Family Financial Mediation Guide

Parties Not Represented by Attorneys

N.C. Dispute Resolution Commission

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About the North Carolina Dispute Resolution Commission

The North Carolina Dispute Resolution Commission was established in October of 1995, pursuant to N.C. Gen. Stat. § 7A-38.2. The Commission is charged primarily with certifying and regulating private mediators who serve the courts of this State. The Commission also recommends policy, rules, and rule revisions relating to dispute resolution in North Carolina's courts; provides support to court-based mediation programs; certifies mediation training programs; serves as a clearinghouse for information about court-based mediation programs; assists other State agencies interested in or providing dispute resolution services to their constituencies; publishes a newsletter and maintains a website.

About the North Carolina Judicial Branch

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

About the North Carolina Administrative Office of the Courts

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources

If you are in a legal dispute involving family financial issues, are proceeding without an attorney, and the court has referred your case to a mediated settlement conference, this Guide, prepared by the North Carolina Dispute Resolution Commission (NCDRC) may be helpful to you. From this point on, a party who proceeds without being represented by an attorney will also be referred to as a "*pro se"* party.

A family financial dispute involves issues such as equitable distribution (division of marital assets and debts during divorce) and/or child or spousal support. Situations where a party is alleged to have violated an agreement or a court order involving a family financial issue may also be referred to a mediated settlement conference. A conference can be ordered by the court or requested by an attorney or party. Parties participating in a conference may also agree to discuss issues like child support and visitation.

What is a Mediated Settlement Conference?

Family financial cases filed in North Carolina's district courts are routinely referred to mediated settlement conferences. A mediated settlement conference (conference) is a legal proceeding that is much less formal and less intimidating than a trial. The conference offers an opportunity for you to settle your case while saving you time, money, and stress involved in lengthy litigation. The mediator is there to help facilitate a discussion between those present to hopefully help them

reach an agreement. Your mediator is not a judge and will not advise the parties on what action they should or should not take. Instead during the conference, you, the opposing party, and any attorneys involved in your case will, with the assistance of the mediator, discuss your dispute and brainstorm possible ways to settle it.

Your mediator's conduct is governed by ethical rules that prohibits them from telling the court or any other third party what happened in mediation. The parties are not bound by the same requirements. If you want the parties to also be bound by confidentiality, you can ask your mediator to help you discuss and reach an agreement on confidentiality at the beginning of the conference.

Conferences may begin with a joint opening session, or with the parties in separate rooms allowing for private discussions (these are called "caucus" sessions). The mediator will explain the process to each room, or in the joint opening session, and give the parties an opportunity to summarize the case from their individual perspectives. If you are uncomfortable meeting face-to-face with the opposing party, let the mediator know you do not wish to have a joint opening session when scheduling the conference. If no joint session is initially held, you will go directly to caucus sessions where the mediator will explain the process individually. You may feel more comfortable speaking with the mediator in the private sessions, which can help the mediator identify common ground between the other party and you. After each caucus session, the mediator will carry information, offers, and counteroffers between you and the other party. If you are able to reach an agreement at mediation, your case may be concluded with the filing of a voluntary dismissal or consent judgment. If you are not able to reach an agreement, your case will simply proceed to trial.

Participating in a Mediated Settlement Conference Without an Attorney

It can be difficult for *pro se* parties to understand legal proceedings. You may feel that you are at a disadvantage because you are unrepresented, particularly if the opposing party has an attorney. For these reasons, the NCDRC strongly urges you to seek legal advice. However, the NCDRC also recognizes that sometimes a party cannot afford, or for other reasons, chooses not to hire an attorney. **If you will be participating in mediation without the benefit of counsel, please be aware that while the mediator will do their best to ensure a civil and full discussion of the issues, they cannot give legal advice to any conference participant.**

Before proceeding with your conference, you may want to read the *Rules of the North Carolina Supreme Court Implementing Settlement Procedures In Equitable Distribution And Other Family Financial Cases (FFS Rules)*. These Rules can also be found on the NCDRC's website at www.ncdrc.gov. (Click on "More Information" from the Contents menu, then select "Program Information", then select "Family Financial Settlement Program", and then click on "Program Rules"). The Rules may help you better understand the mediation process and your responsibilities as a *pro se* party. All of the program forms referenced below can be found on the NCDRC's website.

