2f50-3664-ba5e-](https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ausc%3AUS%3A154885ef-2f50-3664-ba5e-f9654c395ddf&viewer%21megaVerb=group-discover, or upon request at the offices of the Commission as set forth)
2 [f9654c395ddf&viewer%21megaVerb=group-discover, or upon request at the offices of the Commission as set forth](https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ausc%3AUS%3A154885ef-2f50-3664-ba5e-f9654c395ddf&viewer%21megaVerb=group-discover, or upon request at the offices of the Commission as set forth)
3 [in 11 NCAC 23A .0101.](https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ausc%3AUS%3A154885ef-2f50-3664-ba5e-f9654c395ddf&viewer%21megaVerb=group-discover, or upon request at the offices of the Commission as set forth)
4

5 *History Note: Authority G.S. 97-80(a); 97-80(c); 143-296; 143-300;*
6 *Eff. January 1, 2011;*
7 *Amended Eff. July 1, 2014;*
8 *Recodified from 04 NCAC 10G .0104A Eff. June 1, 2018.*
9
10

11 NCAC 23G .0105 SANCTIONS ~~(EFFECTIVE JULY 1, 2014)~~

If a person or party whose attendance at a mediated settlement conference is required by Rule .0104 of this Subchapter fails to attend ~~or cancels, without good cause or cancels a duly ordered mediated settlement conference~~ without Commission approval in accordance with ~~Paragraph (f) of Rule .0104.~~0101(f), (g), or .0103(d) of this Subchapter, ~~a duly ordered mediated settlement conference without good cause,~~ the Commission may impose upon the person or party any lawful sanction, including holding the person or party in contempt or requiring the ~~party to pay~~ payment of fines, attorneys' fees, mediator fees and ~~expenses~~ expenses, and loss of ~~earnings~~ earnings incurred by persons attending the conference. ~~Any sanctions that are assessed against a party consistent with the Workers' Comp Act, the Tort Claims Act and the Rules in this Subchapter, including mediated settlement conference postponement fees and sanctions for the unauthorized cancellation or failure to appear at the conference, may be assessed against the party depending on whose conduct necessitated the assessment of sanctions. Mediated settlement conference postponement fees and sanctions for failure to attend the conference may be assessed against the party whose conduct necessitated the assessment.~~

History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 5 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; June 1, 2000; Recodified from 04 NCAC 10G .0105 Eff. June 1, 2018.

1 **11 NCAC 23G .0106 AUTHORITY AND DUTIES OF MEDIATORS**

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

6 (b) Private Consultation. The mediator may meet and consult privately with any participant prior to or during the
7 conference. The fact that private communications have occurred with a participant prior to the conference shall be
8 disclosed to all other participants at the beginning of the conference.

9 (c) Scheduling and Conducting the Conference. It is the duty of the mediator to schedule and conduct the mediated
10 settlement conference prior to the conference completion deadline set out in the Commission's order. The mediator
11 shall make a good faith effort to schedule the conference at a time that is convenient withfor the parties, attorneys and
12 mediator. In the absence of an agreement, the mediator shall select the date for the conference. The conference
13 completion deadline set by the Commission shall be strictly observed by the mediator, unless the deadline is changed
14 by written order of the Dispute Resolution Coordinator.

15 (d) Information to the Parties. At the beginning of a mediated settlement conference, the The mediator shall define
16 and describe ~~explain~~ the following to the parties: parties at the beginning of the mediated settlement conference:

- 17 (1) the process of mediation;
- 18 (2) the differences between mediation and other forms of conflict resolution;
- 19 (3) the costs of the conference;
- 20 (4) ~~the facts~~ that the conference is not a trial or hearing, that the mediator is not acting in the capacity
21 of a Commissioner or Deputy Commissioner and shall not act in ~~sueh~~that capacity in the ~~subject~~
22 case at any time in the future, and that the parties retain their right to a hearing if the parties do not
23 reach a settlement;
- 24 (5) the circumstances under which the mediator may meet ~~alone~~ and communicate privately with any
25 of the parties or with any other person;
- 26 (6) whether and under what conditions, communications with the mediator will be held in confidence
27 during the conference;
- 28 (7) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 and ~~Paragraph (f)~~
29 of Rule ~~.0103.0103(g)~~ of this Subchapter;
- 30 (8) the duties and responsibilities of the mediator and the ~~parties; and participants;~~
- 31 (9) ~~the fact~~ that any agreement reached will be reached by mutual consent of the ~~parties; parties;~~
- 32 (10) that Rule .0103(k) of this Subchapter prohibits any recording of the conference; and
- 33 (11) that the parties may be subject to sanctions for violating the rules in this Subchapter.

