

ADVISORY OPINIONS POLICY

DISPUTE RESOLUTION COMMISSION

(Adopted by the NC Dispute Resolution Commission on August 28, 1998)

POLICIES AND PROCEDURES:

I. Formal Advisory Opinions of the Commission

A. Opinions to Mediators

The Dispute Resolution Commission will consider issuing non-binding, written advisory opinions in response to requests submitted in writing and signed by a mediator participating in a mediated settlement conference authorized by the North Carolina General Statutes, or under the aegis of a North Carolina State agency, or a U.S. District Court in North Carolina if such mediator is bound by state or federal rules to adhere to the Commission's Standards of Professional Conduct for Mediators;

Provided:

- (1) Such requests are based upon actual events occurring or issues arising in cases in which the requesting mediators are or have been involved; and
- (2) The opinions sought have general application or potentially benefit other mediators, the courts, or the public as formal statements of the Commission's positions on such matters.

B. Opinions to Mediation Trainers

The Dispute Resolution Commission will also accept and consider written requests for formal opinions from persons conducting approved mediation training programs if the requests and opinions meet the foregoing criteria, *i.e.*, are based on experience and have general application.

C. Limitations on the Issuance of Opinions

With respect to both Sections A. and B. above, the Commission will **not** issue written advisory opinions in the following circumstances:

- (1) In response to hypothetical questions;
- (2) In response to questions arising out of cases or circumstances in which the requesting party was not personally involved;
- (3) On complaints about another mediator, a mediator training program or a member of the Commission;
- (4) In response to requests made on behalf of another person or entity; or
- (5) In response to requests which appear to have been made to obtain an opinion as a substitute for a judgment the mediator or trainer should normally be expected to make.

D. Informal Advice

Any certified mediator or person conducting an approved mediator training program may seek informal advice from the Commission's Executive Secretary or a member or ex-officio member of the Commission about any matter at any time and in any manner consistent with professional courtesy, provided it is understood that the advice is not an advisory opinion of the Commission. Any person considering filing a complaint against a mediator is encouraged to seek such informal advice prior to filing a written complaint with the Commission. The Commission expects persons conducting approved mediation training programs to be helpful and responsive to reasonable post-training requests for informal advice on specific issues arising out of actual mediations which do not warrant a formal Commission advisory opinion.

II. Commission Procedure

Advisory Opinion Committee

The Chair of the Commission shall appoint an Advisory Opinion Committee comprised of five persons, two representing approved mediation training programs and three experienced mediators who are members or ex-officio members of the Commission. Appointments shall be for terms not exceeding two years. This committee shall establish its own rules and internal operating procedures.

The Executive Secretary may respond in writing to requests for advice. The Executive Secretary may also respond orally when time is of the essence. Written requests for formal

opinions shall be referred to a single member of the Advisory Opinion Committee in compliance with procedures established by the committee. The reference procedure shall ensure that the case, names of parties, and other identifying information are deleted so that any decision cannot be influenced by such considerations. All requests for formal opinions or informal advice are to be logged by Commission staff and the log periodically reviewed by the Advisory Committee.

If the committee member determines that a formal Commission advisory opinion is not warranted, the requesting person shall be so advised and informed of the informal advice option. If the committee member determines that a Commission advisory opinion is warranted, the matter shall be considered by the full committee and a proposed advisory opinion prepared and submitted to the Commission for its consideration at its next regular meeting unless the Committee recommends and the Chair approves a more expeditious response.

Formal advisory opinions of the Commission shall become public records and may be published without disclosing the identity of the case or parties involved in the factual basis or circumstances upon which the opinion was based.