



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

POLICY

Lapsed Status and Reinstate Policy

(Adopted by the Commission on February 17, 2006; amended February 27, 2015; May 12, 2017; August 9, 2019; March 10, 2020; June 10, 2020.)

Mediated settlement conference program rules require that all mediators be trained in basic mediation theory, processes, and techniques and that all mediators demonstrate familiarity with North Carolina statutes, rules, and practices governing mediated settlement conferences (MSC/FFS/Clerk Rule 8). To that end and in the interest of protecting both the public and the courts, the Commission has adopted this Policy. This Policy is intended to ensure that all mediators certified by the Commission, including those who are reinstated following a lapse in certification, are current in their understanding of the mediation process and are familiar with their role as mediator, including understanding their case management responsibilities and ethical obligations as a mediator for the North Carolina courts.

I. LAPSED STATUS

A. Preference for Inactive Status.

The Commission strongly encourages mediators who wish to *temporarily* withdraw from practice to opt for inactive status rather than allowing their certifications to lapse (see Inactive Status Policy). Mediators who become inactive and pay a reduced fee remain in the Commission's database and continue to receive notifications of policy and rule changes, copies of advisory opinions, newsletters, and other pertinent information. Because they are kept informed, inactive mediators are reinstated upon request with no need for additional training or documentation, however, they will be required to complete two hours of Continuing Mediator Education (CME) and pay any additional fees.

B. Lapsed Status Defined.

An **MSC and/or FFS and/or Clerk certification** will be treated as lapsed when the mediator notifies the Commission's office orally or in writing that he or she is relinquishing the certification(s) or if the mediator fails to take action to renew the certification(s) annually. Once a certification has lapsed, the mediator's name, contact, and other information will be removed from the Commission's on-line data base and the Commission will no longer forward any correspondence or notifications pertaining to mediation or the operations of North Carolina's court-based mediation programs to the mediator.

A mediator whose **superior court certification** (MSC) has lapsed shall no longer mediate any matter referred to mediation within the context of the Mediated Settlement Conference Program, whether upon court appointment or party selection. In addition, pursuant to Clerk Mediation Program Rules 8(c) and 8(d), a mediator whose superior court certification has lapsed shall no longer mediate matters referred to mediation by Clerks, unless the mediator is also an active, certified FFS mediator.

A mediator whose **family financial certification** (FFS) has lapsed shall no longer mediate any matter referred to mediation within the context of the Family Financial Settlement Program. In addition, pursuant to Clerk Mediation Program Rules 8(c) and 8(d), a mediator whose family financial certification has lapsed shall no longer mediate matters referred to mediation by Clerks, unless the mediator is an active, certified MSC mediator.

A mediator whose **clerk program certification to mediate guardianship and estate matters** has lapsed shall no longer mediate any matter involving estate or guardianship matters as may be referred to him/her upon clerk appointment or by party selection.

C. Responsibility to notify court and parties of lapse.

If at the time a mediator's MSC certification lapses, he or she has been appointed by a judge or clerk to mediate a case or has been selected by the parties to do so and that selection has been submitted to the court or clerk, the mediator shall immediately notify the judge or clerk and any attorneys or *pro se* parties involved that his or her certification has lapsed and that the mediator is no longer eligible to serve as a mediator in the matter.

If at the time a mediator's FFS certification lapses, he or she has been appointed by a judge or clerk to mediate a case, the mediator should immediately notify the judge or clerk and any attorneys or *pro se* parties involved that his or her certification has lapsed and that the mediator is no longer eligible to serve as a mediator in the matter.

A mediator may use AOC-DRC-837, *Notice or Withdrawal/Disqualification of Mediator and Order of Substitution of Mediator*, to notify the court or clerk of his/her lapsed status and ineligibility to serve.

II. REINSTATEMENT OF MSC or FFS LAPSED CERTIFICATION.

A. MSC or FFS Certification(s) lapsed for up to three years prior to application for reinstatement.

An applicant for reinstatement of an MSC or FFS certification whose certification has lapsed for less than three years shall be required to verify on the application that the applicant has read and studied current versions of the enabling legislation, program rules, Standards of Professional Conduct for Mediators, Advisory Opinion Policy, and all advisory opinions adopted to date, complete two (2) hours of approved CME **within the year prior to the application for reinstatement**; and comply with additional requirements set forth in section IV below.

