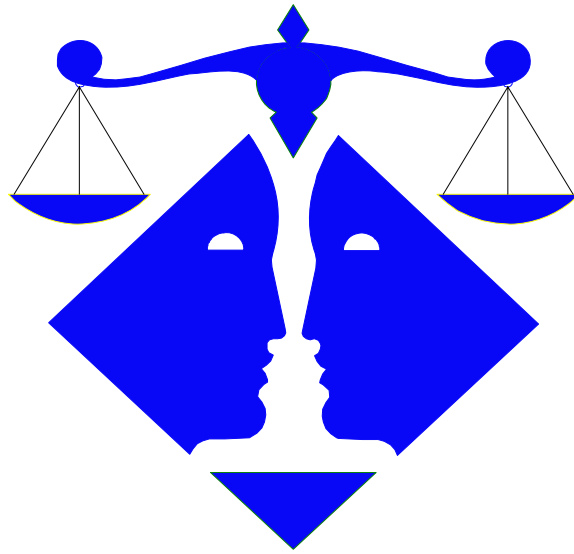


NC DISPUTE RESOLUTION COMMISSION

Guide to Selecting a Mediator



(Approved by the NC Dispute Resolution Commission on February 15, 2008)

Introduction

This *Guide to Selecting a Mediator* has been prepared for you by the North Carolina Dispute Resolution Commission. The Commission, established by statute, is charged with certifying North Carolina court-based mediators and with regulating their conduct.

Mediated settlement is a process designed to expedite settlement of disputes filed in court. If the process is successful, parties can be spared the cost, time and stress involved in protracted litigation and a trial. During mediated settlement, a mediator will sit down with the parties and their attorneys, if they have legal representation, and encourage them to discuss their dispute and to brainstorm about ways to settle it. A mediator is not a judge and will not decide the case. Rather, the mediator's role is to help the parties arrive at their own terms for settlement. If an agreement can be reached, it will be reduced to writing and signed, and then the case can be dismissed. If an agreement cannot be reached, the case simply proceeds to trial. To learn more about mediated settlement, you may explore the Commission's web site at www.ncdrc.org.

The North Carolina Supreme Court has made mediated settlement mandatory for nearly all civil (non-criminal) cases filed in North Carolina's superior courts, including personal injury cases and contract and other business disputes. The Court has also mandated mediation of equitable distribution (property and asset division) cases filed in our district courts as a result of the dissolution of marriages. In other words, if you are involved in civil litigation in North Carolina's superior courts or are involved in a divorce, you are almost certain to be ordered to participate in a mediated settlement conference. Though the Court does not require them to do so, Clerks of Superior Court may refer boundary, estate, guardianship and other disputes filed before them to mediation. (In addition, some judicial districts offer mediation in misdemeanor criminal cases if the individuals involved in the case wish to participate. However, much of what follows does not apply to criminal cases).

Once your case has been referred to mediated settlement, the court or Clerk will give you and the others involved in your dispute a period of time to select a mediator. If those involved in your dispute cannot reach an agreement or take no action to select a mediator, the Court/Clerk will appoint one for you.

If you have an attorney, very often your lawyer will talk with the other side and chose a mediator for your case. If you are a *pro se* party, *i.e.*, you have no lawyer, then you will be directly involved in the selection process. If the other party's attorney, or the other party, if not represented by a lawyer, does not contact you to discuss selection, you should contact them. Once you have agreed on a mediator, the plaintiff's attorney or the plaintiff will file a *Designation of Mediator* form with the Court or Clerk advising them of the selection. Approved forms are available on the Commission's web site or through the Commission's office. (To see a list of forms by name and number, click on the program to which your case was referred and then click on the "Forms" option from the next menu. To view and print a form, click on the "Forms" button near the top of the Commission's web site and then, when the search screen appears, enter the form number.) For more on the mediator selection process, please see Rule 2 of the program rules for the mediation program to which your dispute has been referred. All program rules are posted on the Commission's web site.

The Commission encourages parties and attorneys to select a mediator rather than simply leaving it to a judge or Clerk to appoint one. The Commission believes that parties and their attorneys are more likely to settle their case when they have made an effort to select their mediator and have chosen someone they are confident can help them succeed. Moreover, when parties can agree on a mediator, they have already demonstrated that they can collaborate successfully which bodes well for their future negotiations.

Who Can Mediate in North Carolina's Courts and How Do I Locate a Mediator?

