

Frequently Asked Questions about Criminal District Court Mediation

1. What is the District Criminal Court Mediation Program?

Mediators affiliated with various community mediation centers have been mediating misdemeanor criminal cases in our State's district courts for a number of years with much success. In 2007, the North Carolina legislature adopted G.S. 7A-38.3D. That legislation established a framework for certifying and regulating mediators conducting such mediations. That same year, the North Carolina Supreme Court adopted rules providing for program operations and implementing the certification process set out in the new legislation. The new legislation and rules were intended to strengthen, formalize and standardize existing efforts to mediate misdemeanor criminal cases and to encourage judicial districts that were not mediating such disputes to do so. Copies of G.S. 7A-38.3D and the Supreme Court's *Rules Implementing Mediation in Matters Pending In District Criminal Court* are posted on www.ncdrc.org.

Neither the court, district attorneys, or community mediation centers are required to implement the new statute and rules. It is possible that your case may be filed in a judicial district that has chosen not to mediate misdemeanor criminal matters. It is also possible that your case may be filed in a district that does mediate such cases, but has chosen not to follow the new rules. Such districts will have their own local approach to providing such services and their mediators will be qualified under some other standard. If your case is pending in one of these districts, some of the information that follows may not be applicable to your mediation.

2. What is mediation and what is the role of the mediator?

In mediation you and the other party or parties to your case will be asked to sit down with a mediator or pair of mediators to discuss why you are in court and to try and find ways to resolve your dispute that are acceptable to everyone. Each person will have an opportunity to talk about what brings them to court and will be encouraged to suggest and discuss options for resolving the matter. The mediator will help keep your discussions focused and moving forward and will help you evaluate different ways your dispute may be resolved.

Mediators are impartial and do not take sides. Your mediator will listen to what everyone has to say and then help you explore ways to settle your conflict. He or she will not decide the matter for you; his or her role is to help you and the others involved in the dispute formulate your own settlement terms. Mediators cannot give legal advice; however, they will provide you an opportunity to speak with attorneys or other professionals that can help you evaluate potential resolutions.

3. Is mediation confidential?

Mediation is designed as a confidential process and your mediator will not report to the court, District Attorney, or anyone else what you or others involved in your case said during mediation. In addition, mediators cannot testify in court about what was said at your mediation. However, there are a few important exceptions to confidentiality: By law, if a mediator learns during mediation that a child or an elderly or disabled person is being neglected or abused, he or she is required to report it. If, during a mediation, a mediator learns that a party is planning to hurt someone or to damage property and the mediator believes that person will act, he or she may notify the police or sheriff. Lastly, in some situations a judge may require a mediator to disclose information about a felony unrelated to the matter at hand that is discussed in mediation.

4. Who are the mediators?

A single certified mediator may conduct your mediation or a pair of mediators may serve as co-mediators. A judge will appoint your mediator(s) or will ask the community mediation center responsible for administering the program to assign staff or volunteers to conduct your session. Community mediation centers are non-profit agencies dedicated to resolving conflict peacefully.

If your judicial district and community mediation center are following the new Supreme Court Rules, you can be assured your mediator has met the requirements for certification to conduct district criminal court mediations and that his or her conduct is regulated by the NC Dispute Resolution Commission (DRC). Rule 7 of the Supreme Court's *Rules Implementing Mediation in Matters Pending In District Criminal Court* sets forth mediator certification criteria and can be viewed on this web site. Certified mediators come from all walks of life. Many are retired professionals, business owners or long-time community volunteers. Most importantly, they are there because they want to help you and the others involved in your case resolve your conflict.

5. Will I be required to participate in mediation?

Mediation is a voluntary process and you will not be forced to participate. A judge, district attorney, or defense attorney may encourage you to consider mediation, but may not require you to attend. If you believe mediation is not appropriate for your case and you prefer to have a trial, simply let your judge or district attorney know.

6. Why should I participate in mediation?

There are many reasons why you should consider mediation. Mediation is usually less stressful and time consuming than a trial. You will not have to take the stand and testify, nor will you have to bring witnesses. You don't even need

a lawyer. Mediation offers you and the other party(ies) the opportunity to be in control of the outcome of your dispute. Some research indicates that people are more likely to follow through on agreements that they make as opposed to ones forced upon them by a court. If you are a defendant, a successful mediation may mean that you can avoid a criminal record and more expensive fines and costs. If you are a complaining witness, an opportunity to sit down with others involved in the dispute and work out your conflicts may provide more satisfaction than a judge's verdict.

