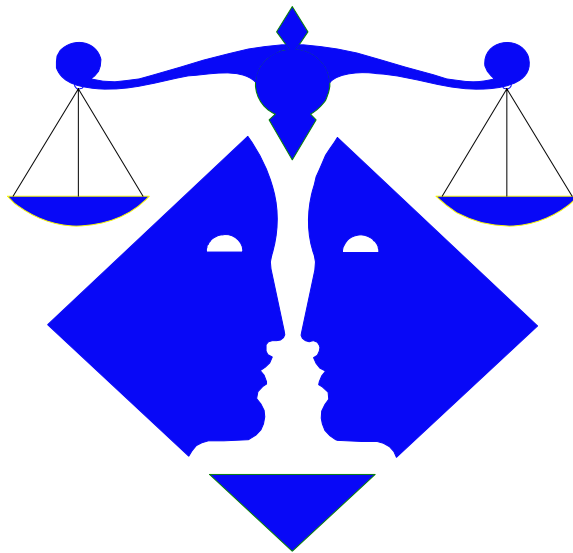


REPORT OF THE
NC DISPUTE RESOLUTION COMMISSION
FOR FISCAL YEAR 2008/2009



JUDGE SANFORD L. STEELMAN, JR., CHAIR (July 1, 2008 -- September 30, 2008)
JUDGE W. DAVID LEE, CHAIR (October 1, 2008 – June 30, 2009)

Prepared By:
Leslie Ratliff, Executive Secretary
NC Dispute Resolution Commission
(919) 890-1415
www.ncdrc.org

I. **Introduction:** N.C. Gen. Stat. § 7A-38.2 established the North Carolina Dispute Resolution Commission effective October 1, 1995. The Commission is charged primarily with administering mediator and mediator training program certification and with regulating the conduct of mediators and training program personnel. The Commission also helps to support the court-based programs served by certified mediators, including: the superior court's Mediated Settlement Conference (MSC) Program; the district court's Family Financial Settlement (FFS) and District Criminal Court Mediation (DCC) Programs; and the Clerk Mediation Program (CMP). In addition to certifying and regulating mediators and providing program support, the Commission also recommends policy, rules and rule revisions relating to dispute resolution to the Alternative Dispute Resolution Committee of the State Judicial Council, seeks to promote mediator education and skills development, interfaces with and serves as a resource for other state agencies offering mediation services or seeking to provide such services, and serves as a clearinghouse for dispute resolution information. This annual report, which is the 14th submitted by this body, describes the activities and accomplishments of the Commission for the period July 1, 2008, through June 30, 2009.

II. **Membership:** The Commission is a sixteen-member body. In accordance with N.C. Gen. Stat. § 7A-38.2, its membership consists of: five judges, including two superior and two district court judges; a clerk of superior court; five mediators, including two certified to conduct family financial settlement conferences in district court, two certified to conduct mediated settlement conferences in superior court, and one certified to conduct criminal district court mediations; two practicing attorneys not certified as mediators, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation. Members who were serving as of June 30, 2009, and their appointing authorities are listed below. Members whose terms expired this year immediately follow:

Judge W. David Lee (Monroe), judge member, re-appointed by the Chief Justice on September 5, 2006, for a term expiring September 30, 2009. Appointed Chair by the Chief Justice on October 1, 2008, for a term expiring September 30, 2009.

Jacqueline R. Clare (Raleigh), superior court mediator member, appointed by the Chief Justice on October 1, 2008, for a term expiring September 30, 2011.

Jessie M. Conley (Statesville), family financial mediator member, re-appointed by the Chief Justice on September 5, 2006, for a term expiring September 30, 2009.

Martha H. Curran (Charlotte), Clerk member, re-appointed by the Chief Justice on September 2, 2008, for a term expiring September 30, 2011.

N. Victor Farah (Raleigh), practicing attorney not certified as a mediator member, appointed by the State Bar President on July 24, 2008, for a term expiring September 30, 2011.

Judge Barbara Jackson (Raleigh) judge member (Court of Appeals), appointed by the Chief Justice on October 1, 2008, for a term expiring September 30, 2011.

Edward C. Hay, Jr. (Asheville), knowledge citizen member appointed by the General Assembly upon recommendation of the Speaker of the House on October 1, 2006, for a term expiring September 30, 2009.

Wayne Huckel (Charlotte), superior court mediator member, appointed by the Chief Justice on October 1, 2007, for a term expiring September 30, 2010.

N. Lawrence Hudspeth (Jacksonville), family financial mediator member, re-appointed

by the Chief Justice on September 5, 2006, for a term expiring September 30, 2009.

J. Anderson Little (Chapel Hill), knowledgeable citizen member, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate on October 1, 2008, for a term expiring September 30, 2011.

Terri C. Masiello (Statesville) district criminal court mediator, appointed by the Chief Justice on October 1, 2008, for a term expiring September 30, 2011.

