

services is to be paid in equal shares by the parties at the conclusion of the conference.

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

**? What if I prefer to go to trial and do not want to mediate my case?** Once your case has been referred to the FFS Program for a conference, you and your attorney must participate in the conference or choose another 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 urges you not to reject the mediation process. Even in cases where parties seem hopelessly at odds, a skillful mediator can sometimes be effective in helping opposing parties think and talk about ways to resolve their dispute so that it works for both of them.

**? 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 both parties. No one can force you to settle your case. If you are unable to reach an agreement, your case will simply be put back on the trial calendar and the judge will not be told why your case did not settle. And, even when an agreement is not reached, mediation can still be helpful as issues in dispute can be narrowed, communication improved, and momentum toward an eventual resolution generated.

**? What if I have a complaint about my mediator's conduct?** You may talk with your mediator about your concerns in the hope of resolving them amicably. You or your attorney 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

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# MEDIATED SETTLEMENT CONFERENCES IN EQUITABLE DISTRIBUTION AND OTHER FAMILY FINANCIAL CASES

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 you are involved in a dispute which the court has referred to the Family Financial Mediated Settlement Conference (FFS) Program for a mediated settlement conference. This means that you will be required to meet with your spouse, ex-spouse, partner, or other parent (the other party) and, with the help of a mediator and your attorney, try to resolve financial disputes arising out of your marriage or the support needs of you and your children. You may be wondering why your case has been referred for mediation and what the process is all about. This brochure is designed to answer these questions and more.

As you read this brochure, try to think of mediation as an opportunity to resolve your disputes in a way that is acceptable to you without the delay and risk involved in long and drawn out litigation and trial. Not all cases settle at mediation and some must be heard by a judge. But, when mediation is successful, you may be saved time and expenses of a trial, be able to reduce stress, and have the satisfaction of knowing that you and the other party were able to work things out yourselves.

## WHY MEDIATION?

The Custody and Visitation Mediation Program has operated successfully for many years in North Carolina's district courts. Mediation is also available statewide for most civil claims filed in North Carolina's superior courts. As a result of these programs, judges, attorneys, parties, and members of our legislature have learned that mediation works — that it helps resolve disputes early on and gives those most directly involved more control over outcomes.

Because of the success of these mediation programs, in 1997, the General Assembly adopted legislation providing for a district court program to help parties resolve family

financial disputes. The Family Financial Mediated Settlement Conference (FFS) Program provides parties an opportunity to mediate claims concerning the division of their marital property and debts as well as claims for child or spousal support. It is to this program that your case has been referred.

## WHAT HAPPENS DURING A MEDIATION?

Mediated settlement conferences are informal proceedings. A mediator, a trained neutral with no stake in the outcome of your dispute, will meet with you, the other party, and your attorneys to help both of you discuss your disagreements. The mediator will work to open channels of communication, help clarify both parties' needs and positions, and explore settlement options with both of you. Unlike a trial, mediations are not open to the public.

You will be participating in the discussions and problem-solving effort, but will not be called upon to testify or be cross-examined by the other party. The mediator will begin the conference by explaining the mediation process and ground rules for your discussions. Generally, each party will be asked to make a brief opening statement describing the marital property and debts, the issues in dispute, and his or her needs and expectations. These conversations may occur in an opening session in which both parties and attorneys participate, or in the discretion of the mediator, with each party and his / her attorney individually. The mediator will then begin the negotiation process. After an opening session with all participants, the mediator may then meet separately with each party and his or her attorney in what is known as a "caucus session." The caucus session provides an opportunity for the mediator to speak frankly, provides you with an opportunity to share information in confidence with your mediator, and permits offers and counteroffers to be discussed privately. The mediator will convey information and offers between you and the other party.

The mediator's goal is to help the parties, with the advice of your attorneys, reach your own agreement. Unlike a judge, your mediator will not impose a settlement on you. If you reach an agreement and at least one of you is represented by an attorney, the attorney will likely prepare a document that reflects your settlement which you may then review and sign at the mediation. If neither party is represented, the mediator will likely prepare a non-binding summary of the understanding reached in mediation. That summary can then be taken to an attorney for preparation of a final agreement or to the court for review.

## WHAT ARE THE BENEFITS OF MEDIATION?

A successful mediation allows you to avoid the time and stress involved in lengthy litigation and trial and assures both you and the other party of an outcome that you find mutually acceptable. In addition, where children are involved, a successful mediation can sometimes mark a turning point in the parents' relationship. They may become motivated to communicate more effectively with the goal of cooperatively resolving future disputes, financial or otherwise, that arise as they parent from separate households. Many cases can be settled in mediation. However, if the dispute cannot be resolved, having participated in the process, the parties and their attorneys can continue their dialogue that began in mediation and their efforts to find a satisfactory resolution.

## SOME QUESTIONS YOU MAY HAVE:

**❓ *Is this the same Program as the Child Custody and Visitation Mediation Program?*** No. The Child Custody and Visitation Mediation Program, as its name implies, addresses issues of child custody and visitation. The Family Financial Settlement Program has a different focus, helping parties resolve financial issues, including division of marital property, debts, and claims for alimony and child support. You may, during

the course of your divorce, be referred to both programs for mediation.

**❓ *Who qualifies as a mediator and how are they trained?*** You and the other party will have the opportunity to choose your certified mediator. All mediators participating in the Family Financial Mediation Program are certified by the N.C. Dispute Resolution Commission and have met stringent threshold criteria relating to his or her education and work experience, completed at least 40 hours of mediation training, and passed a background check. A list of certified mediators can be viewed at [www.ncdrc.gov](http://www.ncdrc.gov) (click on the "Find a Mediator" link), along with information about each mediator's education, experience, and training. If you and the other party cannot agree upon a mediator, the court will appoint a certified mediator to schedule and hold a mediation in your case.

**❓ *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 will 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.

**❓ *How much will mediation cost?*** If you, the other party, and the attorneys involved in your case agree upon a mediator and notify the court of your selection, the mediator's fee will be determined by agreement with the mediator. If you and the other party cannot agree on a mediator, the court will appoint one. Rule 7 of the *Rules Implementing Settlement Procedures in Equitable Distribution and Other Family Financial Cases* 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 for

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