The NCDRC hopes that you will approach your opportunity to mediate with a positive attitude and a willingness to be flexible and compromise. This is your chance to settle your case without the need for lengthy litigation or a trial. If you can reach an agreement, you will likely accomplish two important things:

- By virtue of working things out yourselves, you and the opposing party will have determined the outcome of your case. You are the ultimate authority on your financial situation and the needs of any children. You have the best and most complete information to make decisions regarding the care of your children and the division of your property. Research indicates that when parties make their own decisions, they are more likely to feel better about the outcome and to follow-through on the commitments they made. Do you really want a judge, who does not know you or your kids, deciding your future?

- Additionally, you and the opposing party may be able to preserve whatever goodwill that exists between you. Parties who endure lengthy and often painful divorce litigations or the ordeal of a trial rarely leaves the system happy. Hostility and anger will likely follow both of you in the future. When children are involved, it is especially important to preserve whatever goodwill may still exist between the parents. Mediations focuses on cooperation and consensus building which can help you set the tone for positive interactions. This is important because to ensure a meaningful discussion and settlement, you may no longer be joint partners, but you will remain joint parents.

  It is important to prepare ahead of time for your conference. Some important things you can do prior to your mediation are:

  - Let your mediator know well ahead of time if you have any health or accessibility issues which may affect when and where they schedule your mediation (*e.g.,* the need for a wheelchair ramp or handicapped accessible bathrooms). If you have any significant concerns regarding your safety or security and believe the mediation should be held in a secure facility, share the information with your mediator.

  - If you need a foreign language interpreter, it is your responsibility, and not that of the mediator or court, to make arrangements in advance of your mediation to have an interpreter present. It is important that interpreters be trained and, if possible, certified by the North Carolina Administrative Office of the Courts (NCAOC). If you need an interpreter, contact the NCAOC at (919) 890-1407 or for a list of interpreters you may access a list on the NCAOC Do You Need a Court Interpreter website.

If you are hearing impaired and will need a deaf interpreter at your mediation, please review the NCAOC Guidelines for Accommodating Persons Who Are Deaf Or Hard Of Hearing In The Courts.

- Plan ahead. Think about what you want to say about your case. You will want to be able to summarize your case from your perspective. Keep your comments brief, no

more than a few minutes. Both sides will have an opportunity to speak and neither should interrupt the other. The Commission has created a Guide to Assist Parties in Preparing for a Family Financial Mediation. It is recommended that parties review the Guide before the scheduled conference.

- Come to the table with a positive attitude, prepared to talk, and to listen. To a large degree, the mediation process is dependent on the good will of the parties. If they refuse to talk, will not listen to one another, or do not bargain in good faith, their discussions will never get off the ground.

- If you think there are documents or other evidence that could be helpful for your mediator to see in order to better understand the case from your perspective, you may want to bring them to the mediation. Note: that your mediator may not have a lot of time to review materials. Be prepared to summarize them briefly and to explain why they are important. Local rules for mediation in your district may require you to bring certain financial information to your conference, so please check with your mediator about what information is required**. You should not bring witnesses to your mediation**.

- Do some hard thinking about your case. Come to mediation with a list of all the issues or points in your dispute that you believe need to be discussed for the matter to be settled. Also, think about your bottom line. What will need to happen for you to be able to settle the dispute and feel a sense of closure? One important suggestion is to be realistic in your thinking. Mediation is not about winners and losers, but about consensus and finding common ground. Both sides must be willing to be flexible and to compromise for there to be any real chance of settlement.

