

Resolving delicate issues with GUARDIANSHIP MEDIATION

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What is Mediation

- An intercession or friendly intervention for settling differences.
- A mediator is a neutral 3rd party who has been trained in facilitating dispute resolutions.
- Mediators do not take sides or make decisions.
- They are not advocates, arbitrators or judges.

When to Consider Mediation

- When the guardianship case (new or established) includes unresolved issues among, family, caregivers, neighbors, fiduciaries.
- Counsel must discuss settlement options including mediation with client and opposing counsel.

What Issues May Warrant Mediation?

- Safety of respondent is at issue, disputes over quality of care
 - access to visiting the respondent
- Petitioner seeks guardianship with a goal of LTC placement against the will of the respondent

What Issues (Continued)

- Relationship issues – sibling rivalries, new spouse, new companion
- Family feels someone manipulated respondent into signing, gifting, purchasing, changing will, etc.
- Disputes over who is best person to handle health care decisions/ assets/finances.

Why Mediate?

- Mediation is a private, less formal proceeding to discuss delicate issues related to guardianship.
- Reduces stress by providing a forum to explore options, including alternatives to guardianship.
- Allows everyone to be heard by giving all parties an opportunity for airing their concerns in a clear process which aims for consensus.

Why Mediate (continued)

- Mediation can help salvage important but strained relationships.
- Gives parties an opportunity to see the dispute through the eyes of the other side.
- Helps educate everyone on the strengths and weaknesses of their position.

What Happens When Cases are Referred to Mandatory Mediation?

- Initiate mediation by:
 - Order of the Clerk (AOC-G-301T)
 - who is ordered to attend
 - deadlines for selection of mediator and completion of mediation
 - Motion for an Order for Mediation (AOC-G300T)
- The Clerk must include a copy of brochure explaining mediation along with the order.

Selection of Mediator

- Party Selected Mediator by agreement
 - Notice of Selection of Mediator by Agreement
- Appointment of Mediator by Clerk
 - appoint by rotation from a list
 - Designation of Mediator AOC-G-302T
- The mediator in a guardianship matter must be a certified estate/guardianship mediator
- NC Dispute Resolution Commission maintains a directory of certified guardianship/estate mediators

The Mediation

- May be held in any location agreed to by the parties and the mediator.
- Attendance is mandatory until an agreement has been written and signed or an impasse has been declared by the mediator.
- Any agreement reached is not binding on the Clerk but may be considered by the Clerk.
 - Evidence of statements made and conduct occurring in mediation where agreement is reached is admissible

Duties of the Mediator

- The Mediator must explain:
 - The process of mediation
 - Costs
 - By agreement
 - \$125 admin fee + \$125/hr
 - Pd by parties ordered to mediation
 - Waiver of fees in indigent cases
 - Admissibility of conduct, statements made in estate/guardianship mediation
 - Agreement must be approved by the Clerk

Resources

- NC Dispute Resolution Commission
 - www.nccourts.org/Courts/CRS/Councils/DRC/
- The Center for Social Gerontology
Ann Arbor, MI
 - www.tcsg.org
- NC Division of Aging and Adult Services
 - www.dhhs.state.nc.us/aging/home.htm