

#2019-005

Carolyn A. Koegler

From: Heather Scheiwe Kulp
Sent: Thursday, March 14, 2019 1:33 PM
To: Carolyn A. Koegler
Cc: Hon. David D. King; Patrick Ryan; Hon. Michael H. Garner; lcullen@gargoylenet.com
Subject: proposed changes to Rule 48-B
Attachments: Original Rule 48-b.pdf; Revised Rule 48-b.pdf; Strikethrough Rule 48-b.pdf; Rule 48-b cover letter.pdf

March 14, 2019

To the Secretary of the Advisory Committee on Rules,

The Office of Mediation and Arbitration and the Circuit Court are requesting this rule change to Supreme Court Rule 48-B, "Family Mediator Fees." Rule 48-B fulfills the requirement of RSA 461-A:7 that the Supreme Court "establish rules and take such action as necessary to effectuate the purpose of" the statute entitled "Mediation of Cases Involving Children." The Rule also sets the "amount of the fee" mediators receive for their services, which is to be set "annually by supreme court rule." RSA 461-A:7(X). The Rule also governs divorce cases without children, which may be mediated under RSA 458:15.

Family Division mediation has changed sufficiently in the last few years that a review of Rule 48-B is in order. Please find attached the original Rule 48-B, the suggested revised Rule 48-B in both a "clean" version and in a version with the strikethroughs and brackets required by Rule 51(c)(1)(a).

Please let me know if you need anything further from me.

Best,
Heather

Cc: Administrative Judge King, Court Administrator Pat Ryan, Circuit Court Judge Garner, Ret. Circuit Court Judge Cullen

Heather Scheiwe Kulp
ADR Coordinator
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The State of New Hampshire Judicial Branch

Office of Mediation & Arbitration
Supreme Court
Superior Court
Circuit Court



Heather S. Kulp, Esq.
ADR Coordinator

March 14, 2019

To the Secretary of the Advisory Committee on Rules,

The Office of Mediation and Arbitration and the Circuit Court are requesting this rule change to Supreme Court Rule 48-B, "Family Mediator Fees." Rule 48-B fulfills the requirement of RSA 461-A:7 that the Supreme Court "establish rules and take such action as necessary to effectuate the purpose of" the statute entitled "Mediation of Cases Involving Children." The Rule also sets the "amount of the fee" mediators receive for their services, which is to be set "annually by supreme court rule." RSA 461-A:7(X). The Rule also governs divorce cases without children, which may be mediated under RSA 458:15.

Family Division mediation has changed sufficiently in the last few years that a review of Rule 48-B is in order. Specifically, the following discrepancies, and suggested corrections to improve consistency and efficiency, are noted:

- The Rule references mediation conducted under RSA 458:15-a, which no longer exists. *It is suggested the reference be to RSA 458:15-c.*
- Section 5(a) regarding the definition of indigency references an administrative order from 2005. A newer order—from 2014—is the actual order courts use to determine whether a party qualifies as indigent for the purpose of mediation payment. *Instead of referencing a specific administrative order, it is suggested that the Rule reference the definition of indigency "as set by administrative order by the Chief Administrative Judge of the Circuit Court."*
- Section 5(c), referring to cases in which at least one party is indigent, indicates the penalty for a failure to appear is a \$120 fee. Section 6(c), referring to cases in which parties are not indigent, indicates the penalty for a failure to appear is that two hours are taken off of the parties' available mediation time. This difference in

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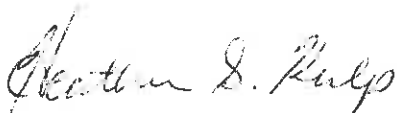
penalties is confusing to implement and treats similarly-situated parties differently. *It is suggested that the Rule treat indigent and non-indigent parties the same, and indicate there is a fee of \$120 for failing to appear at mediation.*

