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West's North Carolina General Statutes Annotated [Currentness](#)

North Carolina Rules of Court

▣ Rules Implementing Statewide Mediated Settlement Conferences in Superior Court Civil Actions

→ **Rule 4. Duties of Parties, Attorneys and Other Participants in Mediated Settlement Conferences**

A. ATTENDANCE.

(1) The following persons shall attend a mediated settlement conference:

(a) Parties.

(i) All individual parties;

(ii) Any party that is not a natural person or a governmental entity shall be represented at the conference by an officer, employee or agent who is not such party's outside counsel and who has been authorized to decide on behalf of such party whether and on what terms to settle the action or who has been authorized to negotiate on behalf of such party and can promptly communicate during the conference with persons who have decision-making authority to settle the action; provided, however, if a specific procedure is required by law (*e.g.*, a statutory pre-audit certificate) or the party's governing documents (*e.g.*, articles of incorporation, bylaws, partnership agreement, articles of organization, or operating agreement) to approve the terms of the settlement, then the representative shall have the authority to negotiate and make recommendations to the applicable approval authority in accordance with that procedure;

(iii) Any party that is a governmental entity shall be represented at the conference by an employee or agent who is not such party's outside counsel and who has authority to decide on behalf of such party whether and on what terms to settle the action; provided, if under law proposed settlement terms can be approved only by a board, the representative shall have authority to negotiate on behalf of the party and to make a recommendation to that board.

(b) Insurance company representatives. A representative of each liability insurance carrier, uninsured motorist insurance carrier, and underinsured motorist insurance carrier which may be obligated to pay all or part of any claim presented in the action. Each such carrier shall be represented at the conference by an officer, employee or agent, other than the carrier's outside counsel, who has the authority to make a decision on behalf of such carrier or who has been authorized to negotiate on behalf of the carrier and can promptly communicate during the conference with persons who have such decision-making authority.

(c) Attorneys. At least one counsel of record for each party or other participant, whose counsel has appeared

in the action.

(2) Any party or person required to attend a mediated settlement conference shall physically attend until an agreement is reduced to writing and signed as provided in Rule 4.C. or an impasse has been declared. Any such party or person may have the attendance requirement excused or modified, including the allowance of that party's or person's participation without physical attendance:

(a) By agreement of all parties and persons required to attend and the mediator; or

(b) By order of the Senior Resident Superior Court Judge, upon motion of a party and notice to all parties and persons required to attend and the mediator.

(3) *Scheduling.* Participants required to attend shall promptly notify the mediator after selection or appointment of any significant problems they may have with dates for conference sessions before the completion deadline, and shall keep the mediator informed as to such problems as may arise before an anticipated conference session is scheduled by the mediator. After a conference session has been scheduled by the mediator, and a scheduling conflict with another Court proceeding thereafter arises, participants shall promptly attempt to resolve it pursuant to [Rule 3.1 of the General Rules of Practice for the Superior and District Courts](#), or, if applicable, the Guidelines for Resolving Scheduling Conflicts adopted by the State-Federal Judicial Council of North Carolina June 20, 1985.

B. NOTIFYING LIEN HOLDERS. Any party or attorney who has received notice of a lien or other claim upon proceeds recovered in the action shall notify said lien holder or claimant of the date, time, and location of the mediated settlement conference and shall request said lien holder or claimant to attend the conference or make a representative available with whom to communicate during the conference.

C. FINALIZING AGREEMENT.

(1) If an agreement is reached at the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel. By stipulation of the parties and at their expense, the agreement may be electronically recorded. If an agreement is upon all issues, a consent judgment or one or more voluntary dismissals shall be filed with the Court by such persons as the parties shall designate.

(2) If the agreement is upon all issues at the conference, the person(s) responsible for filing closing documents with the Court shall also sign the mediator's report to the Court. The parties shall give a copy of their signed agreement, consent judgment, or voluntary dismissal(s) to the mediator and all parties at the conference and shall file a consent judgment or voluntary dismissal(s) with the Court within thirty (30) days or within ninety days (90) days if the State or a political subdivision thereof is a party to the action, or before expiration of the mediation deadline, whichever is longer. In all cases, consent judgments or voluntary dismissals shall be filed prior to the scheduled trial.

(3) If an agreement is reached upon all issues prior to the conference or finalized while the conference is in recess, the parties shall reduce its terms to writing and sign it along with their counsel and shall file a consent judgment or voluntary dismissal(s) disposing of all issues with the Court thirty (30) days or within ninety (90) days if the State or a political subdivision thereof is a party to the action, or before expiration of the mediation deadline, whichever is longer.

(4) When a case is settled upon all issues, all attorneys of record must notify the Senior Resident Judge within four business days of the settlement and advise who will file the consent judgment or voluntary dismissal(s), *and when*.

D. PAYMENT OF MEDIATOR'S FEE. The parties shall pay the mediator's fee as provided by Rule 7.

E. RELATED CASES. Upon application by any party or person, the Senior Resident Superior Court Judge may order that an attorney of record or a party in a pending Superior Court Case or a representative of an insurance carrier that may be liable for all or any part of a claim pending in Superior Court shall, upon reasonable notice, attend a mediation 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 rule. Any such attorney, party or carrier representative that properly attends a mediation conference pursuant to this rule shall not be required to pay any of the mediation fees or costs related to that mediation conference. Any disputed issues concerning an order entered pursuant to this rule shall be determined by the Senior Resident Superior Court Judge who entered the order.

DRC COMMENTS TO RULE 4

DRC Comment to Rule 4.C.

[N.C.G.S. § 7A-38.1](#)(1) provides that no settlement shall be enforceable unless it has been reduced to writing and signed by the parties. When a settlement is reached during a mediated settlement conference, the mediator shall be sure its terms are reduced to writing and signed by the parties and their attorneys before ending the conference.

Cases in which agreement upon all issues has been reached should be disposed of as expeditiously as possible. This rule is intended to assure that the mediator and the parties move the case toward disposition while honoring the private nature of the mediation process and the mediator's duty of confidentiality. If the parties wish to keep confidential the terms of their settlement, they may timely file with the Court closing documents which do not contain confidential terms, i.e., voluntary dismissal(s) or a consent judgment resolving all claims. Mediators will not be required by local rules to submit agreements to the Court.

DRC Comment to Rule 4.E.

Rule 4.E. was adopted to clarify a Senior Resident Superior Court Judge's authority in those situations where there may be a case related to a Superior Court case pending in a different forum. For example, it is common for there to be claims asserted against a third-party tortfeasor in a Superior Court case at the same time that there are

related workers' compensation claims being asserted in an Industrial Commission case. Because of the related nature of such claims, the parties in the Industrial Commission case may need an attorney of record, party, or insurance carrier representative in the Superior Court case to attend the Industrial Commission mediation conference in order to resolve the pending claims in that case. Rule 4.E. specifically authorizes a Senior Resident Superior Court Judge to order such attendance provided that all parties in the related Industrial Commission case consent and the persons ordered to attend receive reasonable notice. The Industrial Commission's Rules for Mediated Settlement and Neutral Evaluation Conferences contain a similar provision that provides that persons involved in an Industrial Commission case may be ordered to attend a mediation conference in a related Superior Court Case.

CREDIT(S)

[Amended effective October 1, 1995; July 15, 1996; December 30, 1998; September 1, 2000. Amended effective November 21, 2002; amended effective March 4, 2004; amended effective March 1, 2006.]

Superior Court Mediated Settlement Conferences RULE 4, NC R SUPER CT MEDIATED SETTLEMENT
CONF RULE 4

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