

**Local Rules Governing Mediated Settlement Conferences
in Superior Court Civil Actions**
(Revised June, 2007)

LR 1 Pre-Suit Alternative Dispute Resolution

- A. Upon being retained to represent any party in a civil Superior Court action, counsel shall advise his or her client(s) regarding available ADR procedures, including the possibility of a pre-suit mediated settlement conference.
- B. Participants are cautioned that engaging in pre-suit ADR does not toll any applicable statute of limitations, nor does it serve as a substitute for or constitute compliance with any other procedural requirements for pursuing a claim. Rather, pre-suit ADR is purely a voluntary process designed to effect early settlement.
- C. Unless approved by the Court, parties who participate in pre-suit ADR will not be relieved of the requirement to participate in a post-suit mediated settlement conference or other ADR method approved by these Rules and the Revised Rules.

LR 2 Mandatory Mediated Settlement Conferences

- A. Pursuant to G.S. § 7A-38.1 and the Revised Rules promulgated thereunder by the N.C. Supreme Court (the "Revised Rules"), all parties to civil actions filed in Superior Court in the 26th Judicial District, and all other persons and entities identified by Rule 4 of the Revised Rules, are required to attend a pre-trial mediated settlement conference, except in those actions in which a party is seeking the issuance of an extraordinary writ or is appealing the revocation of a motor vehicle operator's license. (The Revised Rules are contained in the Rules Volume of the North Carolina General Statutes and may also be found at <http://www.nccourts.org/Courts/CRS/Councils/DRC/MSC/Rules.asp>).

The Revised Rules, as may be amended from time to time, shall be strictly followed in all respects within the 26th Judicial District and all parties, mediators and other persons and entities involved in civil actions in this District are advised to closely familiarize themselves with these Revised Rules.

- B. As set forth in the Revised Rules, any party may move the Senior Resident Superior Court Judge to dispense with the mandatory mediated settlement conference or to allow the substitution of another settlement procedure approved by the Revised Rules. Motions to dispense with the mediated settlement conference are disfavored and will only be granted in cases with exceptional circumstances. Prior to submitting such a motion, the moving party must consult with and seek the position of opposing parties, and indicate their position(s) in the motion. Such motion shall be in writing and must be submitted with a proposed order to the ADR Coordinator in the Trial Court Administrator's Office (the "ADR Coordinator") for processing.

- C. ADR proceedings and information relating to or disclosed during the mediated settlement conference shall be governed by Rule 408 of the North Carolina Rules of Evidence.

LR 3 Local Requirements related to Mediated Settlement Conferences

- A. All forms, motions and orders or other issues or matters involving mediated settlement conferences and any other form of ADR must be directed to the attention of the ADR Coordinator. If the matter is one that only the Senior Resident Superior Court Judge may rule upon, it must still be sent to the ADR Coordinator for processing and subsequent submission by the ADR Coordinator to the Senior Resident Superior Court Judge.
- B. Forms filed with the Clerk of Superior Court and not with the ADR Coordinator will not be deemed validly filed.
- C. All forms, motions and orders, (including without limitation, motions to extend an ADR deadline, to designate or substitute a mediator, and reports of the mediator), must be sent with the original and one copy, along with a self addressed stamped envelope. Additional mailings to opposing parties shall be made by the requesting party once the approved order has been returned. Faxed copies are not accepted and will not be signed.
- D. If an opposing party chooses to file a written objection to any motion, it must be submitted to the ADR Coordinator and served on opposing counsel within three (3) business days of receiving the original motion.
- E. Motions for substitution of mediator will not be considered by the Court, unless the administrative fee has been paid to the Court appointed mediator and certification of such payment is included with the Motion.
- F. AOC forms can be found on the web site, www.nccourts.org, by clicking "forms" at the homepage. Local forms can be found at the same web site. At the homepage, click "Local Rules" located on the right side of the page under favorites. Select "Mecklenburg" and submit the query. Scroll down past local rules and that is where local forms will be found. Commonly used forms for ADR include, but are not limited to:

