



ADVISORY OPINION OF THE THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Advisory Opinion Number 11 (2007)

Advisory Opinion Number 10 (2006)

(Adopted and Issued by the Commission on November 3, 2006; Amended September 20, 2024.)

Attendance, Rule 4(a)(1)

Over the objection of attorney A, the mediator has the discretion to allow attorney B's paralegal to attend the mediated settlement conference.

Concern Raised

Certified superior court mediator contacted the Dispute Resolution Commission (Commission) about a matter that arose at a mediation in which he was representing the defendant. The caller reported that he had arrived at the mediation with his paralegal. He explained that it was a complicated case and that he needed support staff there to assist him in keeping the paperwork organized. The plaintiff's attorney objected to the presence of the paralegal. The mediator allowed the paralegal to attend. Later, the caller was involved in another mediation involving the same opposing counsel. When the caller arrived for this mediation with his paralegal, the plaintiff's attorney again objected to the paralegal's presence. The caller asks the Commission to clarify whether his paralegal may attend.

Advisory Opinion

Rule 4(a)(1) of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions (MSC) and Rule 4(a)(1) of the Rules for Settlement Procedures in District Court Family Financial Cases (FFS) address attendance at the conference. MSC Rule 4(a)(1) provides that the following persons shall attend: individual parties or their representatives, if the party is not a natural person or a governmental entity; a representative of any governmental entity that is a party; insurance company representatives; and at least one counsel of record for each party or participant. FFS Rule 4(a)(1) provides that all individual parties, and at least one counsel of record for each party whose counsel has appeared in the case, shall attend the mediated settlement conference. These Rules provide that these persons shall attend but does not limit attendance only to these individuals. MSC and FFS Rule 6(a)(1) provides that the mediator shall at all times be in control of the conference and the procedures to be followed.

It is within a mediator's discretion, to permit individuals other than those specified in Rule 4(a)(1) to attend and participate in a mediated settlement conference. If an opposing counsel or party objects to the inclusion of an individual, it is the mediator's responsibility to resolve the matter prior to commencing the mediation of the case. The mediator should try and mediate the matter of

attendance first, but if the parties cannot reach an agreement, the mediator shall make a decision pursuant to Rules 6(a)(1).

In the event that the conduct of any such individual that the parties or the mediator have agreed to seat becomes counter-productive, the mediator has the discretion under Rules 6(a)(1) to exclude the individual from attending further.

N.C. Gen. Stat. §7A-38.2(b) provides, “[t]he administration of mediator certification, regulation of mediator conduct, and certification 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 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.