

Advisory Opinion of the NC Dispute Resolution Commission

Advisory Opinion No. 13 (2007)

(Adopted and Issued by the Commission on August 10, 2007)

N.C. Gen. Stat. §7A-38.2(b) provides, "The administration of mediator certification, regulation of mediator conduct, and decertification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department." On August 28, 1998, the Commission adopted an Advisory Opinions Policy encouraging mediators to seek guidance on ethical dilemmas that arise in the context of their mediation practice. In adopting the Policy and issuing opinions, the Commission seeks to educate mediators and to protect the public.

This particular Opinion is an outgrowth of complaint that was filed with the Commission.

Concern Raised

During a superior court mediation, a party made representations to the mediator regarding a key fact in dispute. Later in a caucus session with the opposing party, the mediator learned information that the mediator believed irrefutably contradicted the key fact. The mediator returned to the party who made the initial assertion, angrily confronted him and, using foul language, suggested he had lied about the key fact. The party responded by telling the mediator that he found his demeanor and language unprofessional. The mediator collected himself and agreed, but the offended party withdrew from the mediation.

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Standard II of the Supreme Court's Standards of Professional Conduct for Mediators provides that, "A mediator shall, in word and action, maintain impartiality toward the parties and on the issues in dispute." Confronting a party in a hostile and accusatory manner and accusing him of lying, or words to that effect, is not only wholly inconsistent with this Standard, but counterproductive as evidenced by the party's quick exit from the conference and the resulting impasse. Rather, the mediator should have brought the contract back to the room, pointed out the inconsistency and asked the party to explain his earlier response.

Mediators have a duty to protect the integrity of the mediation process and to conduct the mediation with decorum. The Commission strongly cautions all mediators against using profanity, even in instances where the parties and their attorneys are using it.