



ADVISORY OPINION OF THE THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Advisory Opinion No. 32 (2016)

(Adopted and Issued by the Commission on November 18, 2016; Amended September 20, 2024.)

The best practices for a mediator conducting a mediated settlement conference where at least one participant is a non-English speaking self-representing party are defined below.

Concerns Raised

A court-appointed Dispute Resolution Commission (Commission) certified mediator in a Family Financial Settlement case asks for guidance in a situation involving a self-representing Chinese-speaking plaintiff and a self-representing English-speaking defendant.¹ Plaintiff has indicated that she will bring a family member to act as an interpreter for her and all parties agree to that arrangement. Mediator specifically asks for guidance about the following concerns:

- 1) May the mediator permit the family member of the self-represented plaintiff to serve as her interpreter at the mediated settlement conference?**
- 2) If the parties choose to summarize their terms on a Mediation Summary Form (AOC-DRC-18) at the conclusion of the conference, in what language should the document be drafted?**
- 3) What are the recommended best practices for the mediator to follow to ensure that it is clear that the Mediation Summary was the product of a mediation involving at least one non-English speaking party?**

Advisory Opinion Question 1

¹ While the facts of this advisory opinion deal with a specific question asked of a Commission member involving an FFS case and two self-representing parties, one of whom spoke Chinese, the conclusions and best practice suggestions herein would also apply in any MSC or FFS mediation involving two self-representing parties, one of whom speaks a language other than English.

May the mediator permit the family member of the self-representing plaintiff to serve as her interpreter at the mediated settlement conference?

Yes.

Standards of Professional Conduct for Mediators (Standards), Standard 4 “Consent” provides in part: “A mediator shall make reasonable efforts to ensure that each party understands the mediation process, the role of the mediator and the party’s options within the process.” Standard 4(c) provides: “If a party appears to have difficulty comprehending the mediation process, issue or settlement options, or appears to have difficulty participating in a mediation, then a mediator shall explore the circumstances and potential accommodations, modifications, or adjustments that would facilitate the party’s ability to comprehend, participate and exercise self-determination.” In this inquiry, the self-representing plaintiff needs the services of a language interpreter as an accommodation and wishes to bring a family member to the mediated settlement conference to act as her interpreter.

While the Administrative Office of the Court (AOC) maintains a list of trained and qualified language interpreters, and provides language interpreters in some court proceedings, the AOC does not provide them free of charge for mediated settlement conferences. (AOC interpreter staff can be reached at (919) 890-1407 or OLAS@nccourts.org). Many parties needing language accommodation are unable to afford the services of a trained and qualified language interpreter, and as here, elect to bring a family member/friend to the mediated settlement conference to act as an interpreter. The mediation process belongs to the parties and a party needing language accommodation is permitted to and responsible for, deciding who the interpreter should be. The mediator may permit the family member/friend to attend the conference and serve as interpreter for the party needing the accommodation, subject to the mediator’s exercise of their professional judgment that the family member/friend can interpret sufficiently to provide reasonable assurance of the party’s understanding during the conference, and unless doing so would not be in compliance with the applicable program rules. This accommodation facilitates the party’s capacity to understand the mediation process, the role of the mediator and the party’s options within the process as contemplated by Standard 4.

It is important that the thoughts and ideas of each party are heard and understood by the other parties and the mediator. A literal word by word recitation is rarely possible since there is not a one-to-one correspondence between words or concepts in different languages. However, the mediator should clarify that the interpreter will relate as completely as possible all that is said during the conference and not just a summary and should encourage the interpreter not to engage in conversation with a party separate and apart from the specific statements made and/or questions asked.

A mediator’s duty under Standard 4 does not, however, create a duty on the mediator to explore the availability of a trained and qualified language interpreter; rather it is the responsibility of the party needing the accommodation to make the decision as to the need for an interpreter and who the interpreter should be. If the mediator, in the exercise of their professional judgment is not satisfied that the interpreter can provide reasonable assurance of the party’s understanding during

the mediation process, the mediator should recess the mediation, encourage the party needing accommodation to locate another individual who is able to provide reasonable assurance, and reschedule the conference.

Caveat—If a mediator is conducting a mediation for the North Carolina Industrial Commission (IC), they should be sure to follow the IC’s protocol on the use of interpreters.

Question 2

If the parties choose to summarize their terms on a Mediation Summary Form (AOC-DRC-18) at the conclusion of the conference, in what language should the document be drafted?

Since both parties are self-representing in this case, the Commission recommends that any matters resolved at the mediated settlement conference be summarized on AOC-DRC-18, Mediation Summary Form, or a similar form.² Advisory Opinion 28 (2013) advises that the parties may assist the parties in reducing to writing the terms in the Mediation Summary Form. The Summary is not a binding agreement and neither the parties nor the mediator should sign it. The question arises, “In what language should the Mediation Summary Form be drafted?” Since English is the primary language used in North Carolina’s courts, it is recommended that the Mediation Summary be drafted in English. The mediator should then read the Summary to the parties, ask the trained and qualified interpreter or the family member interpreter to interpret its terms for the non-English speaking plaintiff, facilitate a discussion to ensure that all parties understand the terms of the Summary and afford them an opportunity to make any necessary corrections.

Question 3

What are the recommended best practices for the mediator to follow to ensure that it is clear that the Mediation Summary Form was the product of a mediation involving at least one non-English speaking party?

The self-representing parties may take the Mediation Summary Form to an attorney/attorney of their choice to have them prepare a binding contract for the parties’ signatures or they may bring the Mediation Summary Form to the court and seek entry of an appropriate order. To alert the court to the language access issue, it is recommended as a best practice that the mediator add a provision at the end of the Mediation Summary Form indicating that the Summary was read to the parties and interpreted for the non-English speaking party. When the Mediation Summary Form is presented to the court for entry of a memorandum of judgment in that court proceeding, the court may then utilize the services of a qualified translator and/or interpreter pursuant to policies and procedures adopted by the AOC which may provide said services at no cost to the parties in order

² The mediator may wish to review the “Mediation Agreements” section in the Toolbox on the Commission’s website for instructions and guidance in the use of forms when all parties are pro se, one party is self-representing, or all parties are represented by counsel. If one party is represented by counsel and one is a self-represented non-English speaking party, the mediator may wish to refer to Advisory Opinion 31 (2015).

to complete the necessary examination to ensure that all parties understand and agree to the terms of the memorandum of judgment prior to entry by the court.

The Commission suggests that the following or similar language be added to the Mediation Summary Form (AOC-DRC-18) when a mediator is conducting a mediation involving a non-English speaking party:

“This Mediation Summary was drafted in English, read to the parties by the mediator in English, and interpreted by _____ (name) for _____ (the non-English speaking party) in the following language: _____.”

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.