

## SAMPLE COURT ADR RULE

### NORTH CAROLINA

#### Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program

Statewide or local: Statewide

Process: Mediation

**Eligible Cases:** “All actions involving unresolved issues as to the custody or visitation of a minor child.”

#### Summary:

Under these rules, mediation is mandatory unless waived by the court. Mediation is conducted by staff mediators or mediators contracted and paid by the court. No payment is required of the parties.

#### Related authority

The rule is based on a statute, [NCGS 7A-494](#), which covers mediator qualifications, and [NCGS 50-13.1](#), which covers confidentiality.

#### What is good about this rule:

- *Provides for a pre-mediation orientation session, which is mandatory:* Many parties arrive at mediation not knowing what to expect or what their role is in the process. Orientation should help to educate them before arriving at the first session.
- *Calls for the regular evaluation of mediators through observation, videotaped sessions, audio-taped sessions, co-mediation, or review of written agreements:* The court has a duty to ensure that those who participate in its court-annexed and mandatory process are being properly served by qualified mediators. Periodic evaluation of the mediators helps do so.
- *Strict trainer guidelines and qualifications:* The rule requires that those training the mediators observe the court, court mediations, divorce mediation training, a specified number of co-mediations and a specified number of mediations, as well as required attendance at training meetings held by the Administrative Office of the Court. These strict guidelines help to standardize trainings and thereby help to standardize the quality of the mediators.
  - ⇒ For an example of what to include in training, see [Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court Standing Committee on Dispute Resolution
- *Strong ethics section in Appendix to the Rule:* All programs should require that neutrals abide by a set of ethical standards. This promotes confidence in the program, molds expectations and behaviors, and provides quality control.
  - ⇒ For a discussion of ethical standards for mediators, see [National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement
  - ⇒ Also see the [Model Standards of Practice for Family and Divorce Mediation](#)

**Additional points to note:**

- *Mediators must be mental health professionals:* Those with a law degree only are not considered qualified. It is not common for lawyers to be excluded from the mediator roster. This provision may be considered to be too restrictive by some.
- *The 1<sup>st</sup> 2-hour mediation session is mandatory:* After that, the parties can decide whether to continue the process. This is an interesting way to try to balance the need for self-determination with the benefits of making mediation mandatory (e.g., encouraging participation in the process).
- *Calls on the Administrative Office of the Courts to evaluate the program from time to time:* This is to include the statistics supplied by the programs and may involve the use of post-mediation surveys.
  - ⇒ For more information on monitoring and evaluating ADR programs, see [\*Monitoring and Evaluating Court-Based Dispute Resolution Programs: A Guide for Judges and Court Managers\*](#), National Center for State Courts, 1997

**Further Reading:*****Qualifications***

[National Standards for Court-Connected Mediation Programs](#), Center for Dispute Settlement

***Domestic Violence Screening***

[Model Court Protocol for Domestic Violence and Child Abuse Screening in Matters Referred to Domestic Relations Mediation](#), Michigan Domestic Violence Prevention and Treatment Board

## **Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program.**

*Comment: Legislation establishing a statewide Custody and Visitation Program in North Carolina required that the Administrative Office of the Courts “promulgate rules and regulations necessary and appropriate for the administration of the program” and that services provided be “uniform.” G.S. 7A-494. Uniform rules will protect families receiving such services, will allow meaningful statistical comparisons to be made, and allow both mediators and the mediation program to be periodically reevaluated. The Program is to be established in phases throughout North Carolina, beginning on July 1, 1989.*

**1. Goals of Mediation.** The goals of custody and visitation dispute mediation are centered in the reduction of the stress and anxiety experienced by children in separation and divorce, by furnishing an alternative way for the parties to settle custody and visitation disputes. A trained mediator helps the parties reorganize the family, continue parenting their children despite separation, and begins an educational process which will allow parties to recognize and meet the needs of their children. Mediation provides a structured, confidential, nonadversarial setting which will help the parties make informed choices about matters involving their children, with the hope that such cooperative resolution will alleviate the acrimony between the parties, reducing attendant stress on both the parties and the child. A successful mediation will help the parties put a parenting plan in writing, will teach them to solve future problems without recourse to the courts, and thus reduce the stress of relitigation of custody and visitation disputes.

**2. Purpose of Program.** The Custody and Visitation Mediation Program is to provide the services of skilled mediators to further the goals set out above.

### **3. Definitions.**

**3.01. Mediation.** A process whereby a trained, neutral third party acts to encourage and facilitate the resolution of a dispute without prescribing what the resolution should be.