Superior Court Mediators (MSC Program)

The North Carolina Supreme Court requires mediators participating in the superior court's Mediated Settlement Conference Program to be trained, certified and accountable to the Commission for their professional conduct. As such, parties and lawyers must choose a certified mediator from the Dispute Resolution Commission's list of certified superior court mediators. To see the list, visit the Commission's web site at www.ncdrc.org and click on "List of Mediators" from the left-hand menu. Then click on "Mediated Settlement Conference Mediators (Superior Court)" and a search screen should appear. To see a list of all the mediators available for your selection, scroll to the field labeled "district" and enter the number for the judicial district in which your case is filed (if you don't know that number, click on the map). After you have clicked the search button at the bottom of your screen, you should see a list of mediators available to serve in the district you selected.

If you click on an individual mediator's name, you will be presented with additional contact and biographical information for that mediator. There are additional ways to search for a mediator other than by district, including searching by key word. Further instructions on how to search for a mediator are available on the search screen and are also discussed below. Many mediators have supplied the Commission with web addresses where you can read additional information about them and their practice. You can link directly to a mediator's web site from the Commission's.

Certified superior court mediators are either lawyers with at least five year's experience practicing law or they are non-attorneys with significant mediation experience or significant management, administrative or professional experience. All have completed at least 40-hours of mediation training and required observations and demonstrated to the Commission's satisfaction that they are ethical individuals. Non-attorney mediators have completed additional training in North Carolina court structure and civil procedure and hold at least a 4-year degree.

Clerk Program Mediators

The North Carolina Supreme Court requires all Clerk Program mediators to be trained and certified as either superior court or family financial mediators. Moreover, those mediating estate and guardianship disputes must complete additional training in estate and guardianship law and the aging process. Parties and lawyers ordered to mediation by a Clerk must choose their mediator from the NC Dispute Resolution Commission's list of certified Clerk Program mediators. To see the list, visit the Commission's web site at www.ncdrc.org and click on

“List of Mediators” from the left-hand menu, then click on “Clerk Program Mediators”. You will then be asked whether you are looking for a Clerk Program Mediator to conduct an estate or guardianship mediation or one to help settle some other type of dispute pending before the Clerk. After you have made a selection here, a search screen will appear. To see a list of all the mediators available for your selection, scroll to the field labeled “county” and select the county in which your case is filed. After you have clicked the search button at the bottom of your screen, you should see a list of mediators available to serve in the county you selected.

If you click on an individual mediator’s name, you will be presented with additional contact and biographical information for that mediator. There are additional ways to search for a mediator, including searching by key word. Further instructions on how to search for a mediator are available on the search screen and are discussed below. Many mediators have supplied the Commission with web addresses where you can read additional information about them and their practice. You can link directly to a mediator’s web site from the Commission’s.

Family Financial Mediators (FFS Program)

Unlike the other programs noted above, parties and attorneys may select a trained, certified mediator to mediate their equitable distribution dispute or they may nominate a non-certified mediator to conduct their mediated settlement conference. The Commission believes that training and certification are important credentials for mediators and strongly encourages attorneys and parties to seek out certified mediators. In addition, certified mediators are accountable to the NC Dispute Resolution Commission for their ethical conduct. If you choose to work with a non-certified mediator and later have a complaint regarding his or her conduct, you may have no recourse. To see a list of certified family financial mediators, visit the Commission’s web site at www.ncdrc.org and click on “List of Mediators” from the left-hand menu. Then click on “Family Financial Mediators (District Court) and a search screen will appear. To see a list of all the mediators available for your selection, scroll to the field labeled “district” and enter the number for the judicial district in which your case is filed (if you don’t know that number, click on the map). After you have clicked the search button at the bottom of your screen, you should see a list of mediators available to serve in the district you selected.

If you click on an individual mediator’s name, you will be presented with additional contact and biographical information for that mediator. There are additional ways to search for a mediator other than by district, including searching by key word. Further instructions on how to search for a mediator are available on the search screen and are discussed below. Many mediators have supplied the Commission with web addresses where you can read additional information about them and their practice. You can link directly to a mediator’s web site from the Commission’s.

Certified family financial mediators are either lawyers with at least five year’s practice experience or they hold Advanced Practitioner Status with the Association for Conflict Resolution. This means that all non-attorney FFS mediators (and some attorney mediators for that matter) have met a national qualifications standard, one requiring advanced mediator training and a mentorship. All certified family financial mediators have completed at least 40-hours of mediation training and required observations and demonstrated to the Commission’s satisfaction that they are ethical individuals.

District Criminal Court Mediators

Parties are not permitted to select their district criminal court mediator. Rather, these mediators are appointed by the court or, at the court's request, assigned by a community mediation center. The following material does not apply to these mediators or to the District Criminal Court Mediation Program.

