

The State of New Hampshire Judicial Branch

Office of Mediation & Arbitration
Supreme Court
Superior Court
Circuit Court



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Hon. Patrick E. Donovan, Chair
Advisory Committee on Rules
New Hampshire Supreme Court
One Charles Doe Drive
Concord, NH 03301

RE: Proposed Revisions to Circuit Court Family Division Rules 2.13 (C) and 2.13 (D)

Dear Justice Donovan and Members of the Advisory Committee on Rules:

The Office of Mediation and Arbitration proposes revisions to Circuit Court Family Division Rules 2.13 (C) and 2.13 (D), both involving procedures around court-connected mediation in divorce/parenting cases.

The proposed changes to Rule 2.13 (C) would allow divorce/parenting mediations where there is a finding of domestic violence to occur over a video conferencing platform. Currently, all mediations with a finding of domestic violence must occur at the courthouse unless a waiver is requested. This rule was created prior to the COVID-19 pandemic when mediations over video did not occur regularly. The proposed changes would update the rule to recognize the increased use of and agility with the remote video conferencing technology for mediations. Now, mediating over video is a widely accepted practice that has been incorporated into the court process. Some stakeholders in New Hampshire (such as court staff, mediators, and judges) believe that it may often be safer for parties with a domestic violence finding to mediate their cases over video rather than at the courthouse.¹ In a video mediation, parties may not have to see each other at all if the parties remain in separate breakout rooms for the entirety of the mediation. At the courthouse, however, even if the parties are separated during

¹ These sentiments have been expressed in other jurisdictions as well. See e.g., Anna deDufour, et. al., *Mediating Parenting Solutions in the Age of Technology*, 68 WASH. U.J.L. & POL'Y 1, 5-6 (2022) (stating that the tools of virtual platforms can be especially beneficial in cases involving intimate partner violence or intimidation); Melissa Mangiaracina, *How to Navigate Custody Mediation in Cases Involving Domestic Violence*, RES. CTR. ON DOMESTIC VIOLENCE: CHILD PROTECTION AND CUSTODY & NAT'L COUNCIL OF JUVENILE AND FAMILY COURT JUDGES (March 9, 2019) <https://bwjp.org/wp-content/uploads/2022/10/how-to-navigate-custody-mediation-in-cases-involving-domestic-violence.pdf> ("Telephone mediation is especially helpful when physical closeness may increase danger").

the mediation itself, parties may still encounter each other in the parking lot, at the clerk's window, or in the lobby before or after a mediation.

The proposed changes would allow parties, where there is a finding of domestic violence, to have equal access to the choice of whether mediation should occur over video or at the courthouse.

The New Hampshire Judicial Branch's Domestic Violence Program Manager Jessica Humphrey endorses this proposed rule change.

The proposed revisions to Rule 2.13 (D) clarify the procedures for how many times a mediation session can be rescheduled. Currently, there is no clear guidance on this matter. Excessive rescheduling requests, either by the mediator or the parties, can result in significant delays to a case, prompting extended time-to-disposition, uncertainty for families, and increased management for the court. This rule change would put parties, attorneys, and mediators on notice that the case will be returned for further processing if a mediation session is rescheduled more than two times.

For the reasons outlined above, the Office of Mediation and Arbitration proposes the following changes to Circuit Court Family Division Rules 2.13 (C) and 2.13 (D).

Proposed Changes to Rule 2.13 (C)

If there is a finding of domestic violence as defined in RSA 173-B:1, and if parties agree to mediate ~~despite the existence of the protective order~~, all mediations shall occur **[either]** at the courthouse **[or over a video conferencing platform, unless the court determines otherwise]**.

Proposed Changes to Rule 2.13 (D)

The court ~~will~~ **[shall]** be involved in scheduling the initial mediation session in each case. Thereafter, mediation will be scheduled through the parties and the mediator. Parties must cooperate with the mediator to establish the next mediation date at the end of each mediation session. **[The mediator may reschedule a mediation session up to two times, upon request of the parties, their counsel, or the mediator, before returning the case to court for further processing. The protocol for rescheduling is stated in Supreme Court Rule 48-B (6)(a).]**

Thank you,



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