**3.02. Mediator.** A trained, neutral third party who acts to encourage and facilitate the resolution of a dispute without prescribing what the resolution should be.

**3.03. Parenting Agreement.** A written agreement reached by the parties with the assistance of the mediator, which may be presented to the court for approval and adoption as an order of the court.

**4. Administration of Program.** The Administrative Office of the Courts (AOC) is responsible for establishing the Program in the several judicial districts of the State, and is to promulgate rules and regulations for the administration of the program. The Director of the AOC shall appoint necessary staff to plan, organize, and administer the program on a statewide basis. The AOC is to cooperate with each Chief District Court Judge and other district personnel in implementation and administration of the program.

**4.01. Employment of Mediators.** Mediators are to be employed by the Chief District Court Judge of the judicial district, and are to be full or part-time employees.

**4.02. In-House Contracts Permitted.** When deemed appropriate by the AOC, the Chief District Court Judge may contract for delivery of mediation services, such contract to be approved by the Director. Such contracts are exempt from competitive bidding procedures under Chapter 143 of the General Statutes.

**4.03. Administration of Funds.** Funds appropriated by the General Assembly for the establishment and maintenance of mediation programs are to be administered by the AOC.

**4.04. Multi-district Programs.** The AOC may authorize all or part of a program in one district to be operated in conjunction with that of another district or districts.

**4.05. Advisory Committee Established.** The Director of the AOC shall appoint a Custody Mediation Advisory Committee of at least five members to advise the Custody Mediation Program. Members of the Committee are to receive the same per diem and travel expenses as members of State boards and commissions generally.

**5. Local District Programs.** Each local district program is to consist of a qualified mediator, or mediators, and such clerical staff as the AOC in consultation with the local program deems necessary.

**6. Qualifications of Mediators.** A person desiring to furnish mediation services must demonstrate that he or she:

- 1) Has at least a master's degree in psychology, social work, family counseling, or a comparable human relations discipline; and
- 2) Has completed at least 40 hours of training in mediation techniques by an instructor deemed qualified by the AOC; and
- 3) Has had professional training and experience relating to child development, family dynamics, or comparable areas; and
- 4) Meets such other criteria as specified by the AOC.

**6.01. Initial Training Period.** A person just beginning to furnish mediation services in the North Carolina Custody and Visitation Mediation Program shall satisfy the following requirements during an initial training period of 18-24 months following employment, unless some or all of the requirements are waived by the Director of the AOC or his designee:

Level I:

- A. 18 Hours of Court Observations

(Note: Suggest that B and C occur prior to D)

B. 18 Hours of Custody Mediation Observation

C. 40 Hours of Divorce Mediation Training

D. 24 Hours of Co-Mediation

(Note: E and F begin simultaneously)

E. Minimum of 2 consecutive weeks/maximum of 4 consecutive weeks of internship in one district

F. 150 Mediation Sessions

G. Meetings/Additional Training: (As designated by the AOC)

Regional Meetings

Annual Training Meeting(s)

Trainee Progression Meetings

Level II:

A. 18 Hours of Co-Mediation (Note: To Be Completed Within 1<sup>st</sup> Quarter of Level II)

B. 150 Mediation Sessions

C. Meetings/Additional Training: (As designated by the AOC)

Regional Meetings

Annual Training Meeting(s)

Trainee Progression Meetings

Documentation is to be provided to the Chief District Court Judge and the AOC at the conclusion of each level of the Training Progression. (See Appendix B, Mediator Training Progression.)

**6.02. Continuing Education.** A mediator is to keep abreast of developments in the field through such professional journals and bulletins as are available; further, a mediator is to participate in at least 20 hours of continuing education each two years, in a program approved by the Director of the AOC or his designee. A mediator should also regularly participate as a co-mediator, preferably with mediators outside the mediator's judicial district.

**6.03. Continuing Evaluation.** The performance of a mediator should be regularly evaluated by the AOC. Results of such mediation performance evaluation will be shared with the Chief District Court Judge. Methods of evaluation may include:

- ◇ Observation through a one-way mirror;
- ◇ Videotaped sessions (with permission of the parties);
- ◇ Audio tape-recorded sessions (with permission of the parties);
- ◇ Co-mediations of the mediator and the evaluator;
- ◇ Review of written agreements for completeness and specificity.

**6.04. Mediator Ethics.** See Appendix B, Standards of Practice for Mediators in the North Carolina Mandatory Custody Mediation Program.

