

mediators can be viewed at [www.ncdrc.gov](http://www.ncdrc.gov) (click on the “Find a Mediator” link).

**? What if I prefer to have a hearing before the Clerk and do not want to mediate?** If there is some compelling reason why your case should not be mediated, you may ask the Clerk to rescind his / her order. However, do not be too quick to reject the mediation process. Even in situations where parties seem hopelessly at odds, a skillful mediator can sometimes find a way to break the log jam and get parties talking.

**? What if I don't like the outcome?** Not every matter can be mediated successfully. If you do not agree with a proposed resolution, let your mediator know and simply do not sign any agreement offered. You should not feel pressured.

**? 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.



## THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

OFFICE  
919-890-1415


FAX  
919-890-1935

EMAIL  
[DRCMediators@nccourts.org](mailto:DRCMediators@nccourts.org)

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

MAILING ADDRESS  
N.C. Dispute Resolution Commission  
P.O. Box 2448  
Raleigh, NC 27602

PHYSICAL ADDRESS  
901 Corporate Center Drive  
Raleigh, NC 27607

FOLLOW US ON TWITTER  
 @NC\_DRC



# MEDIATION IN MATTERS PENDING BEFORE CLERKS OF SUPERIOR COURT

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)

## 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 a Clerk of Superior Court has referred a dispute in which you are involved to mediation. In making the referral, the Clerk is asking a mediator to sit down with you and the other parties and individuals involved in the matter to discuss your concerns and disagreements and to consider ways to resolve them. Mediation can be a beneficial process whether your dispute involves an estate, guardianship, boundary disagreement, or other matter pending before the Clerk. You may be wondering why your dispute has been referred to mediation and what the process is all about.

## WHY MEDIATION?

The North Carolina court system has several years of experience with mediation. Mediation programs have been implemented to help resolve disputes filed in our State's district, superior, and appellate courts. All of these programs were initially started as pilots, and, during their pilot phases, were carefully studied and their settlement rates monitored. Such programs were found not only to help expedite the settlement of disputes, but to make the litigation process less stressful for those involved. Mediation programs also help judges better allocate their time and save tax dollars in that disputes which settle earlier require less attention from court staff. Given the success that mediation enjoyed in the trial and appellate courts, legislation was adopted in 2005 to establish a program to provide for mediation of matters pending before Clerks.

## WHAT HAPPENS DURING A MEDIATION?

Mediation is not like a hearing or trial. You will not have to testify and your mediator will not decide the outcome of your dispute.

Rather s/he will conduct a discussion during which you and the others involved will search for a mutually agreeable solution to your conflict. Though less formal than a trial or hearing, a mediation is still a legal proceeding conducted with decorum and guided by rules.

Your mediator will meet with you and others involved in your dispute, including any attorneys, guardian ad litem, or representatives of any state or other agencies. The mediator will explain the ground rules for the discussion and will ask the attorneys or parties to describe the dispute from their respective points of view. The mediator will then start negotiations. At some point, the mediator will likely separate the group and meet individually with each party and his or her attorney in what is known as a "caucus." A caucus provides an opportunity for a mediator to speak frankly and gives the parties and others an opportunity to share information in confidence with the mediator.

The mediator's ultimate goal is to help the parties resolve the dispute themselves. In order to help parties reach an agreement, a mediator will try to open channels of communication, inject reason into the discussion, encourage each side to see the dispute through the eyes of the other, and carry proposals between the parties.

## WHAT HAPPENS IF WE REACH AGREEMENT?

If parties are able to reach an agreement in mediation, it may be possible to reduce it to writing and conclude the matter by filing a dismissal or consent judgment with the Clerk. In some types of disputes, including estate and guardianship matters, agreements reached in mediation must be presented to the Clerk for review. The Clerk may approve the agreement and conclude the matter or seek further information from those involved. Even when no agreement results from mediation, the process can still be

beneficial. Lines of communication may be opened and momentum toward resolution generated.

Often, matters filed with Clerks involve delicate situations and families under stress. Is Mom no longer capable of caring for herself? Will my siblings and I still be speaking when Dad's estate is finally settled? Though mediation is not always successful, the process holds out the hope that those involved in such difficult disputes will be able to come together in an effort to fully discuss the conflict, to collaboratively and creatively explore their options, and to assume responsibility for finding a resolution which meets the needs of all participants.

## SOME QUESTIONS YOU MAY HAVE:

**? Who attends the mediation?** All named parties to the dispute must attend the mediation. The Clerk may order others to attend, including those with some stake in the outcome or those who have relevant information to share. If you have an attorney, s/he will also be present. In a guardianship matter, it is especially important that the person whose capacity to care for him or herself is in question appear and participate in the proceeding.

**? If I live outside North Carolina, can I participate by telephone?** The mediation process works best when parties appear in person and most mediators will discourage participation by telephone. Important nonverbal communication through eye contact, body language, and tone are lost when a party participates by phone. Nevertheless, if travel to this State poses a real hardship, you may raise the issue with your mediator or the Clerk.

**? Will I have an opportunity to speak at the mediation?** The mediation process is designed to give all participants an

opportunity to discuss and to share ideas for addressing their concerns and settling their disagreements. However, if you are not comfortable speaking and you have an attorney, s/he may speak for you. You will not be put under oath and asked to testify at mediation.

### **? I am disabled. Will the building where the mediation is held be accessible to me?**

You should notify your mediator of your limitations and of any accessibility issues, such as the need for wheelchair ramps. You may want to suggest some possible places to hold the mediation. Parties or other participants who need deaf or language interpreters or other assistance should also let the mediator know. If you function better early in the day due to health concerns or medications, advise the mediator of that as well.

**? How much will mediation cost?** If you, the other party or parties, and your attorneys agree upon a mediator, the mediator's fee will be arrived at by agreement with the mediator. If you and the other party cannot agree on who should mediate your dispute, the Clerk will appoint a mediator. Rule 7.B. of the *North Carolina Supreme Court's Rules Implementing Mediation in Matters Before the Clerk of Superior Court* provides for court-appointed mediators to be compensated at the rate of \$150 per hour for mediation services plus a one time administrative fee of \$150. No person found to be indigent by the Clerk shall be required to pay a share of the mediator's fee. For purposes of the Rule, multiple parties represented by the same attorney will be considered as "one" share.

**? How do I find a mediator?** Lists of trained, certified mediators, including those who are specially trained in mediating estate and guardianship matters, are available through the North Carolina Dispute Resolution Commission. A list of certified

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