



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

GUIDELINES

Mediator Observations

(Adopted by the Commission on May 8, 2009; revised on September 10, 2011, May 6, 2020, May 1, 2023, September 20, 2024, and March 6, 2026.)

Observer Defined

An observer is defined as a future applicant for DRC certification who is a third-party neutral observer of the mediation process.

Mediators Allowing Observer in Mediations

All DRC certified mediators are encouraged to allow an observer, with the consent of the parties to the mediation, to follow them throughout the entire mediation process. See MSC Rule 8(a)(10), FFS Rule 8(a)(12), and DCC Rule 7(a)(2)(c). Observations are an important part of mediator training and provide the observer with the tools to become successful mediators. Mediators shall not allow more than two observers for any single mediation, in person or remote.

Observer Compliance with the Standards of Professional Conduct for Mediators

The Standards of Professional Conduct for Mediators (Standards) shall apply to all persons who observe mediation conducted by a DRC certified mediator. The Observer is responsible for reviewing and understanding the Standards, including conducting a conflict check prior to observing a mediation.

Guidelines for Applicants Fulfilling Observation Requirements

MSC Rule 8(a)(3) requires all applicants seeking certification in the Superior Court Settlement Program to complete a specific number of MSC approved observations of mediations.

FFS Rule 8(a)(5) requires all applicants seeking certification in the Family Financial Settlement Program to complete a specific number of FFS approved observations of mediations.

1. The MSC and FFS Rules provide that Attorney applicants are required to complete two observations. A minimum of one observation shall be a live in-person mediation. The other observation may be a second live in-person mediation OR a DRC approved video observation OR a live remote-technology observation.
2. The MSC and FFS Rules provide Non-Attorney applicants are required to complete five observations. A minimum of two observations shall be live in-person mediations. The other

three observations may be a combination of live in-person mediation, DRC approved video observation, AND/OR live remote-technology observation

DCC Rule 7(a)(2)(c)(1) requires all applicants seeking certification in the District Criminal Court Program to complete a specific number of observations of mediations.

1. The DCC Rules provide that applicants are required to observe two court-referred district court mediations for criminal matters. A minimum of one observation shall be a live in-person mediation. The other observation may be a second live in-person mediation OR a DRC approved video observation OR a live remote-technology observation.
2. The DCC Rules provide that applicants are required to co-mediate or solo-mediate at least three court-referred district court mediations for criminal matters. Two co-mediations or solo-mediations conducted via remote technologies may qualify for two of the three required mediations. A minimum of one mediation shall be a live in-person, mediation.

Observations through Remote Technologies

The mediator conducting the mediated settlement conference shall ensure the observer is able to always shadow the mediator during the remote conference. For example, if the mediation is conducted through the use of video technology and includes break-out rooms, the mediator shall bring the observer into each break-out room as they conduct the mediation. The observer shall have the opportunity to ask questions of the mediator, apart from the participants to the mediation, during and after the conference.

Observations through a DRC Approved Observation Video

The DRC approved observation video must be watched in its entirety by the applicant. The DRC shall determine how observation compliance is verified for each applicant.

To qualify as a DRC approved observational video the video must meet the following requirements:

1. be approved by the DRC to qualify as an observation pursuant to the MSC, FFS, or DCC Rules;
2. be approved for use for one program only (MSC, FFS, or DCC) and will not be eligible for observation for multiple DRC programs.
3. be greater than 1.5 hours in length for MSC and FFS;
4. be greater than 30 minutes in length for DCC;
5. provide commentary throughout the video explaining the process, rules, standards, and how to handle situations as they arise within the video; and
6. be in compliance with the DRC Program Rules and Standards of Conduct.

The owner/producer of the video shall at no cost grant the DRC the authority to provide a copy of the video to any applicant seeking to meet the observation requirement for mediator certification in the MSC, FFS, or DCC Program. The video shall be solely used for certification or training of mediators in North Carolina. The DRC shall not collect a fee for the use and/or distribution of the video.

Guidelines for Observer Conduct

When you are observing a mediation, be considerate of the mediator who is helping you. During the conference, be as quiet and unobtrusive as possible and always observe the following rules of conduct:

1. Make every effort to be on time for the conference. If your schedule changes and you will not be able to attend, let the mediator know so they do not wait for you.
2. Dress appropriately. This is a court ordered proceeding.
3. Give your full attention to the conference. Cell phones and other similar devices are to be turned off during sessions and kept in a pocket, briefcase or handbag.
4. Do not try to talk to or to pass notes to the mediator while s/he is working. This disrupts the mediator's concentration.
5. During the conference, do not inject yourself into the negotiation's process or attempt to express any opinions unless you are expressly invited to do so by the mediator. If one or both of the parties ask you to value the case or to comment on their chances in court during either a joint or a caucus session, advise then that you are there only as an observer.
6. Do not make any suggestions about legal arguments to the attorneys either during or after the conference.
7. Observers, like the mediator, are to remain neutral. Avoid any statements or body language that would display any inclination on your part to favor one side or his/her arguments over that of the other.
8. Mediators are mindful of the clock and may not want to discuss what is happening with observers between caucus sessions. You should check with the mediator before the conference starts and ask when he or she prefers to take your questions or respond to your comments. For example, the mediator may be willing to talk with you between caucus sessions, during breaks, at lunch or after the mediation.
9. Remember that the mediation process is confidential. You should not reveal any confidential information that you learn in caucus to the other party during the conference or afterward. In addition, you should not speak to anyone after the conference regarding any statements made or conduct occurring there.
10. Observers should not use the mediation session as an opportunity to solicit any kind of business from either parties or attorneys present.

Observers who do not follow these Requirements for Observer Conduct, or for any other reason in the discretion of the mediator, may be asked to leave the conference and may have their conduct reported to the Commission.