**7. Referral to Mediation.** All actions involving unresolved issues as to the custody or visitation of a minor child shall be ordered to mediation on such issues prior to the trial of the matter, unless the court waives mediation. Such actions include an action for custody or visitation in which no order has been previously entered, motions to modify orders previously entered, and actions to enforce custody and visitation orders. This mandatory referral procedure does not limit the right of the court to enter temporary and *ex parte* orders under the applicable statutory provisions, or to immediately enforce existing orders. The order of referral shall advise the parties that a show cause order may be issued, or other sanctions imposed, if they fail to appear at the orientation session, or the first mediation session. (See Appendix B, Brochure and form AOC-CV-632, Motion and Order to waive Custody Mediation.)

*Comment: In the opinion of the Advisory Committee, the mandatory provisions of G.S. 50-13.1(b), the statutory authority for this section, apply only to actions brought under the provisions of Chapter 50 of the General Statutes. Actions instituted under the provisions of the Juvenile Code, as found in Chapter 7B of the General Statutes, often include issues of placement and visitation at the dispositional stage; such issues may, in appropriate cases, be referred for mediation by a district court judge. Actions brought under the provisions of Chapter 50B of the General Statutes (Domestic Violence) are often inappropriate for mediation because they necessarily involve allegations of spousal abuse. If, however, the court finds the custody or visitation aspect of a domestic violence case to be appropriate for mediation, due consideration should be given to safety issues in the case. (See Appendix B, Domestic Violence Policy.)*

**8. Waiver of Mediation.** On its own motion, or that of either party, the court may waive the setting of a contested custody or visitation matter for mediation. Good cause includes, but is not limited to, a showing of undue hardship to a party, an agreement between the parties for private mediation, allegations of abuse or neglect of the minor child, allegations of alcoholism, drug abuse, or spouse abuse, or allegations of severe psychological, psychiatric, or emotional problems. Where a party resides more than 50 miles from court, such distance shall be considered good cause. (See Appendix B, AOC-CV-632 Motion and Order to Waive Custody Mediation.)

**9. Orientation.** Prior to mediation, an orientation session shall be held at which the goals and procedures of the mediation process shall be explained to the parties to reduce apprehension and avoidance of the process. An intake form shall be completed. (See Appendix B, Sample Mediation Intake Form.) The parties shall be advised that if they fail to appear for the initial mediation session, an order to show cause might be issued and the non-appearing party could be found in contempt of the court.

**10. Attendance at Mediation Sessions.** The mediation process shall consist of no more than three sessions, each of which shall not exceed two hours in length. A party must attend the orientation and first mediation session before deciding to withdraw from the process. The number of sessions may be extended by agreement of the parties with the permission of the Chief District Court Judge.

**11. Neutral Stance of Mediator.** While a mediator is to be a neutral in promoting an agreement between the parties, the mediator is to be aware of the best interests of the children involved in the case. During the mediation process, the mediator is to help the parties avoid agreements which do not promote the best interests of the child.

**12. The Mediation Process.** The mediator should assist the parties in focusing on the needs of their child, the need to reorganize the family and use its strengths, the need to maintain continuity of relationships and stability in the child's life, and the options available to the parties which would accomplish those goals. The mediator should help the parties select from the range of options those which are sound and workable, in an effort to reach an agreement which will reduce the conflict in the family, benefiting both the parties and child.

**12.01. Authority of Mediator.** The mediator shall be in control at all times of the mediation process and the procedures to be followed in the mediation. The mediator may suspend the mediation session if it becomes unsafe for any of the participants, including the mediator.

**12.02. Location.** The mediation proceeding shall be held in a private and safe location.

**12.03. Confidentiality.** The mediation proceeding shall be confidential. Neither the mediator nor any party or other person involved in mediation sessions shall be competent to testify as to communications made during or in furtherance of such mediation sessions; provided, there is no privilege as to communications made in furtherance of a crime or fraud. An individual shall not, however, obtain thereby immunity from prosecution for criminal conduct or be excused from the reporting requirement of G.S. 7A-543 or G.S. 108A-102.

**12.04. Parenting Plan.** A detailed and clearly written parenting agreement, or parenting plan, is the desired end-product of the mediation process. (See Appendix B, Sample Parenting Agreement). The parenting plan may include a designation of the party having legal or physical custody, and what duties and responsibilities such designation includes. The plan should also include a complete schedule of the child's time with each party, including holidays, vacation time, and special events. Arrangements may be made for special day observance, such as birthdays. The need of the child to maintain relationships with persons with whom the child has a substantial relationship may be addressed.