- AOC-CV-811 Order for Mediated settlement conference in Superior Court and Trial Calendar Notice
- AOC-CV-812 Designation of Mediator
- AOC-CV-813 Report of Mediator In Superior Court Civil Action
- AOC-CV-814 Petition and Order for Relief from Obligation to Pay Mediator's Fee
- AOC-CV-815 Motion and Order for Show Cause Hearing
- AOC-CV-816 Order of Contempt for Non-Payment of Mediator's Fee
- AOC-CV-817 Report of Neutral Conducting Settlement Procedure Other than Mediated settlement conference of Arbitration in Superior Court Civil Action
- CCF-44 Motion for Extension of ADR deadline (local form)

CCF-13 Stipulation to ADR for cases that have not yet been ordered by the Court
local form

(Note: There is no form to substitute a mediator. Parties must draft a motion and order to submit to the Court.)

LR 4 Selection of Mediator

- A. The Revised Rules shall govern the selection of mediator. As set forth in the Revised Rules, mediators willing to mediate cases in Mecklenburg County are provided on the State web site <http://www.nccourts.org> for convenience in party designation. The mediator list is updated and maintained by the Dispute Resolution Commission in Raleigh, North Carolina. Any certified mediator not living in the judicial district, or a county contiguous to the judicial district, who wants his or her name added to the 26th Judicial District approved mediator list must submit to the ADR Coordinator the letter required by the Revised Rules confirming that he or she will agree to mediate cases to which he or she are assigned. This annual letter required by the Revised Rules must be submitted to the ADR Coordinator by January 1 of each year.
- B. The allowed compensation for a Court appointed mediator is set forth in the Revised Rules and is not negotiable.
- C. The Senior Resident Superior Court Judge shall retain discretion to depart from the general procedure in particular exceptional, such as the appointment of one mediator to multiple related cases or the appointment of a newly certified mediator. The Senior Resident Superior Court Judge may remove or decline to include a mediator on the Court appointed list or decline to approve the designation of a mediator who has not followed the Revised Rules or these Local Rules.

LR 5 Scheduling and Reporting

- A. The initial deadline for completion of the mediated settlement conference shall be no less than eight (8) weeks prior to the original trial date and the mediator shall comply with the Revised Rules with regard to the timely filing of the Mediator's Report. A change in the trial date will permit a corresponding extension of the mediation deadline and are subject to the requirements of LR3. Reference is made to Rule 6A(3) of the Revised Rules and the mediator's authority and obligation to set a time for the mediated settlement conference in the absence of agreement.
- B. All mediators must comply with the Revised Rules and these Local Rules, including the rule to file reports for all cases where a mediated settlement conference was held. For cases that are disposed of by filing a dismissal or changing the venue, attorneys must notify the assigned mediator, who must report such disposition to the ADR Coordinator using the usual report form.
- C. As set forth in the Revised Rules, mediators who fail to schedule or report mediations as required shall be subject to the contempt power of the Court and sanctions including, but not limited, to the sanctions set forth below in LR 6.

LR 6 Sanctions for Failure to Comply with Court Orders, the Revised Rules and these Local Rules (Mediators, Attorneys and Parties)

- A. All parties, attorneys, mediators, and other persons or entities subject to the Revised Rules and these Local Rules are reminded that they are also subject to the contempt power of the Court and sanctions.
- B. “Past Due Notices” are issued by the Court as a courtesy only and the parties are expected to comply with the requests indicated on the notice.
- C. Once a show cause order is issued, a party subject to the order may request removal from the calendar by submitting a motion and order to be excused from showing cause to the ADR Coordinator, who will forward it to the appropriate Superior Court judge for consideration. No direct communication with the judge is permitted unless requested by the judge.
- D. Sanctions will be consistent with N.C. General Statutes 5A-13(b), 5A-21, 5A-22 and 7a-38.a, the Revised Rules and the N.C. Rules of Civil Procedure.

LR 7 Other Settlement Procedures

Parties and their attorneys should refer to Rules 10-13 of the Revised Rules for other settlement procedures approved by the Revised Rules and these Local Rules.