- Make a commitment to yourself that you will keep your temper in check and watch what you say. Divorce is difficult. The parties are often angry, which can lead to harsh words, accusations, and profanity directed at the other side or even at your mediator. This will only make the situation worse and lessen the chances of a settlement. Remember that a smile, a kind word, and simple courtesy can go a long way.

- Try to get a good night's sleep. Do not fret about the process. You will not be put on a witness stand, forced to reach an agreement, or to sign a document with which you are uncomfortable. If your case does not settle, your mediator will submit a report to the court advising them that the case did not settle, and the matter will simply proceed to trial.

Your Role in the Process

The FFS Rules provide that the mediator is to be the case manager for purposes of your mediated settlement conference. That means that the mediator is responsible for scheduling the case for mediation, conducting the conference, and reporting the outcome of the conference to the court. The FFS Rules do place some responsibilities on the parties and those responsibilities are discussed below. You can download the forms referenced below through the NCDRC's website at

www.ncdrc.gov. Most of the program forms reference below can be accessed by clicking on the Toolbox section on the homepage. From the menu, click on the Family Financial Program, then click on "forms".

ORDER OF REFERRAL.

Mediated settlement conferences are typically ordered in family financial cases filed in North Carolina's district courts. It is possible for parties to file a Motion to Dispense with their conference, but the court will require a good reason to withdraw its order and, as a rule, such motions are rarely granted. (FFS Rule 1)

DESIGNATING A MEDIATOR.

You and the opposing party will have the opportunity to designate a mediator of your choice within a time limit set by the court**. All parties must agree on the mediator to be designated and the mediator you choose must be certified by the NCDRC and should appear on the list of mediators serving the district in which your case is filed**. If the parties agree on a mediator, you will need to designate that mediator in writing and on the approved form (see below) within the time frame for selection set out in the court's order. (FFS Rule 8)

You can search for such a mediator on the NCDRC's website. (Click "Find A Mediator", then select the "Family Financial Settlement Mediators (District Court)" option from the screen.) You may obtain a list of mediators active in the judicial district where your case is pending by clicking the drop-down arrow on the box labeled "district" near the center of the screen. Select the appropriate district, and then click the "Search" button at the bottom of the screen. If you don't know the number of the district in which your case is pending, click the word "here" in the third paragraph of the instructions, to view a map of North Carolina judicial districts. Once the list appears, you may access additional information about a mediator, including his/her contact information, by clicking on his/her underlined name.

One way to try to obtain agreement on a mediator is to tentatively select two or three mediators from the list and submit your choices for consideration to the opposing party or their attorney. Upon agreement, the plaintiff will typically complete the *Designation of Mediator* form (AOC-CV-825) to let the court know that a mediator has been selected. The Designation form should be mailed or otherwise delivered to court staff in the district where your case is filed and who is charged with administering the FFS Program.

If you cannot agree on a mediator, you may ask the court to appoint one for you by using the second page of the *Designation* form. Or you may simply take no action and wait for the court to appoint a certified mediator to your case.

For more information on selecting a mediator or using the website to search for mediators, return to "Find a Mediator" from the menu and, then, from the screen, click on *Guide to Selecting a Mediator* or you may call the NCDRC's office for help at (919) 890-1415. (FFS Rule 2)

SUBSTITUTION OF MEDIATOR.

If a mediator has been appointed by the court (because the parties could not agree on a mediator before the time to designate a mediator had expired), and you thereafter wish to substitute a different mediator, the court could approve the substitution, *only upon proof that the appointed mediator has been paid the $175 one-time administrative fee, and any other fees that may be due and owing.* Examples are any fees for mediation services rendered prior to the substitution, postponement fees, and the like. If both parties agree to the substitution, you can complete AOC-CV-836, *Consent Order for Substitution of Mediator*, and submit it to the Trial Court Administrator/Coordinator for the judge's signature. (FFS Rule 7)

SCHEDULING THE CONFERENCE.

