

**Q:** *What if I prefer to go to trial and do not want to mediate my case?*

**A:** Once your case has been ordered to mediated settlement, you and your attorney must participate. However, if you believe there is some compelling reason why your case should not be mediated, you may ask the Court to exempt it. Do not be too quick to reject the mediation process. Even in cases where parties seem hopelessly at odds, a skillful mediator can sometimes find a way to get opposing parties thinking and talking about ways to resolve their dispute.

**Q:** *Where will my mediated settlement conference be held?*

**A:** Your conference may be held in a public building, in the law office of one of the attorneys involved in the case, or in your mediator's office. If you are in a wheelchair or have other accessibility issues, let your mediator know. Regardless of where your mediation is held, the proceeding will be private and not open to the public.

**Q:** *What if I am unwilling to agree to the terms discussed at the mediation?*

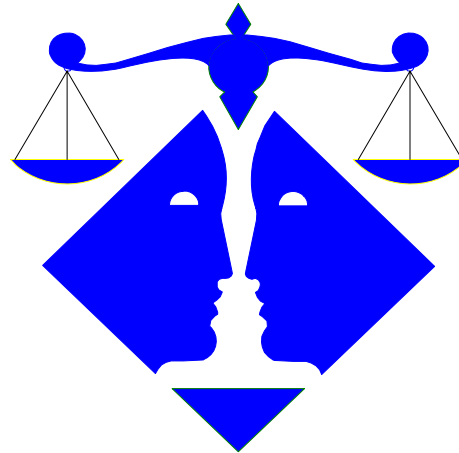
**A:** Not every case can be settled and you will not be forced into an agreement. If an agreement cannot be reached, your case will proceed to trial in due course. Since mediation proceedings are confidential, neither the judge nor jury will be informed about the particulars of your mediation or told why the case did not settle.

**Q:** *What if I have a complaint about my mediator's conduct?*

**A:** You can address your concerns to the mediator in the hope that any misunderstandings can be resolved amicably. You or your attorney may also file a complaint with the Dispute Resolution Commission. The Commission may be contacted at (919) 890-1415.

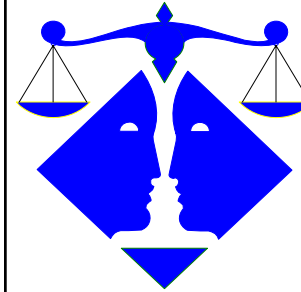
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**MEDIATED  
SETTLEMENT  
CONFERENCES  
IN  
SUPERIOR COURT  
CIVIL ACTIONS**



**Chief Justice Sarah E. Parker  
Supreme Court of North Carolina**

**Judge W. David Lee, Chair  
NC Dispute Resolution Commission  
(919) 890-1415  
[www.ncdrc.org](http://www.ncdrc.org)**



## **INTRODUCTION**

If you are reading this brochure, it is likely your case has been referred to the Mediated Settlement Conference Program. Your attorney has probably told you this means you will be required to meet with the other party to your dispute for the purpose of trying to discuss and resolve your disagreements. You may be wondering why your case has been referred to mediation and what the process is all about. This brochure is designed to answer those questions and others.

As you read this publication, try to think of mediation as an opportunity to resolve your dispute in a way that is acceptable to you while at the same time avoiding protracted litigation and a trial. Cases do not always settle and some must be heard by a judge or jury. But, when mediation is successful, parties save time, avoid stress, and have the satisfaction of knowing they were able to work things out themselves.

## **WHY MEDIATION ?**

In 1991, North Carolina's General Assembly authorized the establishment of a pilot program designed to foster settlement of disputes filed as civil actions in superior court. The pilot operated over a four-year period during which it was studied extensively by researchers at the University of North Carolina at Chapel Hill. The researchers found that the program did help a significant percentage of cases settle earlier than they would have without intervention. Moreover, researchers found that parties liked the informality of mediation and appreciated having an opportunity to meet with the other side to explore the possibility of settling their dispute. Judges also expressed their support for the new program. Mediation, they reported, helped courts better manage their caseloads and operate more efficiently.

