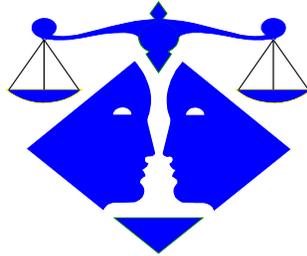


NOTE REGARDING USE OF THIS GUIDE:

This Guide was prepared at the request of court staff to assist *pro se* parties as they navigate the mediation process.

Court staff may request copies of this Guide from the Commission for distribution to *pro se* parties whose cases are referred to mediation.



SECTION II.E

The NC Dispute Resolution Commission's

**Guide to Superior Court Mediation for Parties
Not Represented by Attorneys**

If you are involved in a legal dispute in a North Carolina superior court, are proceeding without an attorney, and your case has been referred to a mediated settlement conference, this Guide, prepared by the North Carolina Dispute Resolution Commission (Commission), may be helpful to you. A party who proceeds without being represented by an attorney is also referred to as a “*pro se*” party.

What is a Mediated Settlement Conference?

Civil cases in the superior courts of North Carolina, with very few exceptions, are referred to mediated settlement conferences. While a mediated settlement conference is a legal proceeding and, as such, is conducted in an orderly fashion, it is a much less formal and intimidating process than a trial. The conference offers an opportunity for you to settle your case and be saved the time, expense, and stress involved in prolonged litigation. The mediator is there to help facilitate a discussion between those present for the conference and, hopefully, to help you reach an agreement. Your mediator is not a judge and will not advise you as to what action you should or should not take. Instead, during the conference, you and any other party(ies) or attorneys involved in your case, with the assistance of the mediator, will discuss your dispute and brainstorm possible ways to settle it.

Your mediator's conduct is governed by ethical rules which prohibit him/her from telling the court or any other third party what happened in mediation. The parties are not, however, bound by the same requirement. If you want the parties to also be bound by confidentiality, you can ask your mediator to help you and the opposing party discuss and reach an agreement on confidentiality at the beginning of your conference.

The process generally begins with an opening session during which all parties have an opportunity to summarize the case from their individual perspectives. The mediator may then separate the parties and hold private discussions with each. Your mediator may use the term "caucus" to describe these private sessions. You may feel more comfortable talking frankly with your mediator in the private session, which can help the mediator identify common ground between the parties. Following each caucus session, the mediator will carry information and offers and counteroffers between the parties. If you are able to reach an agreement at mediation, your case may eventually be concluded with the filing of a voluntary dismissal or consent judgment. If you are not able to reach an agreement, your case will simply proceed to trial.

Participating in a Mediated Settlement Conference Without an Attorney

It can be difficult for you as an unrepresented (*pro se*) party to understand legal proceedings and you may be at a disadvantage because you are unrepresented, particularly if the other party has an attorney. For these reasons, the Commission strongly urges you to seek legal counsel. The Commission, however, also recognizes that sometimes a party cannot afford, or for other reasons, chooses not to hire an attorney. **If you will be participating in mediation without the benefit of counsel, please be aware that while the mediator will do his or her best to ensure a civil and full discussion of the issues, s/he cannot give legal advice to anyone participating in the conference.**

Before you proceed with your conference, you may want to read the North Carolina Supreme Court's *Revised Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions (MSC Rules)*. The Rules can be found on the Commission's website at www.ncdrc.org. (Click on "Program Information" from the menu on your left, then select "Mediated Settlement Conference Program," and then click on "Program Rules"). The Rules may help you better understand the mediation process and your responsibilities as an unrepresented (*pro se*) party. All of the program forms referenced below can be found on the Commission's website.

It is important to prepare ahead of time for your conference so that a meaningful discussion and, hopefully, settlement can occur. Some important things you can do prior to your mediation are:

- Let your mediator know well ahead of time if you have any accessibility issues which will affect where s/he schedules your mediation, *e.g.*, the need for a wheelchair ramp or handicapped accessible bathrooms. Also, let your mediator know if you function better

or worse at certain times of the day due to prescription medications or health issues. If you have any significant concerns regarding your safety or security and believe the mediation should be held in a secure facility, that information should be communicated as well.