- Section 6(c), referring to cases in which parties are not indigent, indicates that parties will be penalized for cancelling a mediation session less than 2 days in advance. There is no similar prohibition for indigent parties. This difference is confusing to implement, especially when one party is indigent and the other is not. *It is suggested that the Rule treat indigent and non-indigent parties the same, and indicate there is a fee of \$120 for cancelling or rescheduling less than 2 days in advance of the mediation session.*
- Section 7(a) provides a sliding scale fee chart based on the parties' individual incomes, if parties choose to mediate beyond the five (5) allotted hours. Section 7(b) provides a sliding scale if the parties "combined annual gross income" is over \$100,000. Using combined gross income could result in inequity between parties, e.g., if Party A's individual income is \$25,000 and Party B's individual income is \$100,000, each party would pay \$75 per hour. If Party A's individual income is \$25,000 and Party B's individual income is \$60,000, Party A would pay \$35 per hour and Party B would pay \$75 per hour. *In the interest of equity, it is suggested the parties' individual annual gross income be used to calculate the amount owed per hour, regardless of the parties' combined annual gross income.*

We are not requesting expedited consideration.

Should the Advisory Committee wish to hear from me about this suggested rule change, I am happy to provide further information in any format.

Sincerely,



Heather Scheiwe Kulp
Alternative Dispute Resolution Coordinator
New Hampshire Judicial Branch

**RULES OF THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE**

ADMINISTRATIVE RULES 35 TO 61

Rule 48-B. Family Mediator Fees

- (1) **Scope.** The provisions of this rule shall apply only to proceedings in which the parties are ordered to participate in mediation under RSA 461-A:7 and RSA 458:15-a, including brought-forward cases under either statute.
- (2) **Services.** Mediators shall be paid for conducting mediation sessions, drafting mediated agreements, and performing necessary administrative tasks. "Administrative tasks" may include reviewing the file, screening for domestic violence, scheduling and rescheduling sessions, and having conferences with counsel. Except as provided below, mediators shall not be paid for travel time; see section (8) below for mileage reimbursement.
- (3) **Disclosure of Fees.** Before mediation starts either the court or the mediator shall provide the parties a written agreement to mediate disclosing both the set fee, and in RSA 458:15-a cases and in RSA 461-A cases that do not qualify as indigent, the hourly fee for any time after the 5 hours. This disclosure of both fees shall be in at least size 12 font. Before mediation begins, the agreement to mediate shall be signed by the parties, the mediator, and if present, counsel.
- (4) **Time Records.** Each mediator shall keep a record of time spent on each case clearly itemizing administrative, mediation, and drafting time.
- (5) **Fees in RSA 461-A Indigent Cases.**
- (a) If both parties are found to be indigent according to Family Division Administrative Order # 2005-4 (December 30, 2005), the mediator shall be paid a set fee of \$300.00 for his or her services if one or more sessions occur. The court may order each party to pay a proportional amount of this fee. The fee shall be paid from the mediation and arbitration fund established pursuant to RSA 490-E:4 and repaid by the parties in accordance with RSA 461-A:18. Mediators have discretion to bill less than the set fee when warranted.
- (b) If only one party qualifies as indigent, it shall be presumed that the person not qualifying as indigent shall pay the fee as set out in sections (6) and (7), below. However, the court may order that the special fund pay half of the fees, as justice requires.
- (c) In indigent cases, if the parties, or either of them, fail to appear for the first session with the mediator, the mediator shall be paid \$120.00 from the special fund in lieu of the \$300.00 set fee. The court may allot the responsibility for reimbursing the state for fees for missed sessions between the parties, as justice requires.
- (d) Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All motions to exceed the maximum fee must be approved prior to the \$300.00 fee being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires. If a motion to exceed is granted, the hourly rate for payments to mediators exceeding the \$300.00 amount shall be based upon the sliding scale in section 7(a) below.

(6) Fees in Other Cases – Up to Maximum of 5 Hours

(a) In all RSA 458:15-a cases, and in RSA 461-A:15 cases that do not qualify as indigent, the fee shall be a set fee of \$300.00 for mediation services up to a maximum of 5 hours. Actual time for any necessary administrative tasks (up to a maximum of 60 minutes for each case) and for any out-of-session time, drafting of mediated agreements shall be included in the 5 hours, except as otherwise provided.

