

§ 7A-38.2. Regulation of mediators and other neutrals.

(a) The Supreme Court may adopt standards of conduct for mediators and other neutrals who are certified or otherwise qualified pursuant to G.S. 7A-38.1, 7A-38.3, 7A-38.3B, 7A-38.3D, 7A-38.3E, and 7A-38.4A, or who participate in proceedings conducted pursuant to those sections. The standards may also regulate mediator and other neutral training programs. The Supreme Court may adopt procedures for the enforcement of those standards.

(b) The administration of the certification and qualification of mediators and other neutrals, and mediator and other neutral training programs shall be conducted through the Dispute Resolution Commission, established under the Judicial Department. The Supreme Court shall adopt rules and regulations governing the operation of the Commission. The Commission shall exercise all of its duties independently of the Director of the Administrative Office of the Courts, except that the Commission shall consult with the Director regarding personnel and budgeting matters.

(c) The Dispute Resolution Commission shall consist of 18 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be active superior court judges, and at least two of whom shall be active district court judges; one clerk of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct superior court mediated settlement conferences and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; one certified district criminal court mediator who is a representative of a community mediation center appointed by the Chief Justice of the Supreme Court; a district attorney appointed by the Chief Justice of the Supreme Court; a court management staff member appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Commission members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. Members appointed to fill unexpired terms shall be eligible to serve two consecutive terms upon the expiration of the unexpired term. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

Vacancies shall be filled for unexpired terms and full terms in the same manner as incumbents were appointed. Appointing authorities may receive and consider suggestions and recommendations of persons for appointment from the Dispute Resolution Commission, the Family Law, Litigation, and Dispute Resolution Sections of the North Carolina Bar Association, the North Carolina Association of Professional Family Mediators, the North Carolina Conference of Clerks of Superior Court, the North Carolina Conference of Court Administrators, the Mediation Network of North Carolina, the Dispute Resolution Committee of the Supreme Court, the Conference of Chief District Court Judges, the Conference of Superior Court Judges, the Director of the Administrative Office of the Courts, and the Child Custody Mediation Advisory Committee of the Administrative Office of the Courts.

(d) An administrative fee, not to exceed two hundred dollars (\$200.00) per certification, may be charged by the Dispute Resolution Commission to applicants for certification and annual renewal of certification for mediators and mediation training programs operating under this Article. The fees collected shall be deposited in a Dispute Resolution Fund. The Fund shall be established within the Judicial Department as a nonreverting, interest-bearing special revenue account. Accordingly, interest and other investment income earned by the Fund shall be credited to it. All moneys collected through the fees authorized and assessed under this statute shall be

remitted to the Fund. Moneys in the Fund shall be used to support the operations of the Commission and used at the direction of the Commission.

(e) The chair of the Commission may employ an executive director and other staff as necessary to assist the Commission in carrying out its duties. The chair may also employ special counsel or call upon the Attorney General to furnish counsel to assist the Commission in conducting hearings pursuant to its certification or qualification and regulatory responsibilities. Special counsel or counsel furnished by the Attorney General may present the evidence in support of a denial or revocation of certification or qualification or a complaint against a mediator, other neutral, training program, or trainers or staff affiliated with a program. Special counsel or counsel furnished by the Attorney General may also represent the Commission when its final determinations are the subject of an appeal.

(f) In connection with any investigation or hearing conducted pursuant to an application for certification or qualification of any mediator, other neutral, or training program, or conducted pursuant to any disciplinary matter, the chair of the Dispute Resolution Commission or the chair's designee, may do any of the following:

- (1) Administer oaths and affirmations.
- (2) Sign and issue subpoenas in the name of the Dispute Resolution Commission or direct its executive director to issue such subpoenas on its behalf requiring attendance and the giving of testimony by witnesses and the production of books, papers, and other documentary evidence.
- (3) Apply to the General Court of Justice, Superior Court Division, for any order necessary to enforce the powers conferred in this section, including an order for injunctive relief pursuant to G.S. 1A-1, Rule 65, when a certified mediator's conduct necessitates prompt action.
- (4) Assess and collect an administrative fee from any person who appeals an adverse determination to the full Commission for a hearing and fails to attend the hearing without good cause as determined by the chair of the Commission. The fee assessed shall be the lesser of the Commission's actual expenses for the hearing or two thousand five hundred dollars (\$2,500). The fees collected shall be deposited in the Dispute Resolution Fund established pursuant to subsection (d) of this section.

