

**RULES IMPLEMENTING MEDIATED
SETTLEMENT CONFERENCES IN
THE TOWN OF DAVIDSON CONSTRUCTION PROJECTS**

Table of Contents

1. Initiating Mediated Settlement Conferences
 - A. Purpose of Mandatory Settlement Conferences.
 - B. Initiating the Dispute Resolution Process.
2. Selection of Mediator
 - A. Selection of Certified Mediator by Agreement of the Parties.
 - B. Nomination and Court Approval of a Non-Certified Mediator.
 - C. Appointment of Mediator by the Town of Davidson.
 - D. Mediator Information Directory.
 - E. Disqualification of Mediator.
3. The Mediated Settlement Conference
 - A. Where Conference is to be Held.
 - B. When Conference is to be Held.
 - C. Request to Extend Deadline for Completion.
 - D. Recesses.
 - E. The Mediated Settlement Conference shall not be cause for the Delay of the Construction Project which is the focus of the Dispute.
4. Duties of Parties and Other Participants in Formal Dispute Resolution Process
 - A. Attendance.
 - B. Finalizing Agreement.
 - C. The Mediation Fee shall be paid in accordance with G.S. 143-128(g).
 - D. Failure to Compensate Mediator.
5. Authority and Duties of Mediators
 - A. Authority of Mediator.
 - B. Duties of Mediator.
6. Compensation of the Mediator
 - A. By Agreement.
 - B. By Appointment.
7. Mediator Certification
8. Rule Making
9. Time Limits

RULE 1. INITIATING MEDIATED SETTLEMENT CONFERENCES

A. Purpose of Mandatory Settlement Conferences. Pursuant to G.S. 143-128(g) and 143-135.26 (1 1), these Rules are promulgated to implement a system of settlement events which are designated to focus the parties' attention on settlement rather than on claim preparation and to provide a structured opportunity for settlement negotiations to take place. Nothing herein is intended to limit or prevent the parties from engaging in settlement procedures voluntarily at any time prior to or during commencement of the dispute resolution process.

B. Initiating the Dispute Resolution Process

1. Any party to a contract with the Town of Davidson (the "Town") governed by Article 8. Ch. 143 of the General Statutes and identified in G.S. 143-128(g) and who is a party to a dispute arising out of the construction process in which the amount in controversy is at least \$15,000 may submit a written request to the Town of Davidson for non-binding mediation of the dispute administered by the American Arbitration Association pursuant to its Construction Industry Mediation Rules.
2. Prior to submission of a written request for mediation to the Town of Davidson, the parties requesting mediation:
 - a. If a prime contractor, must have first submitted its claim to the Project Designer for review. If the dispute is not resolved through the Project Designer's instructions, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit their written request for mediation to the Town Manager for the Town of Davidson or his designee (the "Town Manager").
 - b. If the party requesting mediation is a subcontractor, it must first have submitted its claim for mediation to the prime contractor with whom it has a contract. If the dispute is not resolved through the Prime Contractor's involvement, then the dispute becomes ripe for mediation in the Formal Dispute Resolution Process, and the party may submit its written request for mediation to the Town Manager.
 - c. If the party requesting mediation is the Project Designer, then it must first submit its claim to the Town of Davidson to resolve. If the dispute is not resolved with the Town of Davidson's involvement, then the Project Designer's dispute is ripe for mediation in the Formal Dispute Resolution Process, and the Project Designer may submit its written request to the Town Manager for mediation.
 - d. Town is under no obligation to secure or enforce participation of any of the parties subject to this Article.