Given the success enjoyed by the pilot program, the General Assembly approved statewide expansion of the Mediated Settlement Conference Program in 1995. The program is now available in all of North Carolina's judicial districts. Caseload statistics collected annually for the program confirm that it is continuing to operate successfully, helping parties to resolve their disputes constructively and assisting judges in their efforts to better manage our courts.

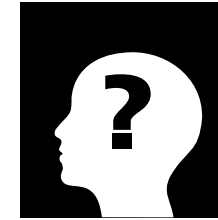
## WHAT HAPPENS DURING A MEDIATED SETTLEMENT CONFERENCE?

Mediated settlement is different from other forms of dispute resolution. Conferences are not hearings or trials designed to determine who wins or who loses. Rather, they are facilitated discussions during which parties search for mutually acceptable solutions to their conflict. Although less formal than a trial or hearing, a mediation is still a legal proceeding conducted with decorum and guided by rules.

The mediator will begin the conference by meeting with you, the other party or parties to the case, and your attorneys. The mediator will explain the ground rules for the discussions and will likely ask the attorneys to describe the case from their respective points of view. The mediator will then start the negotiation process. At some point in the conference, the mediator will likely separate the group and meet with each party and his or her attorney individually in what is known as a “caucus”. A caucus provides an opportunity for a mediator to speak frankly and it gives the parties an opportunity to share information in confidence with the mediator.

It is important to remember that the mediator’s ultimate goal is to help the parties resolve the dispute themselves. Unlike a judge or jury, a mediator does not make decisions for the parties. In an effort to help parties reach an agreement, a mediator will work to open channels of communication, to inject reason into the discussion, and to help each side see the dispute through the eyes of the other. The mediator will also explore with each side the strengths and weaknesses of their case, discuss the benefits of settling, suggest options for the parties to consider, and carry offers and counter offers between the parties.

If parties reach an agreement, their terms will be put down in writing and signed and their case will eventually be dismissed. It is important to recognize, though, that even when an agreement is not reached, mediation can still be helpful. Lines of communication may be opened and momentum toward resolution generated. Cases sometimes go on to settle later.



### ???? Some Questions You May Have ????

***Q: Will I be expected to attend and actively participate in discussions at the mediated settlement conference?***

***A:*** You must attend unless all the parties and the mediator or the court agree otherwise. The mediation process is designed to empower litigants to take a more active role in discussing and settling their case. However, some litigants prefer to let their attorney speak for them. You may want to discuss your participation with your attorney prior to mediation. Because mediation is an informal proceeding, you will not be sworn in or asked to testify about any matter in the case.

***Q: Will my attorney be with me throughout the conference and will I be able to speak privately with my attorney if I need to?***

***A:*** Yes. Your attorney will be present throughout the proceeding. If at some point during the conference you wish to speak privately with your attorney, you can ask the mediator for an opportunity to do so.

***Q: How much will mediation cost?***

***A:*** If you, the other party or parties, and the attorneys involved in your case agree upon a certified mediator and notify the court of your selection, the mediator’s fee will be arrived at by agreement with the mediator. If you cannot agree, the court will appoint a certified mediator. Rule 7.B. of the North Carolina Supreme Court Rules implementing the Mediated Settlement Conference Program provides for court-appointed mediators to be compensated at the rate of \$150.00 per hour for mediation services plus a \$150.00 one time, per case administrative fee for scheduling. Unless otherwise agreed or ordered by the court, the fee will be paid in equal shares by the parties and is due at the conclusion of mediation.

***Q: Who mediates and how are mediators trained?***

***A:*** You, the other party or parties, and your attorneys will be given an opportunity to choose a certified mediator to conduct your mediated settlement conference. All certified mediators have completed at least 40 hours of mediation training and met the other educational and training requirements necessary for certification. Many certified mediators are experienced attorneys licensed to practice law in North Carolina. There are also certified non-attorney mediators with significant professional or mediation experience. A list of certified mediators can be viewed at [www.ncdrc.org](http://www.ncdrc.org).