Your mediator will contact you to schedule a date and time for the conference. **Respond promptly and be prepared to offer some dates when you can attend.** Most mediations are scheduled for either a half day or a full day. Unless you and the opposing party agree otherwise, your mediation will be scheduled in the county where the case is filed. It might be held in the courthouse, the office of a lawyer involved in the case, the office of the mediator, or a different public place. (FFS Rule 3(a))

If a party fails to cooperate with the mediator in scheduling the conference, the mediator has the authority to simply choose a date and notify the parties when and where the session will occur. If a party willfully fails to attend, they may be subject to sanctions by the court. (FFS Rules 5 and 6(a)(1).

EXTENDING THE DEADLINE FOR COMPLETION OF THE MEDIATED SETTLEMENT CONFERENCE.

The court is required to set a deadline for completion of your conference. The deadline is specified in the *Order for Mediated Settlement Conference in Family Financial Cases* (AOC-CV-824) or other scheduling notice/order you received from the court. Only the court has authority to extend the deadline it has set for completion of the conference. (FFS Rules 1(c)(1) or 1(c)(4))

If you are unavailable to attend a mediated settlement conference before the deadline for completion set by the court expires, you may seek an extension. Since courts will rarely extend the trial date set for a case, it is likely that any new deadline for completion of your conference will still fall before the trial date. If the opposing party or their attorney are willing to agree to an extension, you should advise your mediator. The mediator can suggest to the court that it extend the deadline and submit an *Order without Motion Extending Completing Date for Mediated Settlement Conference or Other Settlement Procedure Upon Stipulation of the Parties, Suggestion of the Mediator, or Upon The Court's Own Motion (*A*OC*-DRC-19) to the Trial Court Administrator/Coordinator for the court's approval. In the alternative, the parties can sign and submit AOC-DRC-19 directly

to the court. If the opposing party **does not** agree to an extension, you can file with the court a *Motion and Order Extending Completion Date for Mediated Settlement Conference or Other Settlement Procedure* (AOC-CV-835) and ask the court to extend its deadline. There are filing instructions on the form. (FFS Rule 3(c))

Please understand that the FFS Program and the mediation process are intended to make the courts more efficient and to save parties' time. Only seek an extension if it is truly necessary to ensure your participation.

POSTPONING THE MEDIATED SETTLEMENT CONFERENCE ONCE A DATE HAS BEEN SET.

If a conflict arises that prevents you from attending a scheduled mediation, let your mediator and the opposing party know as soon as possible. You can ask your mediator to postpone the scheduled date for your mediation and reschedule it for a date prior to the completion date set by the court. The mediator should ask you why you are seeking a postponement. If a mediator finds good cause to postpone, they will not assess a postponement fee. Good cause for a postponement is a situation that your mediator determines both prevents your attendance and is beyond your control. A sudden serious illness, an accident causing serious injury, or the death of a close family member are examples of good cause for a postponement. In a situation where the mediator does not find good cause, the rules provide for a postponement fee to be paid by the party seeking the postponement. A mediator cannot extend the date for the conference beyond the deadline set by the court for its completion. If it becomes necessary to extend the court's deadline for completion, the court's approval must be sought. (FFS Rule 7)

ATTENDANCE IS MANDATORY.

You must attend the conference. All parties and parties required to attend a conference may agree to conduct the mediation in person, using remote technology, or using a hybrid of in person and remote technology. If all parties and persons required to attend a conference cannot agree on the attendance method, and the mediator has selected on their mediator profile that he/she will conduct conference only using remote technology, then the conference shall be conducted by remote technology, which includes by either internet means or by phone. However, if the parties and person required to attend the conference do not agree on an attendance method, and the mediator has not selected an attendance method on their profile, then the conference shall be conducted in person. Any mediation conducted in person shall be done in strict compliance with all federal state, and local safety guidelines that are in place for trial court proceedings at the conference.

PAYMENT OF MEDIATOR'S FEE.