(b) The set fee of \$300.00 for up to a maximum of 5 hours shall be a charge against the parties in a proportional amount as the court may determine. Mediators have discretion to bill less than the set fee when warranted.

(c) If the parties or either of them fail to appear for any session with the mediator, or cancel a mediation session less than 2 business days in advance, the scheduled hours shall count toward the 5 hour maximum.

(d) After 3 total hours or before any session that is scheduled to put the total number of hours beyond 5 hours, whichever occurs first, the mediator shall provide written notice of the change in hourly fees after 5 hours and an itemized bill to the clients. The notice shall disclose the change in fees after 5 hours in at least size 12 font. This notice will allow clients the option to continue mediation beyond 5 hours under the fee schedule in section 7 below or have the case put back on the trial docket.

(7) Fees in Other Cases – After 5 Hours

(a) If the parties' combined annual gross income is less than \$100,000, the time beyond 5 hours shall be on a sliding scale hourly rate for each person based on his or her individual gross income, as follows:

**INDIVIDUAL ANNUAL
GROSS INCOME**

\$ 10,000 and under	\$ 15 hour
\$ 10,001 – \$ 15,000	\$ 20 hour
\$ 15,001 – \$ 20,000	\$ 25 hour
\$ 20,001 – \$ 30,000	\$ 35 hour
\$ 30,001 – \$ 35,000	\$ 45 hour
\$ 35,001 – \$ 40,000	\$ 55 hour
\$ 40,001 – \$ 50,000	\$ 65 hour
over \$ 50,000	\$ 75 hour

Each party shall pay at his or her hourly rate unless the court orders either for one party to pay all or a portion of the other's fees or payment from an asset, as justice requires.

(b) If the parties' combined annual gross income is \$100,000 or more, time beyond 5 hours shall be on a sliding scale hourly rate for the case, based on their combined gross incomes, as follows:

**COMBINED ANNUAL
GROSS INCOME**

\$ 100,000 – \$ 199,999	\$ 150 hour
\$ 200,000 or more	\$ 200 hour

The hourly fee shall be a charge against the parties in a proportional amount, or paid from assets, as the court may determine. If one party earns substantially more than the other, it shall be presumed that either the higher income party shall pay the entire fee or the fees will be allocated based on their respective incomes.

(c) Beyond the 5 hours, if the parties or either of them fail to appear for any session with the mediator, or cancel a mediation session less than 2 business days in advance, the mediator shall be paid for the scheduled time at the sliding scale rate for each party. The court may allot the responsibility for paying the mediator for fees for missed or cancelled sessions between the parties, as justice requires.

(8) Mileage. Upon the proper submission to the Administrative Office of the Courts mediators shall be reimbursed at the IRS rate for the first mediation appointment.

