



NC DISPUTE RESOLUTION COMMISSION

Overview of DRC Operations and Program Administration

www.ncdrc.org

1. Composition, Role, and Funding of the Commission.

The North Carolina Dispute Resolution Commission (NC DRC or Commission) was created by statute in 1995. The NC DRC is a free standing commission that is part of the Judicial Department. The Commission is charged with certifying mediators and mediator training programs and with regulating the conduct of mediators and training program personnel. The Commission reports to the Alternative Dispute Resolution Committee of the State Judicial Council and, ultimately, the NC Supreme Court.

A. Composition of the Commission.

- i)** The Commission has 16 members.
- ii)** Commission members are appointed for three-year terms by all branches of government, and may serve an additional consecutive three-year term. Appointing authorities include the Chief Justice of the NC Supreme Court (holds the bulk of appointments), Governor, Speaker of the House, President Pro Tem of the Senate, and President of the State Bar. The Chief Justice determines which Commission member shall be appointed Chair.
- iii)** The fact that appointments are made by all branches of government has meant that the Commission's reach has been broader than just the courts. Executive branch agencies and even private entities have felt free to come to the Commission for help with policy development and rule drafting. Several State agencies also utilize the database of Commission certified mediators.

- iv) Members of the Commission include judges, mediators, lawyers who are not mediators (litigation/consumer perspective) and knowledgeable members of the public.

B. Role of the Commission.

- i) In addition to fulfilling its responsibilities to certify and regulate mediators and mediation trainers, the Commission also assists the Supreme Court with policy development and rule drafting, including helping to craft legislation for new dispute resolution programs and processes.
- ii) The Commission has a small staff. Staff helps to facilitate the work of the Commission's various committees, such as helping to draft program guidelines and advisory opinions; makes arrangements for Commission and committee meetings; reviews certification applications; takes complaints about mediators; interfaces with judges and court staff implementing programs and with consumers of mediation services, including parties and attorneys. Staff also maintains the Commission's extensive website and develops publications regarding its programs including judicial benchbooks for the court and for staff, newsletters, program brochures, and the like. The Commission's website serves as a clearing house for information on dispute resolution in North Carolina.

C. Funding of the Commission. The Commission is self-supporting; its funding is generated by certification and certification renewal fees, but no taxpayer dollars.

D. Commission Committees. The Committee structure consists of the following Standing Committees: Executive Committee, Mediator Certification Committee, Grievance and Disciplinary Committee, Standards and Advisory Opinions Committee, District Court Program Oversight Committee, and Superior Court Program Oversight Committee. Occasionally, ad hoc committees will be established when issues arise which require extensive investigation and consideration.

2. Basic Tenets of NC's Mediated Settlement Conference Programs.

The Commission helps to support four major programs operating in North Carolina's Courts. These programs are typically described as "mediated settlement conference programs" and are characterized by the following features:

- **The parties pay the mediator for his/her services.** These programs are designed to be very cost effective for NC taxpayers. Mediators must provide services without charge to those who demonstrate that they cannot afford to pay. The program operates with a cadre of independent contractor mediators.
- **The parties have an opportunity to select their mediator.** Party selection helps to insure mediator quality in that mediators who are not successful in working with parties or settling cases will not likely continue to be selected to serve. In addition, selection helps to promote settlement in that when parties and lawyers know and have confidence in their mediator, they are more likely to approach the process with a positive attitude.
- **Attorneys and parties actively participate in the mediation process.**
- **There is heavy reliance on caucusing.** After a joint, opening session in which the parties present their perspective on the case, the mediator typically separates the parties and meets with them in individual “caucus” sessions, allowing for more in-depth and candid sharing of each party’s needs, goals, and positions. The mediator facilitates discussions during caucus sessions and transmits proposals for settlement between caucuses.

3. Commission Supported Programs

The four programs which the Commission helps to support are:

A. The Mediated Settlement Conference (MSC) Program.

The MSC program is the Commission’s oldest and largest program, established by statute in 1995, after a successful pilot program in several judicial districts beginning in 1991. This program provides for mediation of superior court civil actions and operates statewide. Judges are required to refer all eligible superior court civil actions to a mediated settlement conference. Typical cases mediated in the Program include: automobile accidents, personal injury, negligence, contract, business, real estate, technology, malpractice, construction defect, and many other types of disputes. All civil cases with the exception of petitions for an extraordinary writ or appeal from the revocation of a driver’s license are referred to mandatory mediation.

Referral to a mediated settlement conference is the automatic default ADR process, but the parties can ask the court to order another process,

including neutral evaluation, arbitration, or summary trial. Such requests are rare.

B. Family Financial Settlement Conference (FFS) Program.

Mediators serving this program mediate the financial aspects of divorce, including dividing the property and debts of the couple and helping them resolve issues of child and spousal support, if applicable. Judges are required to refer disputes over the division of property and debts to mediated settlement. If the parties agree, issues of child custody and visitation can also be discussed at the conference. This Program was established by statute in 1997 and, like the MSC Program, operates with a dispute resolution menu, though mediated settlement is the default procedure and remains the preferred process.

