

NC Dispute Resolution Commission

Minutes

NCBA Bar Center in Cary, NC

September 17, 2004

9:30 a.m.

Members present: Little, Cunningham, DeRamus, Morgan, Seigle, Steelman, and Taylor. Ex-officio members present: Laney, McKee, Morris, Schafer, Walker, and Wrenn. New Commission appointees (effective October 1, 2004) present: Jessie M. Conley, N. Joanne Foil, N. Lawrence Hudspeth, Judge W. David Lee, and Judge Joseph E. Turner. NCBA Dispute Resolution Section Council members, NCBA officials, and Commission staff present: Ann Anderson, Roy Baroff, Bob Cone, Ellen Gelbin, Deborah Isenhour, Maggie Sloane, Leslie McCandless, Gray Wilson, and Leslie Ratliff.

Mr. Little began the meeting by thanking everyone for attending. He noted this would be his last meeting as Chair and he recognized his successor, Judge Steelman, and the new Commission appointees in the room. He noted that later in the day, the Commission would be honoring those members whose terms were expiring. Mr. Laney invited those present to stay for lunch and the Council meeting following the Commission meeting at 12:30 p.m. He noted that the meeting would include a tribute to the late Carmon J. Stuart, a founding member of the Commission and a leader in the dispute resolution arena.

Mr. Little next spoke about the formation of an *ad hoc* committee by the Commission and the Section to explore establishment of a new program for mediation of matters heard by Clerks of Superior Court, including adult guardianship, estate, and boundary disputes. He noted that he and Mr. Laney were serving as co-chairs and that they would be reporting back to the Commission as the Committee's work got underway.

Next, Mr. Little, reporting for the **Executive/Operations Committee**, suggested that the Commission begin its major task for this meeting-- reviewing the proposed draft of new investigative and hearing procedures designed to address conduct and disciplinary matters coming to the Commission's attention as a result of self-reporting by mediators or third party complaints. Mr. Little gave a brief overview of why the Executive Committee felt it was necessary to revise the existing rules. He spoke about the need to flesh out the existing rules and to build in more due process protections for mediators. He also noted that the new rules provided for a two-tiered process. The Standards and Discipline Committee would conduct the initial review of disciplinary matters and either dismiss complaints or order certification or re-certification or, on the other hand, deny certification or impose sanctions. If an applicant or mediator appealed a denial of certification or a sanction, then the matter would be heard *de novo* by the full

Commission. There followed some considerable discussion of the proposed rule and several changes were suggested as discussed in the paragraphs below.

Commission members requested deletion of language in 3.a. which allowed third party character references or witnesses to request that information they provided the Commission regarding applicants, mediators, or trainers be kept confidential. This led to a broader discussion of matters of confidentiality. Mr. Little noted that it was his understanding from an informal opinion issued by Deputy Attorney General Grady Balentine and from discussion with School of Government staff attorneys that the Commission was on firmer ground in terms of confidentiality of its certification files than its disciplinary files. Once a finding of probable cause was made, the disciplinary files would be open to the public.

At this point, Mr. Laney, Judge Turner and others pointed out that though mentioned in A.2.e., the proposed draft did not provide a framework for the review of staff denials of applications for certification and re-certification for reasons not relating to conduct. Mr. Little agreed with them and suggested that perhaps there needed to be an entirely separate rule for addressing staff denials of applications for reasons not relating to conduct.

There followed discussion about whether Committee members who participated in initial determinations should hear the matter when it came before the full Commission on appeal. The Commission agreed that Committee members should not hear appeals even if it meant that in some cases, the matter might be heard by as few as three members. There was additional discussion about whether the Commission should publish all sanctions or just those more serious in nature. It was suggested that the sanctions in Section B.11 be reordered according to their seriousness.

Mr. Little concluded the discussion of Draft 11 by reiterating that the Executive Committee would look into the development of a separate rule for staff denials of certifications or revocations of certifications for non-conduct reasons. He also noted that the Executive Committee would make other changes suggested by the Commission members at the meeting and then submit the draft to the ADR Committee for comment.

Next, Mr. Little called for Committee Reports. Ms. Seigle reported for the **Standards and Discipline Committee**. Ms. Seigle noted that she was reporting for Ms. Bernholz who was away on vacation. Ms. Seigle reported that her Committee had considered two applications for certification that morning and upheld staff decisions to deny in each case. In one of the instances, she noted that the applicant held law and doctoral degrees from unaccredited universities. She noted also that staff and the Committee felt there had been a misrepresentation made regarding what the applicant told staff regarding a master's degree. She noted that the Commission's office had seen an increase in applications involving unaccredited schools. In the other application which involved a renewal, the applicant was a convicted felon. Ms. Seigle concluded by suggesting that the Commission might want to expedite sending proposed rule changes to the Supreme Court that would require lawyers to be graduates of accredited schools and non-lawyers to possess four-year degrees. Lastly, Ms. Seigle reported that the Committee had also

discussed a third matter on which the Committee had already taken action, but which they had revisited at the request of staff.

Judge DeRamus reported for the **Program Oversight Committee**. Judge DeRamus shared some new statutory language with Commission members revising N. C. Gen. Stat. § 7A-38.2 to provide for confidentiality of Commission files and proceedings. There followed some discussion about the effect of the Open Meetings and Open Records Law on the Commission. The members of the Commission voted to approve the provisions, but with the understanding that since the Executive Committee was still drafting in connection with the investigative and hearing rules that there might be a need to tweak or further revise the statute. Judge DeRamus noted that his Committee had also discussed development of a form to facilitate requests for extensions. He noted that Ms. Ratliff would further refine the form and prepare it for submission to the Forms Committee.

Since Mr. Criner was not in attendance, there was no report from the **Mediator Certification and Training Committee**.

At this point, Mr. Little called for a number of Commission members whose terms were expiring to come forward and be recognized. He presented plaques and the Commission's thanks to: Judge Judson DeRamus, Judge Michael Morgan, George Cunningham and Merritt White. Mr. Little also acknowledged Judge Danny Davis whose term was expiring, but who was not in attendance to receive his plaque. Next, Judge Steelman asked Mr. Little to come forward and receive a plaque thanking him for his dedication and service as the Commission's chair and as a member. Judge Steelman noted that he was very pleased that Mr. Little had agreed to remain as an ex-officio member of the Commission.

Lastly, Mr. Little called for approval of the minutes from the last meeting. They were approved unanimously. Lastly, he asked Ms. Ratliff for her office report. Given that time was running short, Ms. Ratliff briefly reported that staff had now tabulated the first two year cycle of CME Reports and that just under half of all certified mediators had complied with the Commission's request that they complete six hours of CME every two years. She also noted that she still had not received caseload statistics for the MSC and FFS Programs from the AOC and was hoping to receive them before transmitting the Commission's Annual Report for FY 2003/04. Lastly, Ms. Ratliff reported that AOC technology staff had pushed back the deadline for posting mediator profiles on the Commission's web site and that the project would not be completed before January at the earliest.

There being no further business, Mr. Little closed the meeting and, again, reminded Commission members that they were invited to remain for lunch and the Council meeting.