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

1 (f) Declaring Impasse. The mediator shall determine when mediation is ~~not no longer viable viable, that an impasse~~
2 ~~exists, or and that mediation the mediated settlement conference~~ should end. The mediator shall consider the desires
3 of the parties to cease or continue the conference.

4 (g) Reporting Results of Conference. In all cases within the Commission's jurisdiction, whether mediated voluntarily
5 or pursuant to an order of the Commission, the mediator shall report the results of the mediated settlement conference
6 on a Form MSC5 Report of Mediator, as set forth in 11 NCAC 23L .0403, within 10 days after the conclusion of
7 mediation or within 10 days of the mediator being notified of the settlement. form provided by the Commission. If an
8 agreement was reached, the report shall state whether the issue or matter ~~under mediation~~ will be resolved by
9 Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary
10 ~~dismissal~~dismissal, or removal from the hearing ~~docket, docket, and shall identify the persons designated to file or~~
11 ~~submit for approval the agreement, or dismissal. If a partial agreement was reached at the conference, the report shall~~
12 ~~state that the parties reached an agreement on some but not all issues.~~ The mediator shall not attach a copy of the
13 parties' memorandum of agreement to the mediator's report transmitted to the Commission and, except as permitted
14 under the Rulesrules in this Subchapter, ~~or unless deemed necessary in the interests of justice by the Commission,~~ the
15 mediator shall not disclose the terms of settlement in the mediator's report. ~~The Commission shall require the mediator~~
16 ~~to provide statistical data for evaluation of the mediated settlement conference program on forms provided by the~~
17 ~~Commission.~~

18 ~~(h) Scheduling and Holding the Conference. The mediator shall schedule the mediated settlement conference in~~
19 ~~consultation with the parties and conduct the conference prior to the completion deadline set out in the Commission's~~
20 ~~order. Deadlines for completion of the conference shall be observed by the mediator unless the time limits are changed~~
21 ~~by the Commission.~~

22 ~~(+)(h)~~ Standards of Conduct. All mediators conducting mediated settlement conferences pursuant to the Rulesrules in
23 this Subchapter shall adhere to the Standards of Professional Conduct for Mediators adopted by the Supreme Court of
24 North Carolina and enforced by the North Carolina Dispute Resolution Commission. The Standards of Professional
25 Conduct for Mediators is hereby incorporated by reference and includes subsequent amendments and editions. A copy
26 may be obtained at no charge from the North Carolina Administrative Office of the Court's website,
27 <https://www.nccourts.gov/courts/supreme-court/court-rules/standards-of-professional-conduct-for-mediators>, or
28 upon ~~request, request~~ at the offices of the ~~Commission, Commission~~ as set forth in 11 NCAC 23A .0101. ~~located in~~
29 ~~the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the hours of 8:00 a.m. and 5:00~~
30 ~~p.m.~~

31
32 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 6 of Rules for Mediated Settlement*
33 *Conferences and Other Settlement Procedures in Superior Court Civil Actions;*
34 *Eff. January 16, 1996;*
35 *Amended Eff. October 1, 1998;*
36 *Recodified from 04 NCAC 10A .0616;*
37 *Amended Eff. July 1, 2014; June 1, 2000;*

1 ~~Eff. January 16, 1996;~~
2 ~~Amended Eff. October 1, 1998;~~
3 ~~Recodified from 04 NCAC 10A .0616;~~
4 ~~Amended Eff. July 1, 2014; June 1, 2000;~~
5 Recodified from 04 NCAC 10G .0106 Eff. June 1, 2018;
6 Amended Eff. October 1, 2024.
7
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11 NCAC 23G .0107 **COMPENSATION OF THE MEDIATOR**

(a) ~~By Mediator Designated by~~ Agreement. When the mediator is ~~stipulated to be designated by agreement of~~ the parties, ~~the mediator's~~ compensation shall be as agreed upon ~~between~~by the parties and the mediator.