C. Clerk Mediation (CMP) Program.

Established by statute in 2005, mediators serving this Program mediate matters referred to mediation by Clerks of Superior Court. Clerks are not required to refer cases to mediated settlement, but may do so in their discretion. Some of the types of cases mediated in this Program include guardianship, estate matters, special proceedings, and boundary disputes. This Program is also authorized statewide.

D. District Criminal Court Mediation (DCC) Program.

Although criminal cases filed in district court (misdemeanor cases) are mediated in many judicial districts around the state, five judicial districts have determined to operate their programs pursuant to NC Supreme Court Rules and to submit their mediators to state level certification and regulation processes. These districts participate in the District Criminal Court Mediation Program, established by statute in 2006. This Program operates differently than the three programs noted earlier in that the parties typically remain together throughout the mediation process and there is much less reliance on caucusing. Parties do not have an opportunity to select their mediator and do not pay for the mediator's services beyond administrative and dismissal fees which are generally paid by the defendant if the charges are dismissed as a result of mediation.

4. Certification of Mediators and Mediator Training Programs.

Mediators serving the MSC, Clerk, and DCC Programs must be certified. Mediators who are not certified may conduct Family Financial mediations if selected by the parties (if appointed by the court they must be certified). The Commission believes that certification is extremely important for purposes of quality control. Certification ensures that mediators are trained both in mediation processes and techniques and in North Carolina program

rules and practice. Certification also ensures that mediators are trained in ethics and are accountable to the Commission for their conduct.

The Commission believes that the more choices parties have among a range of **qualified** mediators, the better. For that reason, the Commission certifies both attorney and non-attorney applicants for mediator certification. However, not unexpectedly given that these are court-based programs, roughly 85% of certified mediators are attorneys.

The bar is set high and it is not easy to become certified under any of the programs in North Carolina. Currently, the Commission has approximately 1600 active and 100 inactive certifications outstanding.

Certification requirements vary from program-to-program and the certification process for each program typically has a number of components, including:

A. Threshold Education and Work Experience Requirements. All programs require that applicants demonstrate that they meet certain specified threshold education and work experience requirements to be certified. It does not matter how much mediation training an applicant has if s/he can't demonstrate some seasoning and real world life and work experience. The MSC Program, for example, requires that an attorney applicant be a graduate of a law school accredited by the American Bar Association and have five years of legal practice experience following graduation to be eligible for certification. A non-attorney applicant must be a graduate of an accredited college or university and have either: 10 years of relatively high level administrative, professional, or management experience of an executive nature or have 3 years of supervised mediation experience and four years relatively high level administrative, professional, or management experience of an executive nature. Threshold requirements for family financial certification are even stricter. An applicant must either meet a national certification standard through the Association for Conflict Resolution or: 1) hold an advanced degree, 2) be a North Carolina licensed member of one of the professions listed in the rule and 3) have five years of experience practicing that profession. The specified licensed professions include: lawyer, psychiatrist, psychologist, marital and family therapist, counselor, clinical social worker, and certified public accountant.

B. Training Requirements. All programs require that applicants demonstrate completion of specialized training depending on the program to be served and the types of cases mediated in the program. FFS training, for example, requires a focus on family law, family dynamics, substance abuse, domestic violence, and other issues specifically related to divorce. MSC and FFS certification require completion of 40-hours of training. Depending on their level of experience, FFS applicant may also be required to complete an additional 12 hours training in NC family law. DCC mediators must complete at least 24 hours of training. MSC, FFS, and DCC applicants must

all complete training in mediation processes and techniques, program rules and operations, mediator ethics, and observe a demonstration of a mediation conference and engage in several role plays of mediated settlement conferences. MSC and FFS applicants must, upon completion of the training, take a short exam on the rules and practice of mediated settlement conferences. To be eligible for Clerk Program certification, an applicant must first be either MSC or FFS certified and then complete additional training focusing on estate and guardianship law and the aging process. Non-attorney applicants and attorneys licensed in states other than NC must also complete training on the NC court system and its operations to be eligible for MSC, FFS, and DCC for certification.

- C. Observation Requirements.** Applicants for MSC and FFS certification must all complete observations of actual mediations conducted by certified mediators working in the program which they seek to serve.
- D. Background Check Requirements.** All certification applicants must demonstrate that they are of good moral character. Specifically, they must provide sufficient background information to allow the Commission's staff to conduct a background check. Applicants are also required to disclose information bearing on their character, including whether they have been arrested, disciplined by a professional licensing authority, filed for bankruptcy, or had any tax or other liens filed against them.
- E. Letters of Reference.** Non-attorney and out-of-state attorney applicants must provide three letters of reference as to the applicant's good character, including at least one letter from a person familiar with the applicant's experience as described in (A) above.
- F. Continuing Mediator Education (CME).** The Commission recommends that all mediators complete at least three hours of eligible CME annually. Although completion is not required at the present time mediators **MUST** report on their certification renewal applications what CME, if any, they have completed. Currently, the Commission is considering replacing its voluntary request that mediators complete three hours of CME annually, with a mandatory requirement for completion of CME hours.
- G. Certification Renewal.** Certified MSC, FFS and Clerk mediators must renew their certification every year. During renewal, mediators must disclose any matters bearing on their character and which have not been previously reported to the Commission. They must also report on their efforts to obtain continuing mediator education.

