



SAMPLE CUSTODY AND VISITATION MEDIATION RULE

NORTH CAROLINA

Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes Under the North Carolina Custody and Visitation Mediation Program (link not available; scroll for full text)

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 mandates mediation and 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. This rule addresses that by having parties go through an orientation before arriving at the first session.
- *Requires that mediators complete a number of steps in order to be certified*
These steps include observing mediations, observing domestic trials, co-mediating, mediating under observation, and official assessment of their knowledge skills and performance of mediation. This increases the probability that certified mediators are competent.

- *Requires continuing education and professional development*
Mediators work best when given opportunities to hone their skills and increase their knowledge. This rule ensures that the mediators take advantage of those opportunities.
- *Contains a protocol for screening for intimate partner violence.*
The rule includes step-by-step instructions for what mediators should do if they find that IPV is present. This both provides guidance to new mediators and encourages all mediators to take appropriate actions.
- *Strong ethics section in Appendix to the Rule*
All programs should require that neutrals abide by a set of ethical standards, as this one does. 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 first two-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

INTIMATE PARTNER 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

TRAINING

[Guidelines for Implementation of Qualifications Standards for Neutrals](#), Massachusetts Supreme Judicial Court Standing Committee on Dispute Resolution

West's North Carolina General Statutes Annotated
North Carolina Rules of Court
Rules Regulating Mediation of Child Custody and Visitation Disputes
Child Custody and Visitation Mediation

Comment

Legislation establishing a statewide Custody and Visitation Program in North Carolina required that the North Carolina 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.

Rule 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, non-adversarial 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 re-litigation of custody and visitation disputes.

Rule 2. Purpose of Program

The North Carolina Child Custody and Visitation Mediation Program is to provide the services of skilled mediators to further the goals set out above.

Rule 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.

Rule 4. Administration of Program

The North Carolina Administrative Office of the Courts (NCAOC) is responsible for establishing the North Carolina Child Custody and Visitation Mediation Program and is to promulgate rules and regulations for the administration of the program. The Director of the NCAOC shall appoint necessary staff to plan, organize, and administer the program on a statewide basis. The NCAOC 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, after consultation with NCAOC Court Programs and Management Services staff concerning qualifications, salary and benefits, and are to be hired as full or part-time employees.

4.02. In-House Contracts Permitted. When deemed appropriate by the NCAOC, the Chief District Court Judge may contract for delivery of mediation services. Such contracts are to be approved by the Director of the NCAOC and 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 NCAOC.

4.04. Multi-District Programs. The NCAOC 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 NCAOC shall appoint a Custody Mediation Advisory Committee of at least five members to advise the Child Custody and Visitation Mediation Program. Members of the committee are to receive the same per diem and travel expenses as members of state boards and commissions generally.

Rule 5. Local District Programs

Each local district program is to consist of a qualified mediator, or mediators, and such clerical staff as the NCAOC, in consultation with the local program, deems necessary. Each Chief District Court Judge should develop local rules to address custody mediation practices, including issues not addressed in statute.

Rule 6. Qualifications of Mediators

A person desiring to furnish mediation services must demonstrate that he or she:

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- 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 NCAOC; and
 - 3) Has professional training and experience relating to child development, family dynamics, or comparable areas; and
 - 4) Meets such other criteria as specified by the NCAOC.

6.01. Initial Training Period. A person just beginning to furnish mediation services in the North Carolina Child Custody and Visitation Mediation Program shall satisfy the following requirements for training and mentoring, to be completed in 6-12 months following employment, unless some or all of the requirements are waived by the Director of the NCAOC or his designee. The new mediator shall not conduct mediations without supervision until the individual is assessed by NCAOC staff and approved by the hiring authority.