(b) ~~By Commission Order. Mediator Appointed by the Commission.~~ When the mediator is appointed by the Commission, the mediator's ~~compensation shall be as follows:~~ conference fee and the one-time administrative fee shall be the same as set forth in Rule 7 of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, which is hereby incorporated by reference and includes subsequent amendments and editions. A copy of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions may be obtained at no charge from the Judicial Branch website, at <https://www.nccourts.gov/assets/inline-files/Rules%20for%20Mediated%20Settlement%20Conferences%20and%20Other%20Settlement%20Procedures%20in%20Superior%20Court%20Civil%20Actions%20-%20Codified%206%20January%202025.pdf?VersionId=ZvKRmnYJlQgwHJySUl9g82LWsgHNGbYf>, or upon request at the offices of the Commission as set forth in 11 NCAC 23A .0101.

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

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

(3)(1) ~~Postponement for Good Cause. Postponement Fees. As used in this Subchapter, the term "postpone" means to reschedule or otherwise not proceed with a scheduled mediated settlement conference after the conference has been scheduled to convene on a specific date. After a conference is scheduled to convene on a specific date, the conference may not be postponed unless the requesting party notifies all other parties of the grounds for the requested postponement and obtains the consent and approval of the mediator or the Dispute Resolution Coordinator. A mediated settlement conference may be postponed by the mediator for good cause only after the requesting party provides notice to all parties of the reason for the postponement and the mediator finds good cause. Good cause exists when the reason for the postponement involves a situation over which the party seeking the postponement has no control, including the following:~~

(A) ~~the illness of a party or attorney;~~

(B) ~~a death in the family of a party or attorney;~~

(C) ~~a sudden and unexpected demand by a judge that a party or attorney for a party appear in court for a purpose not inconsistent with the guidelines established by Rule 3.1(d) of the General Rules of Practice for the Superior and District Courts;~~

(D) ~~inclement weather that makes travel prohibitive.~~

1 If the mediator finds good cause, the mediator shall not assess a postponement fee against a party.

2 (2) Postponement Fees Without Good Cause. If the conference is postponed without good cause, the
3 mediator shall be paid a postponement ~~fee. The postponement fee shall be~~ fee of three hundred
4 dollars (\$300.00) if the conference is postponed ~~within~~ seven or fewer calendar days ~~of~~before the
5 scheduled ~~date, date~~ and one hundred fifty dollars (\$150.00) if the conference is postponed more
6 than seven calendar days ~~prior to~~before the scheduled date. ~~Unless otherwise ordered by the~~
7 ~~Commission in the interests of justice, The~~ postponement ~~fees~~fee shall be ~~allocated in equal shares~~
8 ~~to assessed against~~ the party or parties requesting the ~~postponement, postponement and allocated~~
9 ~~equally among them. As used in this Rule, "good cause" shall mean that the reason for the~~
10 ~~postponement involves a situation over which the party seeking the postponement has no control,~~
11 ~~including a party or attorney's illness, a death in a party or attorney's family, a demand by a judge~~
12 ~~that a party or attorney for a party appear in court, or inclement weather such that travel is~~
13 ~~prohibitive.~~

14 (4)(3) Cancellation Due to Settlement. The parties shall notify the mediator upon settlement.
15 Notwithstanding Subparagraph (1) of this Paragraph, The settlement of a case ~~prior to~~before the
16 scheduled date of the mediated settlement conference ~~shall be~~constitutes good cause for
17 cancellation. No cancellation fee shall be charged if the mediator is notified at least 14 calendar days
18 before the scheduled date of the conference. good cause to cancel the mediation without the approval
19 of the mediator or the Dispute Resolution Coordinator. The parties shall notify the mediator of any
20 cancellation due to settlement. The mediator may charge a cancellation fee of one hundred fifty
21 dollars (\$150.00) if notified of the cancellation ~~within 14~~ 8 to 13 calendar days ~~of~~before the
22 scheduled date, or three hundred dollars (\$300.00) if notified ~~within~~ seven or fewer calendar days
23 ~~of~~before the scheduled date.