5. Regulation of Mediator Qualifications and Conduct.

The NC Legislature charged the Commission with regulating the conduct of mediators and mediation trainers and with oversight of the program's integrity. In that vein, the Commission screens applicants for certification and certification renewal and monitors the conduct of those who are certified, including taking complaints from the public regarding mediator conduct. While the Commission takes its regulatory responsibilities seriously, it has chosen to largely focus on serving as a "proactive" rather than a "reactive" regulator. What that means is that the Commission has sought to emphasize education and encouragement, believing that if mediators understand and appreciate their ethical responsibilities, they will make good choices and avoid ethical pitfalls. To that end, the Commission works hard to make sure that mediators are directly notified of policy and rule changes and know the reasons underlying the changes. The Commission also invites mediators to contact staff with any ethical concerns or questions. Such inquiries may result in the publication of an Advisory Opinion issued by the full Commission and addressing the dilemma or situation raised (see below).

Its efforts at encouragement and education aside, sometimes the Commission must react to inappropriate or unethical conduct and deny a certification or certification renewal application or sanction a mediator whose conduct was reported by an attorney or member of the public.

- A. Ethical Issues Regarding Certification/Certification Renewal.** Commission staff reviews applications for certification and certification renewal and investigates any disclosures on the application bearing on fitness to practice or character. As mentioned above, all applicants are required to disclose a wide range of actions taken against them, and to inform the Commission when such actions are taken. In addition, the Commission conducts its own background check of applicants. The purpose of these investigations is to protect the public by ensuring that only individuals of high moral character are certified to mediate in our courts or to train mediators. The Commission has full authority to allow, condition, deny, or rescind certification.
- B. Issues Regarding Mediator Conduct.** The conduct of all mediators, mediation trainers, and managers of mediation training programs must conform to the Standards of Professional Conduct for Mediators (Standards) adopted by the NC Supreme Court. The Commission is charged with enforcing these Standards. Any mediator whose conduct reflects a lack of moral character or fitness to conduct mediations or mediation training, or which discredits the Commission, the courts or the mediation process, may be subject to disciplinary action and sanctions by the Commission. The Commission may also sanction mediators for not following program rules, including for failing to fulfill their case management responsibilities. The Supreme Court's Rules for the Dispute

Resolution Commission provide specific procedures for the filing of complaints; staff and committee investigation, review and recommendations; and appeal procedures. A Complaint packet is posted on the Commission’s website. Most complaints the Commission receives are filed by members of the public, but they may also be filed by attorneys, court staff or a member of the Commission or its staff.

- C. Matters of Ethics, Standards, and Rule Interpretations.** The Commission makes recommendations to the NC Supreme Court for revisions to the Standards of Conduct, and responds to inquiries from mediators about questions of ethics and the Standards. When a matter rises to the level of being of broad impact or importance, the Commission considers and in some cases, issues a formal Advisory Opinion. Examples include issues of drafting of agreements, confidentiality, attendance requirements, etc. This role of the Commission addresses global issues and as such, does not involve a consideration of sanctions against a mediator or training program. Opinions are shared not only with the individual who requested assistance, but with the wider certified mediator community.

6. Other Program Support/Outreach

- A. Website.** The Commission website is www.ncdrc.org. All rules, Standards, advisory opinions, etc. are kept updated on the site. The “Mediator Toolbox” includes user-friendly tools for mediators such as forms, sample letters, and easy access to policies, guidelines and opinions. Also included are Commission recommended activities for Continuing Mediator training activities (CME). Book and other websites on the subject of dispute resolution are also posted and mediators are encouraged to read and study these materials. They are also encouraged to attend additional training courses or to complete additional observations with more experienced mediators.
- B. Guidelines and Policies.** Guidelines are for the internal use of staff and the Commission and provide guidance as to rule interpretation. Policies are issued by the Commission for the benefit of mediators, trainers, and the public at large, on issues related to the practice of mediation and Commission procedures, such as the Commission’s Advertising Policy, Guide to Selecting a Mediator, Advisory Opinion Policy, and Policy on Lapsed Status and Reinstatement.
- C. Publications and Outreach.**
 - i. Newsletters.**
 - ii. Program Brochures.**

- iii. District Resolution Commission Annual Report and Program Caseload Statistics.**
- iv. Benchbook for MSC and FFS Programs.**
- v. District Criminal Court Video (English and Spanish versions)**
- vi. Guides to Mediation for Pro Se Parties**