The mediator should help the parties reduce their agreement to writing and ensure that each party understands the written document. *Before the parties sign the proposed agreement*, the mediator shall mail a copy of the proposed agreement to parties and counsel, encourage each parties to have their attorneys review the agreement with them prior to their signing the plan, and afford them a reasonable opportunity to do so. The mediator shall promptly submit the initial signed agreement, or any signed modification agreement to the court. An Order Approving Parenting Agreement (Appendix B, AOC-CV-631) is to be attached for the judge's signature. Signed copies will be provided to both parties and their attorneys.

**12.05. Plan Incorporated in Court Order.** Where an initial signed agreement or a signed modification of that agreement is submitted to the court, it shall be incorporated in a court order unless the court finds good reason not to do so. (See Appendix B, AOC-CV-631, Order Approving Parenting Agreement.) When incorporated, the agreement is enforceable as is any other court order. Even though designated "parenting agreement," or some similar name, the incorporated agreement shall be considered a custody order or child custody determination within the meaning of Chapter 50A of the General Statutes, G.S. 14-320.1, G.S. 110-139.1, or other places where those terms appear.

**12.06. Termination of Mediation.** After the parties have attended at least the orientation and first mediation session, either or both of the parties may decide not to participate further in the mediation process, and the mediator shall report to the court that no agreement was reached.

Either party may move to have the mediation proceedings dismissed and the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground. Further, if the mediator determines that the case is not suitable for mediation due to a power imbalance between the parties, the presence of child abuse or neglect, or other reason, the mediator may report to the court that the case was not resolved. (See Appendix B, AOC-CV-914M, Order to Calendar Custody or Visitation Dispute.)

Where an agreement is not reached, the custody mediation office may make available information on community resources for families and children involved in a family reorganization.

**12.07. Return to Mediation.** The mediator shall explain to the parties that the needs of their children change over time, and encourage them to return to mediation if they are unable to resolve any problems caused by that factor, or other changes in circumstances. (See Appendix B, Motion and Order to Return to Custody Mediation, AOC-CV-634.)

**12.08. Other Participants.** With the consent of all parties, the mediator may speak with the child, in an effort to assist the parties to assess the needs and interests of the child.

**12.09. Caucus with Parties.** Although it is generally desirable for the mediator to talk with the parties together, if there is no objection by either party, the mediator may caucus with each party.

**12.10. Evaluation of Program.** The Administrative Office of the Courts shall evaluate the program from time to time, and **shall** prepare a summary of the program activities to be included in the North Carolina Courts Annual Report of the Administrative Office of the Courts.

*Comment: In addition to evaluation of the statistics compiled and submitted by the various programs (See Appendix B, AOC-A-910M, Custody Mediation Monthly Report), user satisfaction might be monitored by the use of exit interviews, and follow-up questionnaires and telephone interviews in a sampling of cases at some time after the completion of the process.*

**12.11. Complaint Procedure.** The written orientation materials provided to the parties shall advise them how a complaint about the mediator, or mediation process, can be filed with the Chief District Court Judge of the judicial district. (See Appendix B, Brochure.)

#### **7A-494. Custody and Visitation Mediation Program Established.**

- (a) The Administrative Office of the Courts shall establish a Custody and Visitation Mediation Program to provide statewide and uniform services in accordance with G.S., 50-13.1 in cases involving unresolved issues about the custody or visitation of minor children. The Director of the Administrative Office of the Courts shall appoint such AOC staff support required for planning, organizing, and administering such program on a statewide basis.

The purposes of the Custody and Visitation Mediation Program shall be to provide the services of skilled mediators to further the goals expressed in G.S. 50-13.1 (b).

- (b) Beginning in July 1, 1989, the Administrative Office of the Courts shall establish in phases a statewide custody mediation program comprised of local district programs to be established in all judicial districts of the State. Each local district program shall consist of: a qualified mediator or mediators to provide mediation services; such clerical staff as the Administrative Office of the Courts in consultation with the local district program deems necessary. Such personnel, to be employed by the Chief District Court Judge of the district, may serve as full-time or part-time State employees or, in the alternative, such activities may be provided on a contractual basis when determined appropriate by the Administrative Office of the Courts. The Administrative Office of the Courts may authorize all or part of a program in one judicial district to be operated in conjunction with that of another district or districts. The Director of the Administrative Office of the Courts is authorized to approve contractual agreements for such services as executed by order of the Chief District Court Judge of a district court district; such contracts to be exempt from competitive bidding procedures under Chapter 143 of the General Statutes. The Administrative Office of the Courts shall promulgate rules and regulations necessary and appropriate for the administration of the program. Funds appropriated by the General Assembly for the establishment and maintenance of mediation programs under this Article shall be administered by the Office of the Courts.
- (c) For a person to qualify to provide mediation services under this Article, that person shall show that he or she:
1. Has at minimum a master's degree in psychology, social work, family counseling, or comparable human relations discipline; and
  2. Has at least 40 hours of training in mediation techniques by a qualified instructor of mediation as determined by the Administrative Office of the Courts; and
  3. Has had professional training and experience relating to child development, family dynamics, or comparable areas; and
  4. Meets such other criteria as may be specified by the Administrative Office of the Courts.  
(1989, c. 795, s.15.)