24 (c) Payment of Mediator's Compensation by Parties. Payment is due upon completion of the mediated settlement
25 ~~conference; provided, except~~ that the State shall be billed at the conference and shall pay within 30 days of receipt of
26 the bill, and an insurance ~~companies~~company or ~~carriers~~carrier whose written procedures do not provide for payment
27 of the mediator at the conference shall pay within 15 days of the conference. Unless otherwise agreed ~~to~~upon by the
28 parties or ordered by the Dispute Resolution Coordinator due to a ~~party or parties violating party's violation of~~ a rule
29 in this Subchapter, the costs of the conference shall be allocated ~~to the parties,~~ as follows:

30 (1) one share by ~~plaintiff(s);~~plaintiffs;

31 (2) one share by the workers' compensation defendant-employer or its insurer, or if more than one
32 employer or carrier is involved, or if there is a dispute between ~~employer(s) or carrier(s), employers~~
33 or carriers, one share by each separately represented entity;

34 (3) one share by participating third-party tort defendants or their ~~carrier, or~~carrier; if there are
35 conflicting interests among them, one share ~~from~~by each defendant or group of defendants having
36 shared interests; and

37 (4) if applicable, one share by the defendant State agency in a Tort Claims Act case.

1 Parties obligated to pay a share of the costs ~~are~~shall be responsible for equal shares; provided, however, that in workers'
2 compensation claims the defendant shall pay the plaintiff's share of ~~mediation,~~the mediator's compensation, including
3 ~~postponement, and substitution~~postponement or cancellation fees, as well as ~~the~~ defendant's own share. If ~~the~~ plaintiff
4 requests postponement of the mediated settlement conference, ~~the~~ defendants shall be entitled to a credit for the entire
5 amount of the postponement fee.

6 (d) Reimbursement of Costs. Unless the Dispute Resolution Coordinator enters an order allocating ~~such fees~~the
7 mediator's compensation to a particular party ~~due to the party violating based upon a violation of a Rule~~rule in this
8 Subchapter, the mediator's compensation, including postponement or cancellation fees, fees may be taxed as other
9 costs by the Commission in an Order or Opinion and Award. After the case is concluded, the defendant shall be
10 reimbursed for the plaintiff's share of ~~such fees~~ the mediator's compensation from any compensation determined to be
11 due to the ~~plaintiff,~~plaintiff and ~~the defendant~~ may withhold funds from any award for this ~~purpose,~~purpose, unless
12 otherwise ordered by the Commission or the Dispute Resolution Coordinator.

13
14 *History Note: Authority G.S. 97-80(a); 97-80(c); 143-296; 143-300; Rule 7 of Rules for Mediated Settlement*
15 *Conference and Other Settlement Procedures in Superior Court Civil Actions;*
16 *Eff. January 16, 1996;*
17 *Amended Eff. October 1, 1998;*
18 *Recodified from 04 NCAC 10A .0616;*
19 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*
20 *Recodified from 04 NCAC 10G .0107 Eff. June 1, 2018.*
21
22

1 **11 NCAC 23G .0108 MEDIATOR CERTIFICATION AND DECERTIFICATION**

2 ~~(a) Party Selection. Mediators Designated by Agreement. The parties may, by mutual consent, select any North~~
3 ~~Carolina Dispute Resolution Commission certified mediator, with or without the qualifications in Paragraph (b) of~~
4 ~~this Rule, as the parties' mediator. A mediator designated by agreement of the parties pursuant to Rule .0102(a) or (c)~~
5 ~~of this Subchapter shall be certified by the North Carolina Dispute Resolution Commission but is not required to meet~~
6 ~~the additional requirements for appointment by the Commission under Paragraph (b) of this Rule.~~

7 ~~(b) Appointment of Mediators. Mediators Appointed by the Commission. If the parties have agreed or been ordered~~
8 ~~to mediate, and cannot agree on the selection of a mediator, the Commission shall appoint a mediator, who holds~~
9 ~~current certification from the North Carolina Dispute Resolution Commission that he or she is qualified to carry out~~
10 ~~mandatory mediations in the Superior Courts of the State of North Carolina and who has filed a declaration with the~~
11 ~~Commission, on forms provided by the Commission, stating that the declarant agrees to accept and perform mediations~~
12 ~~of disputes before the Commission with reasonable frequency when called upon for the fees and at the rates of payment~~
13 ~~specified by the Commission. A mediator appointed by the Commission pursuant to Rule .0102(b) of this Subchapter~~
14 ~~shall:~~

