

Dayton T. Cole

Mediation Services and Policies

Subject to all provisions of applicable statutes adopted by the North Carolina General Assembly, rules adopted by the North Carolina Supreme Court, and rules and policies adopted by the North Carolina Dispute Resolution Commission, I will conduct all mediation services in accordance with the following policies until they are amended or rescinded:

1. Time and Effort Commitment

1.1 I will use my best efforts to mediate and facilitate communication between the parties as long as the parties are willing to proceed voluntarily and with mutual respect in attempts to resolve their dispute(s), subject to prior commitments. While most settlement conferences may be completed in one day or less, a conference may be continued to a date and time certain by mutual agreement of the parties and the mediator in appropriate circumstances.

2. Competence

2.1 I take all necessary steps to obtain training periodically, maintain mediation skills required for effective facilitation of settlement conferences, and maintain certification by the North Carolina Dispute Resolution Commission as required for the conferences in which I participate. While detailed knowledge of the substance or technical aspects of a case is generally not necessary for a mediator to be effective, I will notify the parties if I determine that a lack of such knowledge impairs or is likely to impair my effectiveness in serving the parties. If requested by any party, I will withdraw from the mediation and refund the administrative fee and any other fees received from the parties up to the time of withdrawal. The parties will have no further obligations to the mediator pursuant to the engagement agreement upon such withdrawal.

3. Impartiality

3.1 I will maintain impartiality throughout the settlement conference both as to the parties and to the issues in dispute. I will notify all parties and their counsel no later than the beginning of the first session of any known relationships that may affect or give the appearance of affecting my impartiality. I will decline to serve or withdraw from serving if 1) a party objects on grounds of lack of impartiality, and after discussion, continues to object or 2) I determine that I cannot serve impartially.

4. Confidentiality

4.1 *With regard to persons or agencies outside the mediated settlement conference:*

Subject to exceptions established by statutes and NC Dispute Resolution Commission rules and advisory opinions, I will not disclose to any non-participant any conduct of or information communicated to me by the parties or their counsel in preparation for, during, or as a follow-up to the mediated settlement conference. I will resist subpoenas to testify in any civil action about conduct of and any substantive statements made by participants unless a judge orders me to testify. Exceptions include, among other things, 1) my filing of a report (and executed settlement agreement in appropriate cases) with the appropriate court; 2) testimony about a party's attendance or failure to attend; 3) testimony about a party's failure to pay the mediator's fee; 4) reports to appropriate law enforcement officials, agencies or individuals when a participant has made a threat of bodily harm or damage to property, or conduct during

the mediation results in bodily injury to a person; and 5) circumstances where disclosure is required by statute, e.g. reporting of information relevant to child or elder abuse.

4.2 *With regard to other participants in the mediated settlement conference:*

During the mediated settlement conference, I will not disclose to any participant information communicated to me by any other participant in the mediation process in confidence unless that other participant gives me permission to do so. In practice, I will ask each party to consent to my disclosure of everything you say to me to any other participant unless you expressly tell me at the time of your communication that you want me to keep it confidential.

5. Consent

5.1 I will make reasonable efforts to ensure that each party understands the mediation process, my role, and each party's options within the process. An essential characteristic of mediation is that participation and any resulting agreement are informed and voluntary. While participation in the mediation process may be required by the court, agreement is not. If you reach agreement to resolve your dispute through this process, it must be voluntary on your part. I will encourage all participants to consider the benefits of participation and settlement, as well as the costs of withdrawal and impasse. If a party has any difficulty understanding the process, the issues to be resolved or settlement options at any time, that party or the party's counsel should tell me immediately. We will explore together the circumstances, and any accommodations, modifications or adjustments that would facilitate that party's participation in and understanding of the process.

5.2 Legal, financial, tax or other professional advice may be important to your ability to make informed decisions about the relative merits of settlement options. Hopefully, the parties have already obtained such advice. If, at any time during the process, a party perceives a need to obtain additional advice from such professionals, I encourage the parties to do so during caucuses as I meet with each party individually or as soon after our conference as possible.

6. Self-Determination

6.1 Each of the parties is fully responsible for deciding whether, and on what terms and conditions, to resolve your dispute. I will use my best efforts to assist the parties in making informed and thoughtful decisions, but I will not impose my judgment or opinions on the parties. I will not judge the merits of the case on either side; nor will I express a legal opinion related to the case, except as provided in section 7, below. I may raise questions for the parties and their counsel to consider their perceptions of the dispute, the other parties' perceptions, the acceptability of proposed options for settlement and their impact on third parties. I may suggest consideration of additional options, particularly when I think they may present benefits to all parties; but they will only be suggestions for consideration.

6.2 The parties will ultimately decide the basis and means of any agreement in consultation with your counsel, if any. If they do not reach agreement, they retain the right to trial.

7. Separation of Mediation from Legal Advice and Other Professional Advice

7.1 I have previously emphasized my intent to facilitate your settlement conference through mediation and refrain from giving any party legal or other professional advice. Only as a last resort to avoid impasse, after attempts to help a party utilize that party's own resources to evaluate the dispute and options for settlement, and only in response to a request from that party or the party's counsel, I may offer

an opinion based on the limited information available to me at the time and my own training and experience. I will be reluctant to do so in any case.

8. Fees

8.1 My standard rate for mediation of settlement conferences is \$200 per hour, subject to a two-hour minimum, with a one-time \$200 administrative fee, all equally divided between the parties. In cases where I am appointed by the court, I assess no charges for travel time or mileage. In cases where I am selected by the parties without court appointment, there is no travel charge for mediations within 100 miles of Boone, NC. Outside of that range, travel time is charged at a rate of \$50 per hour and mileage is charged at the rate allowed by the Internal Revenue Code and associated regulations for tax reporting purposes.

8.2 The mediator may postpone a scheduled conference on his own motion for the same reasons that would constitute good cause if presented by a moving party. If the mediator cancels the scheduled mediation at any time, the administrative fee will be refunded to the party or parties in the same amounts that they paid within 10 days.

9. Independent Counsel for Each Party

9.1 If a party is not represented by independent counsel, I will strongly recommend that that party consult with such counsel. If the party declines to do so after receipt of my admonition and discussion, we will proceed with mediation.

10. Cessation of Settlement Conference in Mediator's Discretion

10.1 If, at any time, I conclude in my independent judgment that the integrity of the mediation process has been compromised, I will inform the parties of my concern, and consistent with Standard III of the Revised Standards of Professional Conduct for Mediators, which addresses confidentiality, I may discuss with the parties the source or basis of my concern. By way of example, such concerns could be based on inability or unwillingness of a party to participate meaningfully, inequality in bargaining power or ability, unfairness resulting from non-disclosure or fraud by a participant or other circumstance likely to lead to a grossly unjust result. Following those consultations, I may choose to discontinue the mediation, but I will not violate my obligation of confidentiality.

11. Recording Prohibited

11.1 In accordance with Rules Implementing Statewide Mediation Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, Rule 4F, no participant attending the settlement conference may record the mediation process by any means – stenographic, audio, video, or otherwise. The rule absolutely prohibits recording, whether it is done surreptitiously or with agreement of the parties. Consistent with the rule, I will not knowingly allow any non-participant attending the conference to record the proceedings. If I learn that any person has violated the rule, I may discontinue the settlement conference in accordance with section 10, above, and report that action to the presiding judge and/or the senior resident superior court judge.