(g) The General Court of Justice, Superior Court Division, may enforce subpoenas issued in the name of the Dispute Resolution Commission and requiring attendance and the giving of testimony by witnesses and the production of books, papers, and other documentary evidence.

(h) The Commission shall keep confidential all information in its files pertaining to the initial and renewal applications for certification of mediators, the qualification of other neutrals, and the initial and renewal applications for certification or qualification of training programs for mediators or other neutrals, except that in the case of an initial or renewal application for certification in the District Criminal Court Mediation Program, Commission staff shall notify the Executive Director of the Mediation Network of North Carolina, Inc., and the Executive Director of the community mediation center that is sponsoring the application of any matter regarding the qualifications, character, conduct, or fitness to practice of the applicant. The Commission shall also keep confidential the identity of those persons requesting informal guidance or the issuance of formal advisory opinions from the Commission or its staff.

All information in the Commission's disciplinary files pertaining to a complaint regarding the moral character, conduct, or fitness to practice of a mediator, other neutral, trainer, or other training program personnel shall remain confidential, unless the subject of the complaint requests otherwise, until such time as all of the following conditions are met:

- (1) A preliminary investigation is completed.

- (2) A determination is made that probable cause exists to believe that the words or actions of the mediator, neutral, trainer, or other training program personnel:
 - a. Violate standards for the conduct of mediators or other neutrals;
 - b. Violate other standards of professional conduct to which the mediator, neutral, trainer, or other training program personnel is subject;
 - c. Violate program rules or applicable governing law; or
 - d. Consist of conduct or actions that are inconsistent with good moral character or reflect a lack of fitness to serve as a mediator, other neutral, trainer, or other training program personnel.
- (3) One of the following events has occurred:
 - a. The respondent does not appeal the determination before the time permitted for an appeal has expired.
 - b. Upon a timely filed appeal, the Commission holds a hearing and issues a decision affirming the determination.

Upon a finding of probable cause under this subsection against a mediator arising out of a mediated settlement conference, Commission staff shall provide notice of the finding of probable cause to any mediation program or agency under whose auspices the mediated settlement conference was conducted. Commission shall also make reasonable efforts to notify any such agency or program of any public sanction imposed by the Commission pursuant to Supreme Court rules governing the operation of the Commission against a certified mediator who serves as a mediator for any such agency or program. Commission staff and members of the Grievance and Disciplinary Committee of the Commission may share information with other committee chairs or committees of the Commission when relevant to a review of any matter before such other committee.

The Commission may publish names, contact information, and biographical information for mediators, neutrals, and training programs that have been certified or qualified.

(i) All appeals from denials of initial applications for mediator certification and initial applications for mediator training program certification shall be held in private, unless the applicant requests a public hearing. Appeals from a denial of a mediator or mediator training program application for certification renewal or reinstatement that relate to moral character, conduct, or fitness to practice shall be open to the public, except that for good cause shown, the presiding officer may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. All other appeals from denials of a mediator training program's application for certification renewal shall be held in private, unless the applicant requests a public hearing.

(j) Appeals from the Commission's initial determination after review and investigation of a complaint that probable cause exists to believe that the conduct of a mediator, neutral, trainer, or other training program personnel violated a provision set out in subdivision (2) of subsection (h) of this section shall be open to the public, except that for good cause shown, the presiding officer may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing shall be closed to the public over the objection of the mediator, neutral, trainer, or training program personnel that is the subject of the complaint.

(k) Appeals of final determinations by the Commission to deny certification or renewal of certification, to revoke certification, or to discipline a mediator, trainer, or other training program personnel shall be filed in the General Court of Justice, Wake County Superior Court Division. Notice of appeal shall be filed within 30 days of the date of the Commission's decision.

(l) The Commission may issue a cease and desist letter to any individual who falsely represents himself or herself to the public as certified or as eligible to be certified pursuant to this section, or who uses any words, letters, titles, signs, cards, Web site postings, or advertisements that expressly or implicitly convey such misrepresentation to the public. If the individual

continues to make such false representations after receipt of the cease and desist letter, the Commission, through its Chair, may petition the Superior Court of Wake County for an injunction restraining the individual's conduct and for any other relief that the court deems appropriate.

(m) Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties. (1995, c. 500, s. 1; 1998-212, s. 16.19(b), (c); 2005-167, ss. 2, 4; 2007-387, ss. 2, 3; 2010-169, s. 21(b); 2011-145, s. 15.5; 2011-411, s. 5; 2017-158, s. 26.8; 2019-243, s. 2(a); 2021-47, s. 4(a).)