- A. 18 hours of court observations of domestic trials involving child custody and visitation issues
- B. 18 hours of custody mediation observation with mediators approved by the NCAOC
- C. 40 hours of mediation training in a program approved by the NCAOC
- D. 24 hours of co-mediation with mediators approved by the NCAOC
- E. Minimum 4 hours (2 sessions) solo mediation under observation by NCAOC staff
- F. Official assessment of knowledge, skills and performance of mediation conducted by NCAOC staff
- G. Approval to be a Child Custody and Visitation Mediator signed by the Custody Mediation Program Manager and sent to the hiring authority
- H. Attendance at a minimum of four new mediator meetings
- I. Attendance at any additional training required by NCAOC staff

6.02. Continuing Education. A mediator is to keep abreast of developments in the field through such professional journals and bulletins as available. Further, a mediator is to participate in the annual trainings each year, consisting of

a minimum of 16 hours (including a component on ethics) every two years, as approved by the Director of the NCAOC or his designee. Mediators are encouraged to participate in co-mediation opportunities outside their districts with prior approval from the Custody Mediation Program Manager and the hiring authority.

6.03. Site Visits. NCAOC staff will conduct periodic site visits to the custody mediation programs in each district and report findings to the Chief District Court Judge. A report will also be kept on file at NCAOC. Staff at NCAOC shall be available to assist Chief District Court Judges in the periodic evaluation of mediators.

6.04. Professional Development. In the interest of quality assurance, program evaluation and continuous skill improvement, NCAOC staff shall provide in-service workshops, regional meetings, and co-mediation and observation opportunities. Mediators are expected to participate in at least one of these events per year. Reports and assessments collected during these interactions shall be shared with the mediator.

6.05. Mediator Ethics. See *Standards of Practice for Mediators in the North Carolina Child Custody and Visitation Mediation Program*.

Rule 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 form AOC-CV-632, *Motion and Order to Waive Custody Mediation*.)

Rule 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 domestic violence between the parents in common, or allegations of severe psychological, psychiatric, or emotional problems. Where a party resides more than 50 miles from court, such distance may be considered good cause. (See form AOC-CV-632, *Motion and Order to Waive Custody Mediation*.)

Rule 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.

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.

Rule 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.

Rule 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.

Rule 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. 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 observances, 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 party 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* is to be attached for the judge's signature. (See form AOC-CV-631.) 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 form 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 form AOC-CV-914, *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 form AOC-CV-634, *Motion and Order to Return to Custody Mediation*.)

12.08. Other Participants. At the mediator's discretion and with the consent of all parties, other participants may be included in mediation sessions following the initial session.

12.09. Caucus with Parties. Although the majority of the session is conducted with all parties together, at the mediator's discretion and with consent of all parties, the mediator may utilize a caucus, speaking to each participant individually.

12.10. Evaluation of Program. The NCAOC 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, 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.

West's North Carolina General Statutes Annotated
North Carolina Rules of Court
Rules Regulating Mediation of Child Custody and Visitation Disputes
Permanency Mediation Program

Comment

Legislation in [G. S. 7B-202](#) establishing Permanency Mediation in North Carolina requires that the North Carolina Administrative Office of the Courts “establish a Permanency Mediation program” in phases statewide and to “promulgate policies and regulations necessary and appropriate for the administration of the program.”

Rule 1. Purpose of Permanency Mediation

The purpose of the Permanency Mediation Program is to provide statewide and uniform services to resolve cases in which a juvenile is alleged or has been adjudicated to be abused, neglected, or dependent, or in which a petition or motion to terminate a parent's parental rights has been filed. Participants in the mediation shall include the parties and their attorneys, including the guardian ad litem and attorney advocate for the child. Others may participate by agreement of the parties, their attorneys, and the mediator, or by order of the court.

Rule 2. Definitions

2.01. Mediator. A party who has a contract with the North Carolina Administrative Office of the Courts (NCAOC) to perform permanency mediation services.

2.02. Permanency Mediation Agreement. Any agreement reached by the parties as a result of the mediation, whether referred to as a “placement agreement,” “case plan,” or some similar name, which is reduced to writing, signed by each party, and submitted to the court as soon as practicable.

Rule 3. Administration of the Program

The NCAOC is responsible for establishing the program in phases statewide.

3.01. Contractual Services. The Director of the NCAOC is authorized to approve contractual agreements for permanency mediation services; such contracts are exempt from competitive bidding procedures.

3.02. Funding. Any funds appropriated by the General Assembly for the establishment and maintenance of permanency mediation programs shall by ¹ administered by the NCAOC.

Rule 4. Advisory Committee

The Custody Mediation Advisory Committee, established by the Director of the NCAOC, shall advise the NCAOC on matters of the Permanency Mediation Program.