Sometimes mediation can help bring people together. If those involved in a dispute are relatives, neighbors, or were once friends, talking about and working through conflict can often be an important first step in repairing damaged relationships. People may be angry or hurt when they come to mediation and the mediator(s) will try to help everyone understand the differing perspectives of those involved in the conflict. When underlying causes of a conflict are brought to light, people often settle the case at hand and also learn how to avoid future conflicts.

7. Where will my mediation be held?

If the courthouse has set aside space for mediation, you will likely meet with your mediator the same day you agree to participate. Some community mediation centers ask parties to come to the office of the mediation center to mediate and, if that is the case, you will be given an appointment to appear at the center in the near future.

8. Is there a cost to mediate?

When a case settles in mediation, the Clerk of Superior Court in the county where your case is filed will assess a \$60.00 fee. That fee is in lieu of the \$120 fee a defendant would be required to pay if s/he were found guilty or entered a guilty plea. Although the statute says the \$60.00 fee is the responsibility of the defendant, the parties are free to make their own arrangements and share this cost among them. Such cost sharing may be particularly appropriate if there is more than one defendant and multiple warrants were settled in your mediation. If the parties are indigent or the mediator determines there are other compelling reasons, the court may consider waiving the fee. The \$60.00 fee belongs to the state and is not distributed to the community mediation center or to your mediator.

9. Should I bring a lawyer with me?

If you have an attorney he or she may come with you to mediation, but you are not required to have a lawyer with you. In fact, many parties in misdemeanor criminal cases are not represented by an attorney and simply speak for themselves in mediation.

10. What can I do to be successful in mediation?

There are many things that you can do to help the mediation process work:

- a) Have a positive outlook. Go to your mediation confident that you will be able to have a productive discussion and settle your case;
- b) Come prepared to give the mediator and others present a short, clear summary of the dispute from your perspective;
- c) Listen and be respectful to all who are present.
- d) Respect the mediator's authority. Program rules provide that the mediator is to be in control of the conference and those attending will need to comply with whatever ground rules the mediator sets;
- e) Be open to creative solutions.
- f) Be prepared to compromise and to move forward. Mediation is all about working things out with someone else and getting on with your life;
- g) Be willing to accept responsibility for the way your own actions may have contributed to the conflict and to apologize and make amends; and,
- h) Be willing to forgive when you have been wronged.

11. What happens if we reach an agreement in mediation?

If you reach an agreement in mediation, the charges against the defendant may be dismissed either that day or after a reasonable period of time needed to meet the terms of your agreement. If the charges are not dismissed that day, your mediator will work with the district attorney to arrive at an appropriate length of time to hold the case open until the terms of the agreement have been met. If you experience any difficulties in meeting the terms of your agreement before the next court date, you are encouraged to contact the community mediation center for assistance.

12. What if we can't reach an agreement in mediation?

People can't always agree and sometimes disputes cannot be resolved in mediation. If that is the case, your mediator will report to the court that the mediation did not result in an agreement and your case will continue to be processed by the court. Mediation is a confidential process and a mediator will not tell the judge why your case did not settle or provide information about your discussions. He or she will report only that the matter did not settle.

13. What if I think my mediator has acted inappropriately or unethically?

If you have concerns about how your mediator is conducting your mediation, you may want to politely raise them with the mediator. He or she may be able to resolve your concerns by helping you to better understand the process and the role of the mediator. If you can't resolve your concerns with the mediator, you may, following your mediation, speak with the Executive Director of the community mediation center where your mediator works or volunteers or you may contact the NC Dispute Resolution Commission (DRC) at (919) 890-1415. The DRC is responsible for certifying mediators and regulating their conduct.

14. What if I need a mediator in the future?

Mediators can help resolve many kinds of disputes and many community mediation centers offer a range of services, including mediation of neighborhood disputes, landlord tenant disputes, business and employment disputes, and family disputes, including divorce mediation. Centers receive State funding so they are able to make mediation services available on a sliding scale based on a person's income. The next time that you are involved in a conflict, you may want to consider mediation before you resort to the courts.

14. Where can I get more information?

You can find the Supreme Court's *Rules Implementing Mediation in Matters Pending In District Criminal Court* on www.ncdrc.org. To learn more about district criminal court mediation, you can contact your local community mediation center or the Dispute Resolution Commission. However, please be aware that staff cannot give legal advice or respond to questions about your specific dispute. To learn more about mediation in general and the services available through your local community mediation center, contact your center. Center contact information is available through the Commission at (919) 890-1415 or the Mediation Network of North Carolina at (919) 663-5650 or www.mnnc.org/pg1.cfm