

Advisory Opinion of the NC Dispute Resolution Commission

Opinion Number 06-10

(Adopted and Issued by the Commission on November 3, 2006)

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.

Concern Raised

Certified superior court mediator contacted the 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.

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Mediated Settlement Conference Rule 4.A.(1) addresses attendance at the conference. The Rule 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. The Rule provides that these persons shall attend, but does not limit attendance only to these individuals. MSC 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 Rule 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 Rule 6.A.(1) to exclude the individual from attending further.