

*Settlement Conferences in Superior Court Civil Actions* provides for court-appointed mediators to be compensated at the rate of \$150 per hour for mediation services plus a \$175 one time, per case administrative fee. Unless otherwise agreed or ordered by the court, the fee will be paid in equal shares by the parties and is due at the conclusion of the conference. For purposes of Rule 7(b), multiple parties represented by the same attorney will be considered as owing one share.

**?** *What if I prefer to go to trial and do not want to mediate my case?* Once your case has been referred to mediated settlement, you and your attorney must participate in a conference or choose some other form of dispute resolution. However, if you believe there is some compelling reason why your case should not be referred, you may ask the court to exempt it. The Commission asks you not to reject the mediation process. Even in cases where parties seem hopelessly at odds, a skillful mediator can sometimes find an effective way to help opposing parties think and talk about ways to resolve their dispute.

**?** *What if I am unwilling to agree to the terms discussed at the mediation?* Any agreement reached at mediation has to be voluntarily approved by all parties. No one can force you to settle your case. If you are unable to reach an agreement to settle your dispute, your case will simply be put back on a trial calendar. Neither the judge nor jury will be told why your case did not settle. Even if no agreement is reached, mediation can still be helpful as issues in dispute can be narrowed, communication improved, and momentum toward resolution generated.

**?** *What if I have a complaint about my mediator's conduct?* You can address your concerns to your mediator in the hope that any misunderstandings can be resolved amicably. You may also "File a Complaint Against a Mediator" online with the N.C. Dispute Resolution Commission website at [www.ncdrc.gov](http://www.ncdrc.gov) or by calling 919-890-1415.



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# MEDIATED SETTLEMENT CONFERENCES IN SUPERIOR COURT CIVIL ACTIONS

For more information about the North Carolina Dispute Resolution Commission and its court-based programs, please visit our website:

[WWW.NCDRC.GOV](http://WWW.NCDRC.GOV)

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## THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

*Created by statute and charged with certifying and regulating mediators who serve North Carolina's courts*

## INTRODUCTION

If you are reading this brochure, it is likely that the court has referred your civil superior court case to the Mediated Settlement Conference Program. The referral to mediation means that you will be required to meet with the other party(ies) to your case and a neutral mediator for the purpose of discussing your dispute and searching for a way to settle it. You may be wondering why your case has been referred to mediation and what the process is all about. This brochure is designed to answer those questions and more.

As you read this publication, try to think of mediation as an opportunity to resolve your dispute in a way that is acceptable to you while at the same time avoiding protracted litigation and a trial. Cases do not always settle and some must be heard by a judge or jury. But, when mediation is successful, parties can be saved time and expenses, reduce stress, and have the satisfaction of knowing they were able to work things out themselves.

## WHY MEDIATION?

In 1991, North Carolina's General Assembly authorized the establishment of a pilot program designed to foster settlement of disputes filed as civil actions in superior court. The pilot operated over a four-year period during which it was studied extensively by researchers at the University of North Carolina at Chapel Hill. The researchers found that the program did help a significant percentage of cases settle earlier than they would have without mediation. Moreover, researchers found that parties liked the informality of mediation and appreciated having an opportunity to meet with the other side to explore the possibility of settling their dispute. Judges also expressed their support for the new program. Mediation, they reported, helped courts better manage their caseloads and operate more efficiently.

Given the success enjoyed by the pilot program, the General Assembly approved statewide expansion of the Mediated Settlement Conference Program in 1995. The program is now available in all of North Carolina's judicial districts. Caseload statistics collected annually for the program continue to confirm that it is operating successfully, helping parties to resolve their disputes constructively, and assisting judges in their efforts to better manage our courts.

## WHAT HAPPENS DURING A MEDIATED SETTLEMENT CONFERENCE?

Mediated settlement conferences are informal proceedings designed to help parties discuss and settle their disputes short of protracted litigation and / or a trial. At their conference, parties and their attorneys, if they are represented, will sit down with a neutral mediator to discuss their conflicts, to explore options for settlement, and if their discussions are successful, to agree on settlement terms.

Although less formal than a trial or a hearing, mediated settlement conferences are still legal proceedings and, as such, are conducted with decorum and guided by rules. The mediator will begin the conference by explaining the ground rules for the discussions and will likely then ask the attorneys and any unrepresented parties to each make a brief opening statement. The mediator will then start the negotiation process. At this point in the conference, the mediator will likely separate the group and meet with each party and his or her attorney individually in what is known as a "caucus session." Caucus sessions provide an opportunity for each party to discuss the case and to consider options for settlement privately along with his or her attorney and the mediator. The mediator will, with the parties' permission, share information and concerns discussed in caucus sessions and relay offers and counteroffers between the parties and their lawyers.

Unlike a judge or arbitrator, a mediator will not make decisions for the parties. Rather, the mediator's role is to help the parties reach their own agreement and settle their disputes themselves. To that end, a mediator will work to open channels of communication, to inject reason into the parties' discussions, and to help each side see the strengths and weaknesses of their case, discuss the benefits of settling, and suggest options for the parties to consider.

If the parties reach an agreement and at least one is represented by an attorney, the attorney will likely prepare a document that reflects the terms of their settlement. The mediator will give the parties an opportunity to review the document. If the parties are comfortable that the document reflects their agreement, they may sign it. If all the parties are unrepresented, the mediator will likely prepare a non-binding summary of the understanding they have reached in mediation. That summary can then be taken to an attorney for preparation of a final agreement or to the court for review.

If the parties are unable to reach an agreement, their dispute will simply proceed to trial without the mediator advising the court or jury of what happened at the conference.

## SOME QUESTIONS YOU MAY HAVE:

**?** *Do I have to attend and actively participate in the mediated settlement conference?* You must attend unless all the parties and the mediator or the court agree otherwise. The mediation process is designed to empower litigants to take a more active role in discussing and settling their case. However, some litigants prefer to let their attorney speak for them. You may want to discuss your participation with your attorney prior to mediation. Because mediation is an informal proceeding, you will not be sworn in or asked to testify about any matter in the case.

**?** *Who mediates and how are mediators trained?* You, the other party or parties, and your attorneys will be given an opportunity to choose a certified mediator to conduct your mediated settlement conference. All certified mediators have completed at least 40 hours of mediation training and met the other educational and training requirements necessary for certification. Many certified mediators are experienced attorneys licensed to practice law in North Carolina. There are also certified non-attorney mediators with significant professional or mediation experience. A list of certified mediators can be viewed at [www.ncdrc.gov](http://www.ncdrc.gov) (click on the "Find a Mediator" link).

**?** *Where will my mediated settlement conference be held?* Your conference will be held in a location agreed to by the parties and the mediator. In the absence of agreement, the mediator shall hold the conference in the county in which the case is pending. If you are in a wheelchair or have other accessibility issues, let your mediator know. Regardless of where your mediation is held, the proceeding will be private and not open to the public.

**?** *Will my attorney be with me throughout the conference and will I be able to speak privately with my attorney if I need to?* Yes. Your attorney will be present throughout the proceeding. If at any point during the conference you wish to speak privately with your attorney, you can ask the mediator for an opportunity to do so.

**?** *How much will mediation cost?* If you, the other party or parties, and the attorneys involved in your case agree upon a certified mediator and notify the court of your selection, the mediator's fee will be determined by agreement with the mediator. If you cannot agree on a particular mediator, the court will appoint a certified mediator to conduct your conference. Rule 7(b) of the *Rules Implementing Statewide Mediated*

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