15 ~~(1) hold a current certification from the North Carolina Dispute Resolution Commission to conduct~~
16 ~~mediated settlement conferences in Superior Court cases; and~~

17 ~~(2) have filed a declaration with the Commission on Form MSC6 Mediator's Declaration of Interest and~~
18 ~~Qualifications as set forth in 11 NCAC 23L .0404, agreeing to accept appointments to conduct~~
19 ~~mediations with reasonable frequency and for the fees set forth in Rule .0107(b) of this Subchapter~~

20 ~~A mediator making thiswho has filed a declaration pursuant to this Paragraph shall notify the Commission if~~
21 ~~when any of the facts or information in the declaration declared are no longer accurate.~~

22 (c) Failure of Mediator to Appear at Conference. If a mediator fails to appear at a scheduled mediated settlement
23 conference, the mediator is not entitled to the administrative fee for the case.

24
25 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 8 of Rules for Mediated Settlement*
26 *Conferences and Other Settlement Procedures in Superior Court Civil Actions;*
27 *Eff. January 16, 1996;*
28 *Amended Eff. October 1, 1998;*
29 *Recodified from 04 NCAC 10A .0616;*
30 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*
31 *Recodified from 04 NCAC 10G .0108 Eff. June 1, 2018.*
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33

1 **11 NCAC 23G .0109 NEUTRAL EVALUATION**

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

8 (b) When Conference Is to Be Held. The provisions applicable to the scheduling of mediated settlement conferences
9 set forth in Rule .0103 of this Subchapter also apply to neutral evaluation ~~proceedings-conferences.~~

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

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

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

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

33 (g) No Recordings. There shall be no audio, video, stenographic, or other recording of the neutral evaluation
34 conference by any participant. This prohibition includes recording either surreptitiously or with the agreement of the
35 parties.

36 (g)(h) Evaluator's Opening Statement. At the beginning of the neutral evaluation conference, the neutral evaluator
37 shall define and describe explain the following points to the parties:

~~(1) — the facts that;~~
 (A)(1) the conference is not a ~~hearing; hearing;~~
 (B)(2) the neutral evaluator is not acting in the capacity of a Commissioner or Deputy Commissioner and shall not act in ~~such that~~ capacity in the ~~subject~~ case at any time in the ~~future; future;~~
 (C)(3) the neutral evaluator's opinions are not binding on any ~~party, and party;~~
 (D)(4) the parties retain ~~their the~~ right to a hearing if ~~the parties they~~ do not reach a settlement;
 (2)(5) ~~the fact that~~ any settlement reached ~~will shall~~ be ~~only~~ by mutual consent of the parties;
 (3)(6) the process of the ~~proceeding; conference;~~
 (4)(7) the differences between the ~~proceeding-neutral evaluation~~ and other forms of conflict resolution;
 (5)(8) the costs of the ~~proceeding; conference;~~
 (6)(9) the inadmissibility of conduct and statements as provided by G.S. 8C-1, Rule 408 and ~~Paragraph (f)~~ of Rule ~~.0103, 0103(g)~~ of ~~in~~ this Subchapter; ~~and~~
 (7)(10) the duties and responsibilities of the neutral evaluator and the ~~participants-participants; and~~
 (11) ~~recording of the conference is prohibited pursuant to Paragraph (g) of this Rule.~~
 (H)(i) Oral Report to Parties by Evaluator. In addition to the written report to the Commission required under the ~~Rules rules~~ in this Subchapter, at the conclusion of the neutral evaluation conference, the neutral evaluator shall issue an oral report to the parties advising ~~the parties them~~ of the neutral evaluator's opinion ~~of about~~ the case. The opinion shall include a candid assessment of ~~the strengths and weaknesses of the parties' claims and defenses,~~ liability, estimated settlement ~~values value~~ and options, and the ~~range of potential awards strengths and weaknesses of the parties' claims and defenses~~ if the case proceeds to a hearing. The oral report shall also contain a suggested settlement or disposition of the case and the ~~reasons therefor reason for the neutral evaluator's suggestion.~~ The neutral evaluator shall ~~not neither~~ reduce ~~his or her the~~ oral report to writing ~~and shall not nor~~ inform the Commission ~~thereof of the oral report.~~
 (H)(j) Report of Evaluator to Commission. Within 10 days after the completion of the neutral evaluation conference, the neutral ~~evaluator; evaluator (1)~~ shall submit to the Dispute Resolution Coordinator a written report using Form MSC7 Report of Evaluator, as set forth in 11 NCAC 23L .0405, a form prepared and distributed by the Commission, stating:
 (A)(1) when and where the conference was ~~held; held;~~
 (B)(2) ~~the names of those persons who attended the conference, the name of any party or other person known to the neutral evaluator who failed to attend without permission;~~
 (C)(3) whether ~~or not~~ an agreement was reached by the ~~parties, parties;~~ and
 (D)(4) whether the issue or matter will be resolved by a Commission form agreement, compromise settlement agreement, other settlement agreement, voluntary ~~dismissal dismissal,~~ or removal from the hearing ~~docket; docket.~~
 (2) — ~~shall identify the persons designated to file or submit for approval such agreement, or dismissal; and~~
 (3) — ~~shall provide statistical data for evaluation of the settlement conference programs on forms provided by the Commission.~~