West's North Carolina General Statutes Annotated
North Carolina Rules of Court
Rules Regulating Mediation of Child Custody and Visitation Disputes
Appendices

APPENDIX A. STANDARDS OF PRACTICE FOR MEDIATORS IN THE NORTH CAROLINA CHILD CUSTODY AND VISITATION MEDIATION PROGRAM

I. Preamble.

Custody mediation is a family-centered conflict resolution process in which an impartial third party assists the participants in negotiating a consensual and informed parenting agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes facilitating communication between the parties, exploring solutions, and addressing the needs of the children and other persons who are involved in the dispute.

Mediation is based on principles of problem solving that focus on balance, fairness, privacy and confidentiality, self-determination, and the best interests of all relevant family members, with particular emphasis on the children.

These standards, together with the Uniform Rules Regulating Mediation of Child Custody and Visitation Disputes and Permanency Mediation under the North Carolina Child Custody and Visitation Mediation Program (“Uniform Rules”), are intended to assist and guide custody mediators in the program.

II. Initiating the Process.

II.A. Definition and Description of Mediation. The mediator shall define mediation for all participants, and distinguish the process from therapy, counseling, custody evaluation, arbitration and advocacy.

II.B. Identification of Issues. The mediator shall elicit sufficient information from the participants so they can mutually agree on the issues to be resolved in mediation.

II.C. Determination of Whether Mediation is Appropriate. After gathering information from the parties, the mediator shall evaluate whether mediation of the case is appropriate.

The mediator shall screen the parties for all statutory concerns, particularly those related to family violence, and shall terminate the proceedings if mediation cannot safely continue.

COMMENT

Uniform Rule 12.02 provides that the mediation proceeding be held in a safe environment, and Uniform Rule 12.01 provides that the proceeding shall be suspended if it becomes unsafe for any participant.

Uniform Rule 12.06 provides that the mediator may report to the court 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.” Under the provisions of [G.S. 50-13.1\(c\)](#), the court may waive mandatory mediation for “good cause,” which includes “allegations of abuse or neglect of the minor child; allegations of alcoholism, drug abuse, or domestic violence between the parents in common; or allegations of severe psychological, psychiatric, or emotional problems.”

II.D. Procedures. The mediator shall reach an understanding with the participants regarding the procedures to be followed in mediation. This includes, but is not limited to, the practice of separate meetings between a participant and the mediator (i.e., a caucus), confidentiality, use of legal services, the involvement of additional parties, and conditions under which mediation may be terminated by the mediator. The mediator shall also inform the parties of their right to withdraw from the mediation process.

COMMENT

See Uniform Rules 12.03 (Confidentiality), 12.04 (Parenting Plan), 12.08 (Other Participants), and 12.09 (Caucus with parties). See also [G.S. 50-13.1\(e\) and \(f\)](#) for the statutory provisions relating to the confidentiality of the mediation proceeding and, as a general rule, the incompetence of the mediator as a witness in court. There are specific exemptions from the privilege “as to communications made in furtherance of a crime or fraud,” and as required by the abuse reporting provisions of [G.S. 7A-543](#) and [G.S. 108A-102](#).

II.E. Duty of Disclosure. A mediator shall disclose any circumstance to the participants which might cause the mediator to have, or appear to have, a conflict of interest. This shall include any relationship the mediator has with any party or attorney involved in the matter being mediated, whether that relationship is past, present, or anticipated. The mediator shall also fully divulge any possible pecuniary interest the mediator has in the matter, any prior knowledge of the case being mediated, and any other matter which might reasonably appear to present a conflict. Such disclosures must be made as soon as practical after the mediator becomes aware of such interest, knowledge, or relationship. The duty to disclose continues throughout the mediation process.

II.F. Standards of Recusal. If the mediator has provided counseling or mediation services to one of the parties in the past, then the mediator must recuse himself or herself. If such services have been provided to both parties, the mediator shall not proceed unless all parties choose to do so after a full discussion of the role of the mediator in the present mediation as distinguished from the past relationship. The parties may elect to have a different mediator assigned to the case.

Any party to the mediation may request that the mediator be recused because of a conflict of interest. If the mediator believes that a conflict is such that he or she cannot carry out the mediation, then the mediator must recuse himself or herself. If, however, the mediator believes that he or she can carry out the mediation then the mediator may decline to recuse himself or herself. The party may then request that the court remove the mediator.

