



NC DISPUTE RESOLUTION COMMISSION
Report for NCADCJ Conference
June 23-25, 2015

I. What is the Dispute Resolution Commission?

The North Carolina Dispute Resolution Commission (the Commission) was established by N.C. Gen. Stat. § 7A-38.2, effective October 1, 1995. This enabling legislation charged the Commission with certifying mediators and mediation trainers and with regulating their conduct. In addition to these functions, the Commission provides input on dispute resolution policy in our courts, drafts program rules and rule revisions, issues advisory opinions, helps to support dispute resolution programs, and acts as a clearinghouse for information on dispute resolution in North Carolina.

The Commission has 16 seats and appointments are made by the Chief Justice (11 appointments), the Governor (1 appointment), the Speaker of the House (1 appointment), the President *Pro Tem* of the Senate (1 appointment), and the President of the State Bar (2 appointments). Membership is comprised of judges, mediators, attorneys, a Clerk, and knowledgeable members of the public. Members are drawn from across the state, including urban and rural areas. The Commission also has a number of ex officio (non-voting) members appointed by the Chair.

The Commission's operations and that of its office are funded entirely by mediator certification fees.

II. What programs does the Commission help support?

- The Superior Court's Mediated Settlement Conference (MSC) Program (operating since 1991)
- The Clerk Mediation Program (operating since 2006)

- The District Court’s Family Financial Settlement Conference (FFS) Program (sometimes also referred to as Equitable Distribution or ED mediation) (operating since 1997)
- The District Criminal Court Mediation Program (this program is limited to certain, specific districts that have opted in) (operating since 2007)

III. What is the purpose of the FFS Program?

The enabling legislation for the FFS program, G.S. 7A-38.4A, charges the family financial settlement conference program with facilitating the settlement of district court civil actions involving equitable distribution, alimony, or support and to make that litigation more economical, efficient, and satisfactory to the parties, their representatives, and the State.

Pursuant to G.S. 7A-38.4A, FFS Program Rules were promulgated by the N.C. Supreme Court to implement a system of settlement events which are designed to focus the parties’ attention on settlement rather than on trial preparation and to provide a structured opportunity for settlement negotiations to take place.

Mediation of equitable distribution disputes is now mandatory under FFS Supreme Court Rule 1C(1) in North Carolina, and the parties may also agree to discuss in mediation other matters relating to their divorce, including child support, alimony, and custody and visitation. Post-divorce support disputes may also be referred to mediation.

IV. Some important characteristics of the FFS Program:

The parties pay the mediator. Litigants, and not taxpayers, compensate the mediator for his or her services both in scheduling the case for mediation and in mediating it. If a party contends that he or she does not have the means with which to pay their share of the mediation fees, that party may move the court to pay according to the court’s determination of that party’s ability to pay.

The parties have an opportunity to select their mediator. The parties are given an opportunity to select their mediator with the idea that they will have more confidence in someone they have personally selected and, as a result, be more open to the process and the possibility of settlement. If the parties fail to agree on a mediator, then the court will appoint one for them. In making court appointments to mediate, FFS Rule 2.B provides that the court must appointment a mediator certified by the Dispute Resolution Commission. You can access the Commission’s list of certified

family financial mediators by clicking on “Finding a Mediator” from the menu on the DRC home page (www.ncdrc.org). The certification process is essential for quality control and the protection of the public. Certification means that the mediator met the threshold education and experience requirements necessary for certification; completed training in mediation theory and process, FFS Program Rules, mediator ethics, and NC family law; satisfied a background check and fully submitted his or her conduct to the regulation of the Commission. Certified mediators must also report annually on their efforts to complete continuing mediator education. Currently, the Rules do allow parties to choose by agreement non-certified mediators to mediate their cases, and mediators so chosen are bound by the same ethical standards as certified mediators.

The mediator serves as case manager. The mediator, and not court staff, work with the parties to: schedule the mediation and make arrangements for the conference, ensure that the deadline for completion of the conference is met, and report back to the court on the outcome. The mediator also supports the mediation process by helping the parties stay on course and by keeping the process moving forward.

Attorneys participate. Attorneys play an active role in the mediation process, advising their clients throughout the conference.

Inadmissibility of mediation statements and conduct. G.S. 7A-38.4A(j) and the confidentiality requirements placed on mediators by their Standards of Professional Conduct restrain mediators from testifying, and prevent them from being compelled to testify, about what occurred in mediation, except for the very limited purposes set forth in G.S. 7A-38.4A(j).