**RULES OF THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE**

ADMINISTRATIVE RULES 35 TO 61

DRAFT Revised Rule 48-B. Family Mediator Fees

- 1) **Scope.** The provisions of this rule shall apply to proceedings in which the parties participate in court-connected mediation under RSA 461-A:7 and RSA 458:15-c, including reopened cases under either statute.
- 2) **Purpose.** This rule outlines how and when parties engaged in mediation pay the appropriate mediation fee. These rules also provide guidance for mediators in collecting fees.
- 3) **Services.** Mediators shall be paid according to this rule for conducting mediation sessions, drafting mediated agreements, and performing necessary administrative tasks. “Administrative tasks” may include reviewing the file, screening for domestic violence, scheduling and rescheduling sessions, and communicating prior to and/or after mediation with parties and, if applicable, counsel. Except as provided below, mediators shall not be paid for travel time.
- 4) **Disclosure of Fees.** Before mediation begins, the mediator shall provide the parties a written agreement to mediate disclosing both the set fee and the hourly fee for any time after the 5 hours. This disclosure of both fees shall be in at least size 12 font. Before mediation begins, the agreement to mediate shall be signed by the parties, the mediator, and if present, counsel.
- 5) **First four hours of mediation.**
 - a. **Fee.** For court-referred mediation permissible under RSA 461-A:7 and RSA 458:15-c, the fee is \$300 for the first four hours of mediation services and up to one hour of administrative work related to the mediation. The Court may allocate responsibility for the fee between the parties as the Court determines.
 - i. For a case mediated under RSA 461-A:7, if a party is indigent as determined by the Court, the party qualifies to have the party’s mediation fee paid to the mediator from the Fund established by RSA 490-E:4. If the party chooses to accept such assistance, per RSA 461-A:18, the party is required to repay the fee to the Office of Cost Containment (OCC) after the mediation occurs, but may repay based on a payment plan established with OCC.
 - ii. For a case mediated under RSA 458:15-c, if a party is indigent as determined by the Court, the party qualifies to have the party’s mediation fee paid to the mediator from the Fund established by RSA 490-E:4.
 - iii. If a party is not indigent or fails to complete the necessary steps to receive a determination of indigency from the Court, the party is required to pay the mediation fee directly to the mediator.
 1. If, after communication between the mediator and the party about the fee owed, the party fails to pay the mediator, the mediator may decline to continue mediation services.
 2. If the mediator does not receive payment after providing services, the mediator may complete a Notice to Court of Nonpayment of Mediator Fee and submit it to the Court. The Court will raise the issue of non-payment at the next hearing with the party.
 - b. **Rescheduling.** If a party wishes to reschedule a mediation session, the party must contact the mediator at least 2 business days prior to the session. The party should present the mediator with

days the party is available. The non-rescheduling party must consent to the new date before mediation is rescheduled and notice is sent.

- c. Cancellation. If a party wishes to cancel mediation and not reschedule, the party must contact the mediator at least 2 business days prior to the session. If the cancellation occurs before the first mediation session, the party must motion the Court to be excused from mediation. If the cancellation occurs after the first session, the mediator shall complete the Mediation Report to say, "Case did not settle" without further comment.
- d. Non-appearance. If a party receives notice but does not appear for the scheduled mediation session, or cancels or reschedules the mediation session within 2 business days of the session, the case may be scheduled for the next court event. The party will be required to pay the mediator a failure-to-appear fee of \$120.

6) Additional mediation beyond four hours.

- a. Approval. If the mediator believes mediation beyond four hours will benefit the parties, the mediator may raise the option with parties after three hours of mediation. The mediator shall share the sliding scale with parties at that time. If both parties want to continue mediation beyond four hours, the mediator shall contact the Office of Mediation and Arbitration to receive approval. The Office of Mediation and Arbitration will notify the mediator within seven (7) days if another four hours has been approved.
- b. Fee. If additional hours are approved, each party's fee will be determined by the party's individual annual gross income. Each party shall pay the mediator at his or her hourly rate listed below, unless the court orders either for one party to pay all or a portion of the other's fees or payment from an asset, as justice requires.

INDIVIDUAL ANNUAL GROSS INCOME

\$ 10,000 and under	\$ 15 hour
\$ 10,001 – \$ 15,000	\$ 20 hour
\$ 15,001 – \$ 20,000	\$ 25 hour
\$ 20,001 – \$ 30,000	\$ 35 hour
\$ 30,001 – \$ 35,000	\$ 45 hour
\$ 35,001 – \$ 40,000	\$ 55 hour
\$ 40,001 – \$ 50,000	\$ 65 hour
\$ 50,001 – \$100,000	\$ 75 hour
\$100,001 and above	\$100 hour

- c. Payment options for parties who are indigent. Since parties who are indigent pay a lower rate for mediation beyond four hours, parties may wish to pay the mediator directly. Parties who are indigent are also eligible to have their mediation fee paid to the mediator from the Fund. Per RSA 461-A:18, the party will be required to repay the fee to the Office of Cost Containment (OCC) after the mediation occurs, but may repay based on a payment plan established with OCC. Mediators should advise parties who are indigent of both options for payment.
- d. Rescheduling. If a party wishes to reschedule a mediation session, the party must contact the mediator at least 2 business days prior to the session. The party should present the mediator with days the party is available. The non-rescheduling party must consent to the new date before mediation is rescheduled and notice is sent.
- e. Cancellation. If a party wishes to cancel mediation and not reschedule, the party must contact the mediator at least 2 business days prior to the session. The mediator shall complete the Mediation Report to say, "Case did not settle" without further comment.
- f. Non-appearance. If a party receives notice but does not appear for the scheduled mediation session, or cancels or reschedules a mediation session within 2 business days of the session, the case may be scheduled for the next court event. The party will be required to pay the mediator a failure-to-appear fee of \$120.