COMMENT

Uniform Rule 12.06 provides that either party may move to dismiss the mediation proceedings “due to the mediator's bias, undue familiarity with a party, or other prejudicial ground.”

III. Additional Responsibilities of the Mediator.

III.A. The mediator's primary role is to assist the parties in reaching an informed and voluntary agreement. The mediator shall not allow at any time manipulative or intimidating negotiation techniques. The mediator shall not at any time coerce a participant into entering into an agreement, nor shall the mediator make any substantive decision, or act as an advisor, for any participant.

III.B. Although the mediator shall strive to maintain impartiality at all times, the mediator may promote during the mediation the participants' awareness and consideration of the rights of children and third parties who will be affected by the decision of the participants.

COMMENT

Uniform Rule 11 provides that the mediator is to be neutral but is to “be aware of the best interest of the children,” and is to assist the parties to avoid agreements which do not promote the best interest of the child. Uniform Rule 12 provides, in part, that the mediator is to assist the parties in focusing on the needs of the child, so that an agreement benefiting both the parties and the child can be reached.

III.C. The mediator shall be sensitive to issues raised by the gender, ethnic, and cultural diversity of the parties to the mediation.

III.D. The mediator shall not share information with the participants in areas in which the mediator is not qualified by either training or experience.

III.E. The mediator shall advise the participants that each has a right to secure and consult with independent legal counsel during the course of the mediation, and prior to the execution of a formal agreement resolving the issues.

IV. Referral of Parties.

The mediator may refer participants to appropriate community resources so long as such referrals do not compromise the mediator's role as a neutral third party. The mediator shall furnish to the participants a list of at least three service providers, including both professionals in private practice and non-profit agencies.

Under no circumstances should a mediator self-refer a matter, or refer a matter to a specific agency or person with which the mediator has a continuing financial relationship. No commissions, rebates, or similar forms of remuneration shall be given or received for referral of clients.

V. Concluding Mediation.

V.A. The mediator shall inform the participants of their right to withdraw from mediation at any time and for any reason.

V.B. If the mediator believes that the participants are unable or unwilling to participate meaningfully in the mediation process, or that an impasse has been reached and an agreement is unlikely, the mediator may suspend or terminate mediation. In order to avoid unnecessary emotional-costs to the participants, the mediator should not prolong unproductive discussions.

V.C. If no agreement is reached, the mediator may give the parties information on available community resources which can assist families involved in a reorganization.

V.D. When the participants reach a full agreement, the mediator shall discuss with them the process by which the agreement may be formalized and submitted to the court for approval.

V.E. When the participants reach a partial agreement, the mediator shall discuss with them procedures available to them to resolve the remaining issues.

VI. Storage and Disposal of Records.

The mediator shall preserve the records of each case for a period of three years after the conclusion of the mediation. The mediator's records shall be stored in locked containers, and destroyed in a manner which will preserve their confidentiality.

VII. Post-Mediation Relationships.

The mediator's post-mediation professional or social relationship may compromise the mediator's continued availability as a neutral third party. If the parties return to mediation, the mediator must fully disclose any such relationship as set out above in Section II.E.

After mediation of a custody dispute as a part of a court-ordered program, a mediator shall not thereafter accept private employment to mediate other portions of the parties' dispute.

COMMENT

In order to preserve the integrity of the mandatory custody mediation program, it is important that the mediator avoid, insofar as possible, even the appearance of impropriety.

APPENDIX B. DOMESTIC VIOLENCE POLICY FOR THE NC CHILD CUSTODY AND VISITATION MEDIATION PROGRAM

While cases involving domestic violence may be exempted from mandatory mediation under the provisions of [N.C. Gen. Stat. 50-13.1 \(c\)](#), this policy is intended to address those cases not waived prior to referral to mediation and/or those deemed appropriate for mediation by the referral source.

I. Orientation

A. Participants may be offered the opportunity to attend separate orientation sessions.

B. Whenever possible, bailiffs should be present at orientation sessions.

II. Screening

A. Mediation intake form questions will alert mediators to issues regarding physical and verbal violence in the relationship, the presence of a Domestic Violence Protective Order (DVPO), and/or issues of substance abuse, child abuse and/or mental illness.