- If you need a foreign language interpreter, it is your responsibility, and not that of the mediator or court, to make arrangements in advance of your mediation to have an interpreter present. It is important that interpreters be trained and, if possible, certified by the North Carolina Administrative Office of the Courts (NCAOC). This ensures that they have a certain level of fluency relative to both the language in question and English and understand the kinds of legal terminology that may come up in mediations ordered by the court. If you need an interpreter, you may contact the NCAOC at (919) 890-1407 or, for a list of interpreters, you may access the following two websites:

<http://nccourts.org/LanguageAccess/Documents/SpanishForeignLanguageRegistry.pdf>

<http://www.nccourts.org/LanguageAccess/Documents/StateFederallyCertifiedInterpreters.pdf>

If you are hearing impaired and will need a deaf interpreter at your mediation, contact court staff in the judicial district where your case is filed to inquire about getting an interpreter for your mediation. You should contact court staff well in advance of your mediation date.

- Plan ahead. Think about what you want to say about your case. You will want to be able to summarize your case from your perspective. Keep your comments brief, no more than a few minutes. Both sides will have an opportunity to speak and neither should interrupt the other.
- Come to the table with a positive attitude and be prepared not just to talk, but to listen. The mediation process is dependent to a large degree on the good will of the parties. If parties refuse to talk, won't listen to one another, or don't bargain in good faith, their discussions may never get off the ground.
- If you think there are documents, photos, or other evidence that could be helpful for your mediator to see in order to better understand the case or your perspective, you may want to bring them to the mediation. Do be aware though that your mediator may not have a lot of time to review materials. Be prepared to summarize them briefly and to explain why they are important. You should **not** bring witnesses to your mediation.
- Do some hard thinking about your case – come to mediation with a list of all the issues or points in your dispute that you believe need to be discussed for the matter to be settled. Also, think about your bottom line – what will need to happen for you to be

able to resolve the conflict and feel a sense of closure? One important suggestion – be realistic in your thinking; mediation is not about winners and losers, but about consensus and finding common ground. Both sides must be willing to be flexible and to compromise for there to be any real chance of settlement.

- Make a commitment to yourself that you will keep your temper in check and be careful about what you say and how you say it. Harsh words, accusations, and profanity directed at the other side or even at your mediator will likely only make your situation worse and lessen the chances of a settlement. By the same token, remember that a smile, a kind word, and simple courtesy can go a long way.
- Try to get a good night's sleep. Don't worry about the process. You won't be put on a witness stand, forced to reach an agreement, or to sign a document with which you are uncomfortable. If your case does not settle, your mediator will submit a report to the judge advising that the case did not settle and the matter will simply proceed to trial.

Your Role in the Process

The MSC Rules provide that the mediator is to be the case manager for purposes of your mediated settlement conference. That means that the mediator is charged with scheduling the case for mediation, conducting the conference, and reporting the outcome of the conference to the court. That said, the MSC Rules do place some responsibilities on the parties and those responsibilities are discussed below. You can download the forms referenced below through the Commission's website at www.ncdrc.org. Most of the forms are accessible by clicking on the blue toolbox icon on the homepage. Use the menu on the left to locate forms for a particular purpose. Forms can also be found by clicking on "Program Information" from the home page menu, then clicking "Mediated Settlement Conference Program," and then clicking "MSC Forms."

- **ORDER OF REFERRAL.**

Mediated settlement conferences are mandatory in North Carolina's superior court for all eligible cases. The court will refer your case to mediation either with a written order or notice. It is possible for parties to file a Motion to Dispense with their conference, but the court will require a good reason to withdraw its order and, as a general rule, such motions are rarely granted. See MSC Rule 1.

- **DESIGNATING A MEDIATOR.**

You and the opposing party(ies) will have the opportunity to designate a mediator of your choice within a time limit set by the court. **All parties must agree on the mediator to be designated and the mediator you choose must be certified by the Dispute Resolution Commission and should appear on the list of mediators serving the district in which your case is filed.** If you and the others involved in your case can agree on a

mediator, you will need to designate that mediator in writing and on the approved form (see below) within the time frame for selection set out in the court's order.

You can search for a certified mediator on the Commission's website. Click "Finding A Mediator," then select the "Mediated Settlement Conference Mediators (Superior Court)" option from the screen. You may obtain a list of mediators active in the judicial district where your case is pending by clicking the drop down arrow on the box labeled "district" near the center of the screen. Select the appropriate district, and then click the "Search" button at the bottom of the screen. If you don't know the number of the district in which your case is pending, click the word "here" in the third paragraph of the instructions to view a map of North Carolina judicial districts. Once the list appears, you may access additional information about a mediator by clicking on his/her underlined name, including his/her contact information

One way to try to obtain agreement on a mediator is to tentatively select two or three mediators from the list and submit your choices for consideration by the opposing attorneys or other unrepresented parties involved in your case. Upon agreement, the plaintiff will typically complete the *Designation of Mediator* (Form AOC-CV-812) to let the court know that a mediator has been selected. The Designation form should be mailed or otherwise delivered to the Senior Resident Superior Court Judge or his/her designee.