- 7) **Mileage.** For the first mediation session, the mediator may be reimbursed for roundtrip mileage from the mediator's primary residence to the Court in which the case has been filed. No additional mediation sessions are eligible for mileage reimbursement. To receive reimbursement, the mediator shall submit mileage within 45 days of accrual to the Office of Mediation & Arbitration on the Office's approved form. The reimbursement shall be at the current IRS mileage reimbursement rate.

RULES OF THE SUPREME COURT OF THE STATE OF NEW
HAMPSHIRE

ADMINISTRATIVE RULES 35 TO 61

Rule 48-B. Family Mediator Fees

(1) Scope. The provisions of this rule shall apply ~~only~~ to proceedings in which the parties ~~are ordered to~~ participate in **[court-connected]** mediation under RSA 461-A:7 and RSA 458:15-a, including **[reopened]** ~~brought forward~~ cases under either statute.

[(2) Purpose. This rule outlines how and when parties engaged in mediation pay the appropriate mediation fee. These rules also provide guidance for mediators in collecting fees.]

~~(2)~~ **[(3)]** Services. Mediators shall be paid **[according to this rule]** for conducting mediation sessions, drafting mediated agreements, and performing necessary administrative tasks. “Administrative tasks” may include reviewing the file, screening for domestic violence, scheduling and rescheduling sessions, and having ~~conferences with counsel~~ **[communicating prior to and/or after mediation with parties and, if applicable, counsel]**. Except as provided below, mediators shall not be paid for travel time; see section (8) below for mileage reimbursement.

~~(3)~~ **[(4)]** Disclosure of Fees. Before mediation **[begins,]** ~~starts either the court or the mediator~~ shall provide the parties a written agreement to mediate disclosing both the set fee, and ~~in RSA 458:15-a cases and in RSA 461-A cases that do not qualify as indigent,~~ the hourly fee for any time after the 5 hours. This disclosure of both fees shall be in at least size 12 font. Before mediation begins, the agreement to mediate shall be signed by the parties, the mediator, and if present, counsel.

~~(4) Time Records. Each mediator shall keep a record of time spent on each case clearly itemizing administrative, mediation, and drafting time.~~

~~(5) [First four hours of mediation.] Fees in RSA 461-A Indigent Cases.~~

- a. Fee. For court-referred mediation permissible under RSA 461-A:7 and RSA 458:15-c, the fee is \$300 for the first four hours of mediation services and up to one hour of administrative work related to the mediation. The Court may allocate responsibility for the fee between the parties as the Court determines.
 - i. For a case mediated under RSA 461-A:7, if a party is indigent as determined by the Court, the party qualifies to have the party’s mediation fee paid to the mediator from the Fund established by RSA 490-E:4. If the party chooses to accept such assistance, per RSA 461-A:18, the party is required to repay the fee to the Office of Cost Containment (OCC) after the mediation occurs, but may repay based on a payment plan established with OCC.
 - ii. For a case mediated under RSA 458:15-c, if a party is indigent as determined by the Court, the party qualifies to have the party’s mediation fee paid to the mediator from the Fund established by RSA 490-E:4.
 - iii. If a party is not indigent or fails to complete the necessary steps to receive a determination of indigency from the Court, the party is required to pay the mediation fee directly to the mediator.

