

## MEDIATION BASICS

Mediation is a process through which parties exchange information in an effort to obtain a voluntary mutually agreeable resolution of one or more disputes. Mediation differs from other forms of conflict resolution in that the parties control the outcome. No decision on the merits of the disputes is made by the mediator. Agreement of the parties is required to obtain a resolution. The parties are entirely in control of the outcome of mediation.

Unless agreed otherwise, each party will pay a pro rata share of the mediation costs. The fees and costs for the mediation are set in the Agreement to Mediate, by Court Order or Rule, or by agreement of the parties and the mediator.

A mediated settlement conference is not a trial, the mediator is not a judge and the parties retain any right to trial they otherwise may have if they do not reach settlement. In addition to the communications between the mediator and the participants in joint sessions, private communications between the mediator and participants may occur before or during the mediation. While the fact of private communications will be made known to all participants, the content of private communications will remain confidential to the extent a participant makes a specific request of the mediator as to specific content. Otherwise, participants should expect that a mediator may share information among the parties from time to time as part of efforts to resolve the disputes.

Generally, what happens in mediation will not be shared outside the mediation by the mediator or in court by the participants. Underlying information obtained in mediation may be subject to later discovery request or use in court. See N.C.G.S. § 7A-38.1 for specific language of statute.

Each participant in court ordered mediation is required to attend; otherwise participation is entirely voluntary. The mediator facilitates the conference, remains impartial, declares, in consultation with the participants, when impasse has occurred and reports the results of the mediation.

Any agreement reached will be voluntary, requires mutual consent of all parties to the agreement and will be reduced to writing before the mediation is adjourned.

N.C.G.S. § 7A-38.1

(1) Inadmissibility of negotiations. -- Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

- (1) In proceedings for sanctions under this section;
- (2) In proceedings to enforce or rescind a settlement of the action;
- (3) In disciplinary proceedings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals; or
- (4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term “neutral observer” includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

No mediator, other neutral, or neutral observer present at a settlement proceeding shall be compelled to testify or produce evidence concerning statements made and conduct occurring in anticipation of, during, or as a follow-up to a mediated settlement conference or other settlement proceeding pursuant to this section in any civil proceeding for any purpose, including proceedings to enforce or rescind a settlement of the action, except to attest to the signing of any agreements, and except proceedings for sanctions under this section, disciplinary hearings before the State Bar or any agency established to enforce standards of conduct for mediators or other neutrals, and proceedings to enforce laws concerning juvenile or elder abuse.