Unless otherwise agreed to by the parties, or as ordered by the court, the program rules require that the mediator's fees be paid in equal shares by the parties. Mediators appointed by the court are paid $150.00 per hour for their mediation services, plus a one-time per case, administrative fee of

$175.00. Appointed mediators may not charge for travel time. Mediators selected by the parties are paid an hourly fee by agreement between the mediator and the parties and may charge for travel time and expenses.

Come prepared to pay the mediator's fee. Mediator fees are due at the end of the conference (a mediator may seek payment of his/her administrative fee be paid before the scheduled mediation), so bring your checkbook with you to the proceeding. If the mediator prefers to mail the parties an invoice, please pay it upon receipt. If you do not pay your mediator promptly, you may, following a hearing, be found in contempt and fined—in addition to the mediator fees owed.

If you are unable to pay the mediator due to a lack of funds, it is not necessary for you to inform your mediator until the end of your conference. You will need to complete a copy of the *Petition and Order For Relief From Obligation To Pay Mediator's Fee* (AOC-CV-828) form and file it with the court at the completion of the mediation. Follow the instructions on the form when filing with the court. Once your conference has concluded, notify the mediator that you will be filing the *Petition* and ask that this information be noted on their *Report of Mediator.* Your *Petition* must go before the court, as it is the court's responsibility to make a determination on your ability to pay. While the *Petition* is before the court, your mediator should not communicate with you about their fee. Both you and your mediator must abide by whatever the court decides. (FFS Rules 5 and 7)

CONCLUDING THE CONFERENCE.

If an agreement with your opposing party is reached at your conference and both of you are not represented, either party or the mediator may record the matters discussed in writing. The *Mediation Summary* (AOC-DRC-18) form or a similar document should be used. This summary should not be signed by the parties or the mediator and is not intended to be a binding agreement. **Be aware that the unsigned summary document alone has no legal effect as a binding agreement and will not conclude your case.** Your agreement becomes binding, and the case is closed when either 1) both of you draft and sign a written, final settlement agreement and file a dismissal or a consent judgment with the court, or 2) the parties present their summary in court for entry of a memorandum of judgment by the court. One or both of you may wish to consult with an attorney after the mediation to draft a final agreement based upon the Mediation Summary for signatures and for court filing. The NCDRC strongly encourages you to seek legal advice before you sign any documents.

If the opposing party is represented by counsel and an agreement is reached, the attorney, <u>not</u> the mediator, may draft a settlement agreement using the Mediated Settlement Agreement (AOC-DRC-17) form or a similar form for both parties to consider and review. Since you are unrepresented, the mediator will not be able to offer you any legal advice. The mediator will most likely tell you it is important to have a legal document reviewed before you sign it. The mediator will recess the mediation for you if you wish to have an attorney review the agreement before you do sign it. The mediator will read the draft agreement prepared by the attorney and help facilitate any discussions about revisions or changes to it. The NCDRC strongly encourages you to seek legal advice before you sign any document. That way, your legal rights can be better protected.

If you determine that you do not wish to consult an attorney, and you convey your acceptance of the agreement, and your decision to sign the agreement to the mediator, the mediator will ask all parties to sign it. Then it will be distributed to all parties and attorney(s).

If the parties are not able to reach an agreement in mediation, your mediator will declare an impasse and your case will proceed to trial. Although your mediation did not end in a settlement, it does not necessarily mean that the process was a failure. Issues are often narrowed during the discussion and the parties may leave the conference with a much better idea of what may be needed to reach a settlement down the road. If after some reflection, you find you would like to discuss matters further or even want an opportunity to reconsider the other side's proposal for settlement, it is perfectly appropriate to contact the opposing attorney, the other party, if they are also *pro se* to discuss settlement further or, even to contact the mediator, to explore whether it might be appropriate to reconvene the conference, assuming the other side is also willing to talk further.

If you have any further questions, please contact the Dispute Resolution Commission's office at (919) 890-1415 or by email DRCMediators@nccourts.org. NCDRC staff cannot give legal advice but are happy to respond to your questions about the mediation process or the Family Financial Settlement Program.

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