1. If, after communication between the mediator and the party about the fee owed, the party fails to pay the mediator, the mediator may decline to continue mediation services.
 2. If the mediator does not receive payment after providing services, the mediator may complete a Notice to Court of Nonpayment of Mediator Fee and submit it to the Court. The Court will raise the issue of non-payment at the next hearing with the party.
- b. Rescheduling. If a party wishes to reschedule a mediation session, the party must contact the mediator at least 2 business days prior to the session. The party should present the mediator with days the party is available. The non-rescheduling party must consent to the new date before mediation is rescheduled and notice is sent.
 - c. Cancellation. If a party wishes to cancel mediation and not reschedule, the party must contact the mediator at least 2 business days prior to the session. If the cancellation occurs before the first mediation session, the party must motion the Court to be excused from mediation. If the cancellation occurs after the first session, the mediator shall complete the Mediation Report to say, "Case did not settle" without further comment.
 - d. Non-appearance. If a party receives notice but does not appear for the scheduled mediation session, or cancels or reschedules the mediation session within 2 business days of the session, the case may be scheduled for the next court event. The party will be required to pay the mediator a failure-to-appear fee of \$120.

~~(a) If both parties are found to be indigent according to Family Division Administrative Order # 2005-4 (December 30, 2005), the mediator shall be paid a set fee of \$300.00 for his or her services if one or more sessions occur. The court may order each party to pay a proportional amount of this fee. The fee shall be paid from the mediation and arbitration fund established pursuant to RSA 490 E:4 and repaid by the parties in accordance with RSA 461 A:18. Mediators have discretion to bill less than the set fee when warranted.~~

~~—(b) If only one party qualifies as indigent, it shall be presumed that the person not qualifying as indigent shall pay the fee as set out in sections (6) and (7), below. However, the court may order that the special fund pay half of the fees, as justice requires.~~

~~—(c) In indigent cases, if the parties, or either of them, fail to appear for the first session with the mediator, the mediator shall be paid \$120.00 from the special fund in lieu of the \$300.00 set fee. The court may allot the responsibility for reimbursing the state for fees for missed sessions between the parties, as justice requires.~~

~~—(d) Only upon express, written finding for good cause and exceptional circumstances by the court will the maximum fees be exceeded or will additional fees be authorized. All motions to exceed the maximum fee must be approved prior to the \$300.00 fee being exceeded; provided, however, that the court may waive the requirement for prior approval when justice so requires. If a motion to exceed is granted, the hourly rate for payments to mediators exceeding the \$300.00 amount shall be based upon the sliding scale in section 7(a) below.~~

~~(6) Fees in Other Cases—Up to Maximum of 5 Hours~~

~~—(a) In all RSA 458:15-a cases, and in RSA 461 A:15 cases that do not qualify as indigent, the fee shall be a set fee of \$300.00 for mediation services up to a maximum of 5 hours. Actual time for any necessary administrative tasks (up to a maximum of 60 minutes for each case) and for any out of session time, drafting of mediated agreements shall be included in the 5 hours, except as otherwise provided.~~

~~—(b) The set fee of \$300.00 for up to a maximum of 5 hours shall be a charge against the parties in a proportional amount as the court may determine. Mediators have discretion to bill less than the set fee when warranted.~~

~~—(c) If the parties or either of them fail to appear for any session with the mediator, or cancel a mediation session less than 2 business days in advance, the scheduled hours shall count toward the 5 hour maximum.~~

~~—(d) After 3 total hours or before any session that is scheduled to put the total number of hours beyond 5 hours, whichever occurs first, the mediator shall provide written notice of the change in hourly fees after 5 hours and an itemized bill to the clients. The notice shall disclose the change in fees after 5 hours in at least size 12 font. This notice will allow clients the option to continue mediation beyond 5 hours under the fee schedule in section 7 below or have the case put back on the trial docket.~~

[(6) Additional mediation beyond four hours.

- e. Approval.** If the mediator believes mediation beyond four hours will benefit the parties, the mediator may raise the option with parties after three hours of mediation. The mediator shall share the sliding scale with parties at that time. If both parties want to continue mediation beyond four hours, the mediator shall contact the Office of Mediation and Arbitration to receive approval. The Office of Mediation and Arbitration will notify the mediator within seven (7) days if another four hours has been approved.
- f. Fee.** If additional hours are approved, each party's fee will be determined by the party's individual annual gross income. Each party shall pay the mediator at his or her hourly rate listed below, unless the court orders either for one party to pay all or a portion of the other's fees or payment from an asset, as justice requires.]