1 ~~(j)(k)~~ Evaluator's Authority to Assist Negotiations. If all parties at the neutral evaluation conference request and
2 agree, the neutral evaluator may assist the parties in settlement discussions. If the parties do not reach a settlement
3 during the discussions, the neutral evaluator shall complete the neutral evaluation conference and ~~make his or her~~
4 ~~submit the~~ written report to the Commission as if the settlement discussions had not occurred.

5 ~~(k)(l)~~ Finalizing Agreement. If the parties ~~are able to~~ reach an agreement ~~before the conclusion of at~~ the neutral
6 evaluation ~~conference, conference and before the evaluator provides his report to the Commission,~~ the parties shall
7 reduce the agreement to writing, specifying all ~~the~~ terms ~~of the parties' agreement~~ that bear on the resolution of the
8 dispute before the Commission, and ~~shall~~ sign the agreement along with ~~the parties' respective their~~ counsel. ~~By~~
9 ~~stipulation of the parties and at their expense, the agreement may be electronically or stenographically recorded.~~ All
10 agreements for payment of compensation shall be submitted for Commission approval ~~in accordance with 11 NCAC~~
11 ~~23A .0501 and .0502, and shall be filed with the Commission within 20 days of the conclusion of the conference.~~

12 ~~(l)(m)~~ Applicability of Mediation Rules and Duties. ~~All~~The provisions and duties applicable to mediated settlement
13 conferences set forth in ~~Rule~~Rules .0103 through ~~Rule~~ .0107 of this ~~Subchapter, Subchapter~~ that ~~are do~~ not ~~in~~ conflict
14 with the provisions and duties of this Rule .0109 of this Subchapter, also apply to neutral evaluation conferences.
15 ~~conferences conducted under the Rules in this Subchapter.~~

16 ~~(m)(n)~~ Ex Parte Communications Prohibited. Unless all parties agree otherwise, there shall be no ex parte
17 communication prior to the conclusion of the ~~proceeding~~conference between the neutral evaluator and any counsel or
18 party ~~on~~concerning any matter related to the ~~proceeding~~neutral evaluation, except with regard to administrative
19 matters.

