



## **District Court Services and Mandatory Referral to Mediation**

The Mediation Center provides mediation services for cases referred from District Court in Buncombe, Henderson, Transylvania, and Polk counties. In its 2012 short session, the North Carolina General Assembly enacted several changes to the statutes governing mediation in criminal cases. These changes address referral of citizen-initiated warrants. The purpose of this document is to explain how the mandatory mediation statute is interpreted and applied by the Mediation Center.

### **Mandatory Misdemeanor Mediation** (S.L. 2012-194, § 63.3.(a):

#### **Offenses Requiring Mandatory Mediation:**

The mandatory mediation statute (S.L. 2012-194, § 63.3.(a) provides the criteria for referral of misdemeanor cases to a local mediation center.

- Each chief district court judge and district attorney shall refer any misdemeanor criminal action in district court that is generated by a citizen-initiated arrest warrant to the local mediation center for resolution, except for: any case involving domestic violence; any case in which the judge or the district attorney determine that mediation would be inappropriate; or any case being tried in a county in which mediation services are not available. The mediation center shall have 30 days to resolve each case and report back to the court with a resolution. The district attorney shall delay prosecution in order for the mediation to occur. If the case is not resolved through mediation within 30 days of referral, the court may proceed with the case as a criminal action. For purposes of this section, the term "citizen-initiated arrest warrant" means a warrant issued by a magistrate or other judicial official based upon information supplied through the oath or affirmation of a private citizen.
- As set out in the text of the provision, the mandatory mediation requirement applies only to a specific class of cases, with certain exceptions (see below).
- Note that, because the mandatory mediation provision does not apply if there are no criminal mediation services available in the county, the new provision does not require districts without a current mediation program to create one.

## **Application and Interpretation by the Mediation Center**

**Referral to mediation is mandatory only when all three of the following are met:**

- The case is in district court AND
- The case is a misdemeanor (no cases involving only infractions) AND
- The case was brought via a citizen-initiated warrant

**Referral to mediation is not mandatory when apply when either of the follow are true:**

- The case involves domestic violence OR
- Either the judge or the district attorney finds mediation inappropriate

The statute states that **referral** to mediation, not participation in mediation, is mandatory. Mediation is most likely to be effective in resolving disputes when parties participate voluntarily. When parties feel coerced to participate in mediation, they are quite unlikely to resolve their dispute. **The mediation process is voluntary, and the Mediation Center will not compel parties to participate against their will.** The Mediation Center recognizes that there may be consequences for parties who do not participate, including that the district attorney may decline to prosecute a case. Parties are encouraged to seek such information from their lawyer or from the district court personnel during their court appearance. The Mediation Center will not provide advice to parties on the consequences of declining to participate, but will inform parties that such consequences may exist.

### **Intake and Mediation:**

Once a case is referred to The Mediation Center from District Court, a staff member conducts an intake with all parties to determine if the case is appropriate for mediation, discuss the potential benefits of mediation, and determine the parties' willingness to participate. If the case is appropriate and parties are willing, staff work with the parties and volunteer mediators to schedule a mediation session. After mediation, staff report back to District Court the outcome of mediation (i.e., whether the case was resolved, unresolved, or parties request additional time to follow through on an agreement reached in mediation).

### **Dispute Resolution Fee:**

If a case is resolved through mediation, the defendant in the case is responsible for paying the Dispute Resolution Fee to the Clerk of Courts in the respective county. The fee is \$60. Once the fee is paid, the Mediation Center requests that the case be dismissed. If a defendant cannot pay the fee, they can request that the judge grant a fee waiver or an extended time to pay the fee. This request must be made in court. The Mediation Center does not make decisions regarding waiver of the dispute resolution fee. Because we depend on the funds generated by this fee to be able to provide the service at no charge, we do not advocate for fee waiver.