If you can't agree on a mediator, you may ask the court to appoint one for you by using the second page of the Designation Form. Or you may simply take no action and wait for the court to appoint a certified mediator to your case.

For more information on selecting a mediator or using the website to search for mediators, return to "Finding a Mediator" from the left-hand menu and, then, from the screen, click on "*Guide to Selecting a Mediator*" or you may call the Commission's office for help at (919) 890-1415. See MSC Rule 2.

- **SUBSTITUTION OF MEDIATOR.**

If a certified mediator has been appointed by the court (because the parties could not agree on a mediator before the time to designate a mediator had expired), and you thereafter wish to substitute a different certified mediator, the court may approve the substitution (but is not required to) only upon proof that the appointed mediator has been paid the \$150 one-time administrative fee, and any other fees that may be due and owing. Examples are any fees for mediation services rendered prior to the substitution, postponement fees, and the like. If all parties agree to the substitution, you can complete AOC-CV-836, *Consent Order for Substitution of Mediator*, and submit it to the Trial Court Administrator/Coordinator for the judge's signature. See MSC Rule 7.

- **SCHEDULING THE CONFERENCE.**

Your mediator will contact you to schedule a date and time for the conference. **Please respond promptly and be prepared to offer some dates when you can attend.** Most mediations are scheduled for either a half day or a full day. Unless the parties agree otherwise, your mediation will be scheduled in the county where the case is filed and may be held in the courthouse, the office of a lawyer involved in the case, the office of the mediator, or some other public place. See MSC Rule 3.A.

If a party fails to cooperate with the mediator in scheduling the conference, the mediator has the authority to simply choose a date and notify the parties when and where the session will occur. If a party willfully fails to attend, s/he may be subject to sanctions by the court. See MSC Rules 6.A(1) and 5.

- **EXTENDING THE DEADLINE FOR COMPLETION OF THE MEDIATED SETTLEMENT CONFERENCE.**

The court is required to set a deadline for completion of your conference. The deadline is specified in the *Order for Mediated Settlement Conference in Superior Court Action* (AOC-CV-811) or in the scheduling notice/order you received from the court. MSC Rules 1.C(4) or 1.D(2) or (3). Only the court has authority to extend the deadline it has set for completion of the conference.

If you are unavailable to attend a mediated settlement conference before the deadline for completion set by the court expires, you may seek an extension of the deadline to complete your mediation. Since courts will rarely extend the trial date set for a case, it is likely that any new deadline for completion of your conference will still fall before the trial date. If the opposing party(ies) or his/her attorneys(s) are willing to agree to an extension, you should advise your mediator. The mediator can suggest to the court that the deadline be extended and provide Form AOC-DRC-19 to the Trial Court Administrator/Coordinator for the court's approval. In the alternative, the parties can sign and submit AOC-DRC-19 directly to the court. If the opposing party(ies) will **not** agree to an extension, you can file a motion with the court (AOC-CV-835), and ask the senior resident superior court judge to extend the deadline. There are filing instructions on the form. See MSC Rule 3.

Please understand that the MSC Program and the mediation process are intended to make the courts more efficient and to save parties' time. As such, you should not seek an extension unless it is truly necessary to ensure your participation.

- **POSTPONING THE MEDIATED SETTLEMENT CONFERENCE ONCE A DATE HAS BEEN SET.**

If a conflict arises that prevents you from attending a scheduled mediation, let your mediator and the other parties know as soon as possible. You can ask your mediator to postpone the scheduled date for your mediation, and reschedule it for a date prior to the completion date set by the court. The mediator should ask you why you are seeking a postponement. Where a mediator finds good cause to postpone, s/he will not assess a

postponement fee. Good cause for a postponement is a situation that your mediator determines both prevents your attendance and is beyond your control. A sudden serious illness, an accident causing serious injury, or the death of a close family member are examples of good cause for a postponement. In a situation where the mediator does not find good cause, the rules provide for a postponement fee to be paid by the party seeking the postponement. Again, a mediator cannot extend the date for the conference beyond the deadline set by the court for its completion. If it becomes necessary to extend the court's deadline for completion, the court's approval must be sought. See MSC Rule 7.