20 ~~(n)(o)~~ ~~Adherence to~~ Standards of Conduct. ~~Conduct for Neutrals.~~ All neutral evaluators conducting neutral evaluation
21 conferences pursuant to the Rules~~rules~~ in the Subchapter shall adhere to any applicable standards of conduct. ~~conduct~~
22 ~~that are adopted by the North Carolina Dispute Resolution Commission and are hereby incorporated by reference and~~
23 ~~include subsequent amendments and editions. A copy may be obtained at no charge from The North Carolina Court~~
24 ~~System's website, <http://www.nccourts.org/Courts/CRS/Councils/DRC/Default.asp>, or upon request, at the offices of~~
25 ~~the Commission, located in the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina, between the~~
26 ~~hours of 8:00 a.m. and 5:00 p.m.~~

27
28 *History Note:* Authority G.S. 97-80(a),(c); 143-296; 143-300; Rule 11 of Rules for Mediated Settlement
29 Conferences and Other Settlement Procedures in Superior Court Civil Actions;
30 Eff. January 16, 1996;
31 Amended Eff. October 1, 1998;
32 Recodified from 04 NCAC 10A .0616;
33 Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;
34 Recodified from 04 NCAC 10G .0109 Eff. June 1, 2018.

1 **11 NCAC 23G .0110 WAIVER OR VARIANCE OF RULES**

2 In the interests of justice or to promote judicial economy, ~~the Commission may~~, except as otherwise provided by the
3 rules in this Subchapter, the Commission may waive or vary the requirements or provisions of any of the rules in this
4 Subchapter in a case pending before the Commission upon written application of a party or upon its own initiative
5 only if the ~~employee~~plaintiff is not represented by counsel. Factors the Commission shall ~~use~~consider in determining
6 whether to grant the waiver are:

- 7 (1) the necessity of a waiver;
- 8 (2) the party's responsibility for the conditions creating the need for a waiver;
- 9 (3) the party's prior requests for a waiver;
- 10 (4) the precedential value of ~~such~~ a waiver;
- 11 (5) notice to and opposition by the opposing parties; and
- 12 (6) the harm to the party if the waiver is not granted.

13
14 *History Note: Authority G.S. 97-80(a); 97-80(c); 143-296; 143-300;*
15 *Eff. January 16, 1996;*
16 *Amended Eff. October 1, 1998;*
17 *Recodified from 04 NCAC 10A .0616;*
18 *Amended Eff. July 1, 2014; June 1, 2000;*
19 *Recodified from 04 NCAC 10G .0110 Eff. June 1, 2018.*
20
21

1 **11 NCAC 23G .0111 MOTIONS**

2 Unless otherwise ~~indicated~~provided by the ~~Rules~~rules in this Subchapter or an ~~applicable~~ order ~~by~~of the ~~Commission~~
3 ~~in the interests of justice or judicial economy, Commission,~~ motions pursuant to ~~the Rules in~~ this Subchapter shall be
4 addressed to the ~~Commission's~~ Dispute Resolution Coordinator and served on all parties ~~involved in the mediated~~
5 ~~settlement conference, to the claim and the settlement procedure.~~ Responses may be filed with the Commission within
6 10 days after the date of receipt of the motion. Notwithstanding the ~~above, foregoing,~~ the Commission may, in the
7 interests of justice, act upon oral ~~motions, motions~~ or ~~aet upon~~rule on any motions prior to the expiration of the 10-
8 day response period. Motions shall be decided without oral argument unless otherwise ordered in the interests of
9 justice. ~~Any appeals~~An appeal from ~~orders~~an order issued pursuant to a motion under ~~the Rules in~~ this Subchapter
10 shall be filed within 15 days of receipt of the administrative order and addressed~~directed~~ to the ~~attention of the~~
11 Commission Chair or the Chair's designee for appropriate action.

12
13 *History Note: Authority G.S. 97-80(a),(c); 97-85; 143-92; 143-296; 143-300;*
14 *Eff. January 16, 1996;*
15 *Amended Eff. October 1, 1998;*
16 *Recodified from 04 NCAC 10A .0616;*
17 *Amended Eff. July 1, 2014; January 1, 2011; June 1, 2000;*
18 *Recodified from 04 NCAC 10G .0111 Eff. June 1, 2018.*
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1 **11 NCAC 23G .0112** **MISCELLANEOUS COMPUTATION OF TIME PERIODS**

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

11
12 *History Note: Authority G.S. 97-80(a),(c); 143-296; 143-300;*
13 *Eff. January 16, 1996;*
14 *Amended Eff. October 1, 1998;*
15 *Recodified from 04 NCAC 10A .0616;*
16 *Amended Eff. July 1, 2014; June 1, 2000;*
17 *Recodified from 04 NCAC 10G .0112 Eff. June 1, 2018.*
18
19