RULE 2. SELECTION OF MEDIATOR

- A. Selection of Certified Mediator by Agreement of the Parties.** The parties may select a mediator certified pursuant to the Rules by agreement within 21 days of requesting mediation. The requesting party shall file with the Town Manager a Notice of Selection of Mediator by Agreement within 10 days of the request; however, any party may file the notice. Such notice shall state the name, address and telephone number of the mediator selected; state the rate of compensation of the mediator; state that the mediator and opposing counsel have agreed upon the selection and rate of compensation; and state that the mediator is certified pursuant to these Rules.
- B. Nomination and Public Owner Approval of a Non-Certified Mediator.** The parties may select a mediator who does not meet the certification requirements of these rules but who, in the opinion of the parties and the Town Manager, is otherwise qualified by training or experience to mediate the action. If the parties select a non-certified mediator, the requesting party shall file with the Town Manager a Nomination of Non-Certified Mediator within 10 days of the request. Such nomination shall state the name, address and telephone number of the mediator; state the training, experience or other qualifications of the mediator; state the rate of compensation of the mediator; and state that the mediator and opposing counsel have agreed upon the selection and rate of compensation. The Town Manager shall rule on said nomination, shall approve or disapprove of the parties' nomination and shall notify the parties of its decision
- C. Appointment of Mediator by the Town of Davidson.** If the parties cannot agree upon the selection of a mediator, the party or party's attorney shall so notify the Town Manager and request, on behalf of the parties, that the Town Manager appoint a mediator. The request for appointment must be filed within 10 days after request to mediate and shall state that the parties have had a full and frank discussion concerning the selection of a mediator and have been unable to agree. The request shall state whether any party prefers a certified attorney mediator, and if so, the Town Manager shall appoint a certified attorney mediator. If no preference is expressed, the Town Manager may appoint a certified attorney mediator or a certified non-attorney mediator.
- D. Mediator Information Directory.** To assist the parties in the selection of a mediator by agreement, the parties are free to utilize the list of certified mediators maintained in any county participating in the Superior Court Mediation Settlement Conference Program.
- E. Disqualification of Mediator.** Any party may request replacement of the mediator by the Town Manager for good cause. Nothing in this provision shall preclude mediators from disqualifying themselves.

RULE 3. THE MEDIATED SETTLEMENT CONFERENCE

- A. Where Conference is to be Held.** Unless all parties and the mediator otherwise agree, the mediated settlement conference shall be held in the *Town of Davidson*.

The mediator shall be responsible for reserving a place and making arrangements for the conference and for giving timely notice of the time and location of the conference to all attorneys, unrepresented parties and other persons and entities required to attend.

- B. When Conference is to be Held.** The deadline for completion of the mediation shall be not less than 30 days nor more than 60 days after the naming of the mediator.
- C. Request to Extend Deadline for Completion.** A party, or the mediator, may request the Town Manager to extend the deadline for completion of the conference. Such request shall state the reasons the extension is sought and shall be served by the moving party upon the other parties and the mediator. If any party does not consent to the request, said party shall promptly communicate its objection to the Town Manager. The Town Manager may grant the request by setting a new deadline for completion of the conference.
- D. 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 conference.
- E. Delay.** The mediated settlement conference shall not be cause for the delay of the construction project which is the focus of the dispute.

RULE 4. DUTIES OF PARTIES AND OTHER PARTICIPANTS IN FORMAL DISPUTE RESOLUTION PROCESS

A. Attendance.

1. All parties to the dispute originally presented to the Designer or Prime Contractor for initial resolution must attend the mediation. Failure of a party to a construction contract to attend the mediation will result in the public owner's withholding of monthly payment to that party until such party attends the mediation.
2. Attendance shall constitute physical attendance, not by telephone or other electronic means. Any attendee on behalf of a party must have authority from that party to bind it to any agreement reached as a result of the mediation.
3. Attorneys on behalf of parties may attend the mediation but are not required to do so.
4. Sureties or insurance company representatives are not required to attend the mediation unless any monies paid or to be paid as a result of any agreement reached as a result of mediation require their presence or acquiescence. If such agreement or presence is required, then authorized representatives of the surety or insurance company must attend the mediation.

- B. Finalizing Agreement.** If an agreement is reached in the conference, parties to the agreement shall reduce its terms to writing and sign it along with their counsel.