B. MSC or FFS Certification(s) lapsed for more than three years but less than ten years prior to application for reinstatement.

An applicant for reinstatement of an MSC or FFS certification whose certification has lapsed for more than three but less than ten years prior to the date of application for reinstatement, shall be required to attend a 16-hour supplemental training course wherein the statutes, rules, and practice governing

mediated settlement are discussed, complete the exam required by MSC Rule 9(a)(8) or FFS Rule 9(a)(11), as applicable, and comply with additional requirements set forth in section IV below.

An applicant for reinstatement of dual certifications whose certifications in one or both programs has lapsed for more than three years but less than 10 years prior to application for reinstatement shall be required to attend one 16-hour supplemental training course wherein the statutes, rules, and practice governing mediated settlement, including the Standards of Professional Conduct for Mediators, are discussed, complete the exam required by MSC Rule 9(a)(8) or FFS Rule 9(a)(11), as applicable, *and* provide a letter certifying that they have read and studied current versions of the statutes and rules of the program for which they will NOT be taking a 16-hour training course. In addition, the applicant shall complete all other requirements for certification set forth in both the MSC and FFS program rules and section IV below.

C. MSC or FFS Certifications lapsed for more than ten years prior to application for reinstatement.

An applicant for reinstatement of an MSC or FFS certification whose certification has lapsed for more than ten (10) years shall be required to attend a full 40-hour MSC or FFS training course and to comply with additional requirements set forth in subsection IV below.

An applicant for reinstatement of dual certifications whose certification in one or both programs has lapsed for more than ten (10) years prior to application for reinstatement shall be required to attend *one* full 40-hour MSC or FFS training course *and* to provide a letter certifying that s/he has read and studied current versions of the statutes and rules of the program for which s/he will NOT be taking a 40-hour training course. In addition, the applicant shall complete all other requirements for certification set forth in both the MSC and FFS program rules and in section IV below.

D. Waiver of observation requirement upon verification of substantial involvement with mediation.

An applicant for reinstatement of an MSC or FFS certification whose certification has lapsed may request a waiver of the observation requirement upon providing verification the applicant has been substantially involved in mediation during the lapsed period. “Substantially involved”, for purposes of this policy, is defined as:

Involvement in the mediation process by representing a party in a mediation, or acting as the mediator in a matter, for a minimum of four mediations per year during the lapsed period.

III. REINSTATEMENT OF LAPSED CLERK MEDIATION CERTIFICATION (Estates and Guardianships).

A. An applicant for reinstatement of his/her Clerk certification to mediate estate and guardianship matters whose certification has lapsed for less than ten (10) years shall be required to verify on the application that the applicant has read and studied current versions of the Clerk program enabling legislation, Clerk program rules, Standards of Professional Conduct for Mediators, DRC Advisory Opinion Policy, and all advisory opinions adopted to date.

B. An applicant for reinstatement of his/her Clerk certification to mediate estate and guardianship matters whose certification has lapsed for more than ten (10) years shall complete a full 10-hour Commission approved Clerk mediation training program.

IV. OTHER REQUIREMENTS.

In addition to meeting training requirements, applicants must also meet all other requirements for certification or certification reinstatement set forth in Commission rules, including:

A. Complete and file with the Commission's office a current application for each certification or reinstatement of a certification sought;

B. Meet all the training, professional, experience, and other requirements currently in effect for each certification or reinstatement of certification sought;

C. Be of good moral character and fit to practice as a mediator (all certification applicants must undergo a background check); and

D. Pay the pro-rated certification fee(s) for the program(s) for the fiscal year for which the applicant seeks reinstatement.

V. COMMISSION STAFF MAY, AS THEY DEEM APPROPRIATE, INTERPRET THE PROVISIONS OF THIS POLICY BROADLY.