- **ATTENDANCE IS MANDATORY.**

You must attend the conference. All parties are required to be physically present for mediation. Physical attendance often results in the parties being more engaged in the process. Moreover, a great deal of communication is non-verbal. Facial expressions and body language can be lost when a party appears by phone or electronic means.

If you live out-of-state or at some distance from the conference or are seriously ill or home bound, you may appear by telephone or through software such as Skype, **if all parties and the mediator agree to this arrangement.** If the other parties and/or mediator will not agree, you may seek permission from the senior resident superior court judge of the district where your case is pending by filing a motion with the court. The Commission and courts do not have a form for this. If you fail to attend the scheduled conference, you may be found in contempt and/or assessed monetary sanctions, such as being required to pay all the costs of mediation and any attorneys' fees incurred by other parties.

In some instances, persons other than the parties may be permitted to attend in the discretion of the mediator. For example, an elderly or ill individual may want to have a family member with him or her to provide support. Witnesses are not allowed to attend and the conference may not be recorded. See MSC Rules 4 & 5.

- **PAYMENT OF MEDIATOR'S FEE.**

The program rules require that the mediator's fees be paid in equal shares by the named parties, or as otherwise agreed to by the parties, or as ordered by the court. Multiple parties shall be considered as one party if they are represented by the same attorney. Mediators appointed by the court are paid \$150.00 per hour for their mediation services, plus a one-time, per case, scheduling fee of \$150.00. Appointed mediators may not charge for travel time. The fees of party selected mediators are negotiated between the mediator and the parties. Party selected mediators may charge for their travel time and expenses.

Come prepared to pay the mediator's fee. Mediator fees are due at the conclusion of the conference (except that a mediator may seek payment of his/her administrative fee earlier), so bring your checkbook with you to the proceeding. If the mediator prefers to

mail an invoice, please pay it upon receipt. If you don't pay your mediator promptly, you may, following a hearing, be found in contempt and fined — in addition to the mediator fees owed.

If you are unable to pay the mediator due to a lack of funds, it is not necessary for you to inform your mediator until the conclusion of your conference. What you will need to do is complete a copy of AOC-CV-814, *Petition and Order For Relief From Obligation To Pay Mediator's Fee* and take it to your conference with you. Once your conference has concluded, give the Petition to your mediator. Your Petition must go before the court, as it is the court's responsibility to make a determination on your ability to pay. While the *Petition* is before the court, your mediator should not communicate with you about his/her fee. Both you and your mediator must abide by whatever the court decides. See MSC Rules 5 and 7.

CONCLUDING THE CONFERENCE.

If you do reach an agreement with your opposing parties at your conference, either the mediator or an attorney present at the proceeding will summarize the matters discussed in writing and provide you with a copy. The mediator may use form AOC-DRC-18, "*Mediation Summary*," or a similar document. Because you are unrepresented, the mediator should not require you to sign the summary at the end of the conference. Rather, the mediator will likely advise you to take the document to an attorney to have it reviewed. The Commission strongly advises you to seek legal advice before you sign any document. In that way, your legal rights can be better protected. **Be aware that the unsigned, summary document alone has no legal effect and will not conclude your case.** Your case is closed either when 1) all the parties draft and sign a written, final settlement agreement and file a dismissal or a consent judgment with the court, or 2) the parties present their summary in court for entry of a memorandum of judgment by the court.

If the parties are not able to reach an agreement in mediation, your mediator will declare an impasse and your case will proceed to trial. Though your mediation did not end in settlement, that does not necessarily mean that the process was a failure. Issues are often narrowed during the discussion and the parties may leave the conference with a much better idea of what may be needed to reach a settlement down the road. If after some reflection, you find you would like to discuss matters further or even want an opportunity to reconsider the other side's proposal for settlement, it is perfectly appropriate to contact the opposing attorney or the other party, if s/he is also *pro se* to discuss settlement further or, even to contact the mediator, to explore whether it might be appropriate to reconvene the conference, assuming the other side is also willing to talk further.

If you have any further questions, please contact the Dispute Resolution Commission's office at 919-890-1415. Commission staff cannot give legal advice, but are happy to respond to your questions about the mediation process or the Mediated Settlement Conference Program.

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