How Do I Narrow My Search for A Mediator?

If you have visited one of the Commission's lists, you have seen that every North Carolina judicial district or county has a number of mediators available to serve attorneys and litigants. You may be wondering, how do I and the others involved in my dispute narrow our selection down to a single mediator? Certainly, if you are an attorney, you can ask your colleagues for suggestions on mediators that they have used and would use again. Non-attorneys may be acquainted with or have some knowledge of the mediators appearing on a judicial district's list or they may have family, friends or co-workers who have had positive experiences in mediation. So, be sure to make some inquiries.

In more urban districts or counties where there are many mediators on a list, it can be effective to search for mediators using key words. Say, for example, your client in a superior court case is a plaintiff alleging there are serious construction defects in an office building that she and her associates paid to construct. If the facts are really complicated, you might want to search for a mediator who has an engineering background, is a contractor, or who is an attorney with experience handling complex construction defect cases. To conduct a key word search, go to www.ncdrc.org and click on the "Mediated Settlement Conference Mediators (Superior Court)" list. When the search screen appears, scroll down to the field labeled "Select". Using the drop down box, select key words, which best describe the qualifications you are seeking. In the above example, you might select the key words, "engineer" and "construction". Then, hit the search button and a list should appear. The more key words you enter the more it will narrow your search. If you will be paying your mediator's travel expenses, you may want to consider focusing on mediators who not only meet your key word test, but live relatively near the district or county where your case is filed. You may perform a key word search in connection with the Family Financial Settlement and Clerk Program Mediator lists as well.

Once you have used key words to narrow your search to a manageable list of mediators you will want to read and compare the biographical information that each mediator has provided to the Commission. To read biographical information, simply click on a mediator's name and a profile screen will appear. Scroll down the screen until you reach the boxes that contain biographical information. After you have read the mediator's bio, click the "cancel" button at the bottom to return to the list and access another bio. (Do not hit the green return button to get back to the list.) Be aware that not all mediators have supplied biographical information to the Commission.

You may want to narrow your search to three or so mediators and then present your short list to the other party or parties for their consideration. They may present a similar list to you and you will probably want to read the biographical information posted for those mediators.

Remember, you must all reach an agreement on who should serve, no attorney or party has the right to dictate mediator selection. If you can't agree, ask the Court/Clerk to appoint.

Interviewing A Mediator

Sometimes you can't learn enough about a mediator to make you comfortable just by looking at lists or biographical information. It is permissible to call a mediator and **briefly** interview him or her. During the interview, you may ask the mediator about his or her education and professional experience; any relevant interests; type and complexity of cases he or she had mediated; how much he or she charges; whether he or she has ever worked with a deaf or foreign language interpreter, if relevant; or how long you may have to wait for his or her services. You may also want to identify the parties, so that the mediator can let you know if he or she has any "conflicts", *i.e.*, relationships or knowledge that might affect his or her ability to be neutral. Of course, you will want to try and gauge how relaxed and comfortable you feel with the mediator(s) you are interviewing.

You will probably want to interview no more than three mediators and to limit your questions to a handful, ones that you think will be most relevant to you in making your decision. Again, you should be brief. It is also extremely important to remember that mediators are to be neutral during mediation, that is, not favor one side over the other. As such, it is not fair or appropriate to use the interview time to talk about the specific facts in dispute in your case or to share your perspective on those facts. If you do that, the mediator may be forced to decline your case. You may tell the mediator what kind of case you are involved in and whom the parties are. Save everything else for your mediation!

Conclusion

The Commission encourages parties and lawyers to take mediator selection seriously. Different mediators bring different personalities, skills and strengths to the table and it is important for lawyers and parties to think about what combination of education, experience, temperament and style best serves them given their dispute and their personalities.

If you are a lawyer it is important to keep your client in the loop. Let your client know you are selecting a mediator and explain why you and opposing counsel chose the person you did. Make sure your client knows about the Commission's website and has one of the Commission's brochures. There is a brochure for every major program supported by the Commission and they are available at no charge through the Commission's office. Talk with your client about mediation prior to his/her conference, explain the process and the mediator's role. Your client will be more relaxed if s/he knows what to expect ahead of time, rather than hearing things for the first time from the mediator. If you are a *pro se* party, request a brochure or visit the Commission's web site at www.ncdrc.org and take the time to learn about the process and the role of the mediator. Call the Commission's office and talk with staff if you have questions.

If the parties and attorneys involved in a case have done their homework, they will have chosen a mediator they are confident can help them succeed. In essence, they will be on the path to settlement even before they commence their discussions.