C. **Mediation Fee.** The mediation fee shall be paid in accordance with G.S. 143-128(g).

D. **Failure to compensate mediator.** Any party's failure to compensate the mediators in accordance with G.S. 143-128(g) shall subject that party to a withholding of said amount of money from the party's monthly payment by the Town of Davidson.

RULE 5. AUTHORITY AND DUTIES OF MEDIATORS

A. Authority of Mediator.

1. The mediator shall at all times be in control of the conference and the procedures to be followed.
2. The mediator may communicate privately with any participant or counsel prior to and during the conference. The fact that private communications have occurred with a participant shall be disclosed to all other participants at the beginning of the conference.
3. The mediator shall make a good faith effort to schedule the conference at a time that is convenient with the participants, attorneys and mediator. In the absence of agreement, the mediator shall select the date for the conference.

B. Duties of Mediator.

1. The mediator shall define and describe the following at the beginning of the conference:
 - a. The process of mediation;
 - b. The difference between mediation and other forms of conflict resolution;
 - c. The costs of the mediated settlement conference;
 - d. That the mediated settlement conference is not a trial, the mediator is not a judge, and the parties retain their legal rights if they do not reach settlement;
 - e. The circumstances under which the mediator may meet and communicate privately with any of the parties or with any other person;
 - f. Whether and under what conditions communications with the mediator will be held in confidence during the conference;
 - g. The inadmissibility of conduct and statements as provided by G.S. 7A-38.1 (1);
 - h. The duties and responsibilities of the mediator and the participants; and
 - i. That any agreement reached will be reached by mutual consent.
2. The mediator has a duty to be impartial and to advise all participants of any circumstance bearing on possible bias, prejudice or partiality.

3. It is the duty of the mediator timely to determine that an impasse exists and that the conference should end.
4. The mediator shall report to the Town Manager within 10 days of the conference whether or not an agreement was reached by the parties. If an agreement was reached, the report shall state the nature of said agreement. The mediators report shall inform the Town Manager of the absence of any party known to the mediator to have been absent from the mediated settlement conference without permission. The Town Manager may require the mediator to provide statistical data for evaluation of the mediated settlement conference program.
5. It is the duty of the mediator to schedule the conference and conduct it prior to the deadline of completion set by the rules. Deadlines for completion of the conference shall be strictly observed by the mediator unless said time limit is changed by a written order of the Town Manager.

RULE 6. COMPENSATION OF THE MEDIATOR

- A. By Agreement.** When the mediator is stipulated by the parties, compensation shall be as agreed upon between the parties and the mediator provided that the provision of G.S. 143-128(g) are observed.
- B. By Appointment.** When the mediator is appointed by the Town Manager, the parties shall compensate the mediator for mediation services at the, rate in accordance with the rate charged for Superior Court mediation. The parties shall also pay to the mediator a one-time per case administrative rate in accordance with the rate charged for Superior Court mediation, which is due upon appointment.

RULE 7. MEDIATOR CERTIFICATION.

All mediators certified in the Formal Dispute Resolution Program shall be properly certified in accordance with the rules certifying mediators in Superior Court in North Carolina, except when otherwise allowed by the Town Manager upon the request of the parties to the mediation. When selecting mediators, the parties may designate a preference for mediators with a background in construction law or public construction contracting. Such requirements, while preferred, are not mandatory under these rules. All mediators chosen must either demonstrate they are certified in accordance with the Rules Implementing Scheduled Mediated Settlement Conference in Superior Court or must gain the consent of the Town Manager to mediate any dispute in accordance with these rules.

RULE 8. RULE MAKING

These Rules are subject to amendment by the Town of Davidson at any time the Town deems it appropriate.

RULE 9. TIME LIMITS

Any time limit provided for by these Rules may be waived or extended by the mediator it appoints for good cause shown. If the mediator has not yet been appointed, the designer of record shall decide all waivers or extensions of time for good cause shown.