1. 50B Cases

Cases that originate from Chapter 50B actions shall not be mediated.

2. Chapter 50 Cases in which Domestic Violence Is or May Be an Issue

a. When a case referred by the court involves or includes a Chapter 50B action or order, the case may be considered for mediation only if a claim for custody or visitation is pending in a Chapter 50 case.

b. Domestic cases in which violence is a central issue generally are not appropriate for mediation.

c. If there is a prior or pending Chapter 50B action between the parties or a party indicates concerns regarding alleged domestic violence, the mediator has a professional responsibility to screen immediately for safety issues and to make a determination as to the appropriateness of the case for mediation. (Refer to screening procedures outlined in II.A.3.a-e). Cases deemed inappropriate for mediation should be returned to court.

d. Mediators shall where possible obtain a copy of any Chapter 50B Order as a part of the screening process.

e. Mediators will continue to screen each case for appropriateness during mediation session(s) and/or the orientation session.

3. Chapter 50 Cases with an associated Chapter 50B

a. When domestic violence is indicated the mediator may conduct a brief separate interview (in person or by telephone) with either or both parties during the appointment setting phase, to assess the appropriateness of the case for mediation. A detailed assessment during a pre-mediation interview or caucus utilizing a standard one page violence assessment screening checklist may also be appropriate. If the case is appropriate for mediation, assessment shall continue during the mediation process.

b. If the mediator and parties jointly choose to pursue mediation following the assessment described above, the mediator shall determine the appropriate format for the mediation process.

c. Mediators in the training progression, regardless of prior experience with domestic violence, shall consult with their mentor and/or North Carolina Administrative Office of the Courts (NCAOC) staff regarding such cases, and/or arrange for a co-mediator prior to scheduling a mediation session.

d. When the assessment indicates the case is **appropriate** for mediation:

I. The mediator shall make arrangements to promote emotional and physical safety of all participants. Refer to *Triage Process*.

II. The mediator shall refer to *Differences in Parenting Contracts* regarding appropriate parenting time arrangements to maximize boundary setting, reduce reasons for contact and to minimize opportunity to create confusion and to coerce.

III. If safety issues arise during the mediation process, the mediator shall terminate the session, and return the case to the court for disposition. Refer to *Additional Screening Considerations: Indicators of Abuse That Can Be Observed During Mediation*.

e. When the assessment indicates that a case is **inappropriate** for mediation, the mediator shall return the case to the court for disposition.

III. Domestic Violence Protective Order

A Domestic Violence Protective Order (DVPO) is issued by the court. Neither the mediator nor the parties have the authority to modify a DVPO without the approval of the court. If the parties enter into a Parenting Agreement which is inconsistent with the terms of the DVPO, the Parenting Agreement is not effective until approved by the court. The mediator will attach a copy of the DVPO to the Parenting Agreement prior to submission to the judge for review and appropriate disposition.

I. New Mediators: (Those working to complete the training progression.)

A. Initial Training

1. The 40 hour mediation training for new mediators will include two hours of training on issues and procedures regarding domestic violence.

2. An additional training of six hours regarding screening for domestic violence issues and how these issues relate to mediation procedures and technique will be provided during the first twelve to eighteen months of employment.

B. Continuing Training

1. Recently hired mediators will work with mediators approved to be mentors by the NCAOC. The mentors will have:
 - a. completed the training progression.
 - b. demonstrated knowledge, skill and sensitivity in the issues relative to screening/mediation of domestic violence cases.
 - c. exhibited the ability during case management and self-evaluation to request assistance where appropriate.
2. New mediators will also be required to be involved in continuing training for heightened awareness of domestic violence issues, screening procedures and self-evaluation.

II. All Mediators: Continuing Education in Domestic Violence

Experienced mediators should continue to pursue training, to include gender sensitivity and related issues, the effect of domestic violence on various developmental stages of childhood, and self-awareness of personal issues and how they may impact the mediation process and clients.

All mediators are encouraged to develop collaborative working relationships with local domestic violence programs and professionals.

The mediator must, above all, promote the safety of all participants in the mediation process. The mediator shall make arrangements with the client(s) and other appropriate professionals (such as law enforcement) to promote the client's ability to participate in the mediation process safely.