~~(7) Fees in Other Cases—After 5 Hours~~

~~—(a) If the parties' combined annual gross income is less than \$100,000, the time beyond 5 hours shall be on a sliding scale hourly rate for each person based on his or her individual gross income, as follows:~~

**INDIVIDUAL ANNUAL
GROSS INCOME**

\$ 10,000 and under	\$ 15 hour
\$ 10,001 – \$ 15,000	\$ 20 hour
\$ 15,001 – \$ 20,000	\$ 25 hour
\$ 20,001 – \$ 30,000	\$ 35 hour
\$ 30,001 – \$ 35,000	\$ 45 hour
\$ 35,001 – \$ 40,000	\$ 55 hour
\$ 40,001 – \$ 50,000	\$ 65 hour
over \$ 50,000	\$ 75 hour
[\$ 50,001 – \$100,000	\$ 75 hour
\$100,001 and above	\$100 hour]

~~Each party shall pay at his or her hourly rate [listed below,] unless the court orders either for one party to pay all or a portion of the other's fees or payment from an asset, as justice requires.~~

[c. Payment options for parties who are indigent. Since parties who are indigent pay a lower rate for mediation beyond four hours, parties may wish to pay the mediator directly. Parties who are indigent are also eligible to have their mediation fee paid to the mediator from the Fund. Per RSA 461-A:18, the party will be required to repay the fee to the Office of Cost Containment (OCC) after the mediation occurs, but

may repay based on a payment plan established with OCC. Mediators should advise parties who are indigent of both options for payment.

d. Rescheduling. If a party wishes to reschedule a mediation session, the party must contact the mediator at least 2 business days prior to the session. The party should present the mediator with days the party is available. The non-rescheduling party must consent to the new date before mediation is rescheduled and notice is sent.

e. Cancellation. If a party wishes to cancel mediation and not reschedule, the party must contact the mediator at least 2 business days prior to the session. The mediator shall complete the Mediation Report to say, "Case did not settle" without further comment.]

~~(b) If the parties' combined annual gross income is \$100,000 or more, time beyond 5 hours shall be on a sliding scale hourly rate for the case, based on their combined gross incomes, as follows:~~

~~_____ COMBINED ANNUAL
_____ GROSS INCOME~~

~~_____ \$ 100,000 \$ 199,999 _____ \$ 150 hour
_____ \$ 200,000 or more _____ \$ 200 hour~~

~~—The hourly fee shall be a charge against the parties in a proportional amount, or paid from assets, as the court may determine. If one party earns substantially more than the other, it shall be presumed that either the higher income party shall pay the entire fee or the fees will be allocated based on their respective incomes.~~

~~(c) [f. Non-appearance.] Beyond the 5 hours, [If a party receives notice but does not if the parties or either of them fail to appear for any [the scheduled mediation] session with the mediator, or cancel[s or reschedules] a mediation session [within] less than 2 business days [of the session] in advance, [the case may be scheduled for the next court event. The party will be required to pay the mediator a failure-to-appear fee of \$120.] the mediator shall be paid for the scheduled time at the sliding scale rate for each party. The court may allot the responsibility for paying the mediator for fees for missed or cancelled sessions between the parties, as justice requires.~~

(8) Mileage. Upon the proper submission to the Administrative Office of the Courts mediators shall be reimbursed at the IRS rate for the first mediation appointment. [For the first mediation session, the mediator may be reimbursed for roundtrip mileage from the mediator's primary residence to the Court in which the case has been filed. No additional mediation sessions are eligible for mileage reimbursement. To receive reimbursement, the mediator shall submit mileage within 45 days of accrual to the Office of Mediation and Arbitration on the Office's approved form. The reimbursement shall be at the current IRS mileage reimbursement rate.]