Mediator confidentiality vis-à-vis the Court. The ethical conduct of mediators is governed by the North Carolina Supreme Court’s Standards of Professional Conduct for Mediators. Standard I addresses confidentiality and broadly provides that mediators have a duty to maintain the confidentiality of all information obtained before, during, or after the mediation process. Except as required to complete a Report of Mediator, mediators should not communicate with court officials or staff regarding their mediations, including communicating information and correspondence pertaining to scheduling or attendance. There are a few exceptions to this broad requirement of confidentiality. Subsection C of Standard III provides that, when trying to collect fees, mediators may share parties’ correspondence or communications relating to fees with court staff or officials. Subsection C also provides that in situations where a mediator believes that discussing procedural matters with court staff and officials will aid the mediation, he or she may do so, but only with the

consent of all of the parties. During any such permitted discussion with court staff or officials regarding procedural matters, the mediator must refrain from expressing any personal opinions about the participants or any aspect of the case. Mediators should not be asked or required to attach a copy of any agreement reached in mediation to their Report of Mediator or to otherwise convey information about the parties' terms to the court (see FFS Rule 6.B(4)(a) and Standard III of the Standards of Professional Conduct for Mediators).

V. **Other Types of DRC Support for the District Courts.**

- **Benchbook for Court Staff.** The Commission has developed a benchbook for court staff and one for senior resident superior court judges regarding the MSC program. It is now working on a benchbook for the FFS Program which should be available very soon.
- **Mentoring Program.** The Commission is developing a mentoring program designed to match court staff experienced with CaseWise, the AOC computer statistical reporting system, and program operations with those who are new hires or are less experienced. Mentors have agreed to be available by telephone or email, or even to arrange for site visits when necessary, either to come to you or to allow you to visit their office. The Commission will make every effort to pair staff seeking help with experienced staff from a similar district, e.g., matching staff from a rural, multi-county district with staff from a similar, nearby district. The Commission has committed to providing some funding for site visits. If you need such assistance, please contact the Commission's office.
- **Guide to Family Financial Mediation for Parties Not Represented by Attorneys.** The Commission has developed a Guide that court staff can make available to pro se parties whose cases have been ordered to mediation. Hopefully this resource can help answer questions that such parties may have, and save court staff time. It is posted on the Commission's website. On the home page, click on "Information for Parties Without Attorneys," then, "Guide to Family Financial Mediation."

VI. **Statewide Statistical Reports -- Getting the Word Out.**

The AOC extracts information from an individual judicial district's CaseWise submissions relating to family financial mediated settlement conferences and uses it to generate a separate statistical report. AOC Court Programs' staff Stephanie Nesbitt and Mia La Motte are available to assist your staff in learning to use CaseWise for FFS statistical reporting purposes and to offer

suggestions for administering your district's FFS Program. They can provide help over the telephone, by email, or can arrange for an onsite visit, if that would be helpful. Individual districts should receive quarterly cumulative reports from the AOC for review.

At the end of the fiscal year, the AOC publishes an annual statistical report for the FFS Program. That report shows annual caseload and conference outcome numbers for individual judicial districts as well as cumulative numbers for the state as a whole. The Commission distributes that report along with its own annual report of the Commission's activities for the year, to members of the General Assembly, Judicial Department officials, all Senior Resident Superior Court Judges, Chief District Court Judges, Clerks, NC State Bar and NC Bar Association officials, and NC law school faculty. A copy of the statistical report is also posted on the Commission's website.

VII. What the Statistics Tell Us.

In FY 2013-2014, in the FFS program, 1466 cases were mediated, and 949, or 64.7%, were resolved in whole or in part at a mediated settlement conference. Historically, the number of cases that settle at the conference has remained relatively consistent for this program depending on the year. That number does not, however, tell anything close to the full story. That number must be read in conjunction with the number of cases reported settled prior to or during a recess of the conference and the number for cases reported disposed without conference. A substantial number of cases are reported by mediators each year as having been settled prior to the conference or during a recess of it. Thus, if one also considers cases resolved after referral but prior to a conference, 66.4% of the FFS cases were resolved in FY 2013-2014.

The Commission strongly believes that the FFS Program is indirectly responsible for many of those settlements. Mediated settlement, the Commission believes, has changed the way litigators practice law, making it more acceptable for them to contact one another, sometimes very early in a case, to suggest a meeting to discuss settlement. Lastly, as a part of a study of mediated settlement in the MSC Program by several UNC students seeking a Masters in Public Administration, a sample of attorneys whose cases had been reported by mediators as impasse in mediation were contacted. They asked those attorneys what the eventual outcome of the case had been and whether mediation had influenced that outcome. The students found that 68.6% of the cases that had impasse in mediation went on to settle within eight weeks of the conference. The majority of attorneys involved with these cases told the students that the dialogue begun at mediation and the offers generated, though not resulting in a settlement at the conference, had led to further discussions and overtures which eventually resulted in settlement. The Commission believes that, if studied, the FFS data would be comparable.

VIII. Contact the Commission.

The Commission has offices in Raleigh and operates a website at www.ncdrc.org. The Commission typically meets quarterly and its meetings are open to the public. Commission staff, Leslie Ratliff and Harriet Hopkins, are available to answer questions from and provide information and advice to mediators, judges, court staff, attorneys, and the general public.

Any judge or court staff wishing to bring a matter or a concern before the Commission is invited to do so by calling (919) 890-1415 or writing to:

The NC Dispute Resolution Commission

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