## **7A-495. Implementation and Administration**

- (a) Local District Program - The Administrative Office of the Courts shall, in cooperation with each Chief District Court Judge and other personnel, implement and administer the program mandated by this Article.
- (b) Advisory Committee Established - The Director of the Administrative Office of the Courts shall appoint a Custody Mediation Advisory Committee consisting of at least five members to advise the Custody Mediation Program. The members of the Advisory Committee shall receive the same per diem and reimbursement for travel expenses as members of State board and commissions generally. (1989, c. 795, s.15.)

## **50-13.1. Action or proceeding for custody of minor child.**

- (a) Any parent, relative or other person, agency, or organization, or institution claiming the right to custody of a minor child may institute an action proceeding for the custody of such child, as hereinafter provided. Unless a contrary intent is clear, the word "custody" shall be deemed to include custody or visitation or both.
- (b) Whenever it appears to the court, from the pleadings or otherwise, that an action involves a contested issue as to the custody and visitation of a minor child, the matter, where there is a program established pursuant to G.S. 7A-494, shall be set for mediation of the unresolved issues as to custody and visitation before or concurrent with the setting of the matter for hearing unless the court waives mediation pursuant to subsection (c). Issues that arise in motions for contempt or for modifications as well as in other pleadings shall be set for mediation unless mediation is waived by the court. Alimony, child support, and other economic issues may not be referred for mediation pursuant to this section. The purposes of the mediation under this section include the pursuit of the following goals:
  - 1. To reduce any acrimony that exists between the parties to a dispute involving custody or visitation of a minor child;
  - 2. The development of custody and visitation agreements that are in the child's best interest;
  - 3. To provide the parties with informed choices and, where possible, to give the parties the responsibility for making decisions about custody and visitation;
  - 4. To provide a structured, confidential, nonadversarial setting that will facilitate the cooperative resolution of custody and visitation disputes and minimize the stress and anxiety to which the parties, and especially the child, are subjected: and
  - 5. To reduce the relitigation of custody and visitation disputes.

- (c) For good cause, on motion of either party or on the court's own motion, the court may waive the mandatory setting under Article 39A of Chapter 7A of the General Statutes of a contested custody or visitation matter for mediation. Good cause may include, but is not limited to, the following: a showing of undue hardship to a party; an agreement between the parties for voluntary mediation, subject to court approval; allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or spouse abuse; or allegations of severe psychological, psychiatric, or emotional problems. A showing by either party that the party resides more than fifty miles from the court shall be considered good cause.
- (d) Either party may move to have the mediation proceedings dismissed and that the action heard in court due to the mediator's bias, undue familiarity with a party, or other prejudicial ground.
- (e) Mediation proceedings shall be held in private and shall be confidential. Except as provided in this Article, all verbal or written communications from either or both parties to the mediator or between the parties in the presence of the mediator made in a proceeding pursuant to this section are absolutely privileged and inadmissible in court. The mediator may assess the needs and interest of the child, and may interview the child or others who are not parties to the proceedings when he or she thinks appropriate.
- (f) Neither the mediator nor any party or other person involved in the mediation sessions under this section shall be competent to testify to communications made during or in furtherance of such mediation session; provided, there is no privilege as to communications made in furtherance of a crime or fraud. Nothing in this subsection shall be construed as permitting an individual to obtain immunity from prosecution for criminal conduct or as excusing an individual from the reporting requirements of G.S. 7A-543 or G.S. 108A-102.
- (g) Any agreement reached by the parties as a result of the mediation shall be reduced to writing, signed by each party, and submitted to the court as soon as practical. Unless the court finds good reason not to, it shall incorporate the agreement in a court order and it shall become enforceable as a court order. If some or all of the issues as to custody or visitation are not resolved by mediation, the mediator shall report the fact to the court.
- (h) If an agreement that results from mediation and is incorporated into a court order is referred to as a "parenting agreement" or called by some similar name, it shall nevertheless be deemed to be a custody order or a child custody determination for the purposes of Chapter 5A of the General Statutes, G.S. 14-320.1, G.S. 110-139.1, or other places where those terms appears. (1967, c.1153, s 2;1989, c795, s.15 (b).)