Judge Ann E. McKown (Durham), district court judge member, appointed by the Chief Justice on November 20, 2007, for a term expiring September 30, 2009.

Judge Michael R. Morgan (Raleigh), superior court judge member, appointed by the Chief Justice on October 1, 2007, for a term expiring September 30, 2010.

Professor Mark Morris (Raleigh), knowledgeable citizen member, appointed by the Governor on September 30, 2007, for a term expiring September 30, 2010.

Gary Tash (Winston-Salem), practicing attorney not certified as a mediator member (family law specialist), appointed by the State Bar President on August 27, 2007, for a term expiring September 30, 2010.

Judge Joseph E. Turner (Greensboro) district court judge member, re-appointed by the Chief Justice on September 5, 2006, for a term expiring September 30, 2009.

This year a number of Commission members completed their term or terms on the Commission: **Judge Sanford L. Steelman, Jr.**, served both as a two term member of the Commission and its Chair. **Sherman L. Criner** served two terms and chaired the Commission's Mediator Certification and Training Standards Committee for five years. **Diann Seigle** served two terms and held the position of Vice-Chair of the Commission's Standards, Discipline and Advisory Opinions Committee. **Jules Banzet, III**, served a single term on the Commission. The Commission expresses its gratitude to Judge Steelman, Mr. Criner and Ms. Seigle for their exemplary leadership and its appreciation to all four of these individuals for their dedication and hard work. (Judge Steelman will remain active in Commission work as a Chair Emeritus and as a liaison from the Court of Appeals Mediation Program thereby helping to insure a smooth transition for Judge Lee.)

A number of *ex-officio* members also attend Commission meetings and provide expertise on matters before the Commission. Ex-officio members do not have a vote on the full Commission, but participate in committee meetings. Serving as *ex-officio* members this fiscal year were:

Robert A. Beason, Member, State Judicial Council's ADR Committee

Betty Fuqua, Court Support Staff Liaison

Ellen Gelbin, Chair, NCBA Dispute Resolution Section

Alisa Huffman, AOC Liaison

Frank Laney, Mediator, US Circuit Court of Appeals for the Fourth Circuit and Chair, ADR Committee of State Judicial Council

Jody Minor, Executive Director, Mediation Network of North Carolina

John Schafer, Deputy Commissioner, NC Industrial Commission

Judge Sanford L. Steelman, Chair Emeritus and Liaison for the Court of Appeals Mediation Program

- III. **Office:** The Commission's office operates with a three-quarter time Executive Secretary, Leslie Ratliff, and two part-time administrative assistants, Sharon Corey-Laue (35 hours per

week) and Maureen McCarthy Robinson (25 hours per week). Office staff maintain the Commission's website, which can be viewed at www.ncdrc.org, and publish its newsletter, *The Intermediary*. The Commission's office is housed in the North Carolina Judicial Center located at 901 Corporate Center Drive in Raleigh.

- IV. **Interface with other agencies or programs:** Dispute resolution programs and services are offered in many venues in North Carolina besides the State courts. Though the Commission was established under the Judicial Department and is largely a creature of the courts, it has not hesitated to respond to requests for assistance from agencies and offices housed and working outside the courts. The NC Industrial Commission (mediation of workers' compensation claims); the NC Public Utilities Commission, the NC Office of Administrative Hearings; the Federal Eastern, Middle and Western Districts; the United State's Department of Agriculture's Mediation Program (targeting farmers and lending institutions); The NC Department of Insurance (Disaster Mediation Program), and a number of smaller state and federal agencies all operate established mediation programs with assistance, in part, from mediators and trainers certified by the Commission.
- V. **Budget:** Commission revenues are deposited in Administrative Office of the Court's (AOC) Fund 1715. The Commission's budget is comprised of fees collected from mediators and mediation training programs for certifications and renewal of certifications. Certifications and renewals for FY 2008/09 generated \$186,325.00 in revenues. This fiscal year, as in past fiscal years, the Commission fulfilled its charge to fund its operations from revenues only and without expenditure of any tax dollars.
- VI. **Certifications issued:** Total numbers of outstanding certifications by program as of June 30, 2009, are as follows: 1,217 active MSC certifications, 280 active FFS certifications, 186 active CMP certifications (to conduct guardianship and estate mediations), and 36 active DCC certifications.* In addition, there were 67 inactive MSC and FFS certifications. **
- * These numbers reflect total certifications outstanding and not the total number of mediators. The number of mediators is slightly less than the total number of certifications given that 136 mediators hold dual certification, *i.e.*, both MSC and FFS certification (active and inactive) or multiple certifications.
- ** Inactive mediators may not conduct mediated settlement conferences and their names do not appear in the Commission's mediator database accessible at www.ncdrc.org. However, they continue to receive information and updates from the Commission and may reactivate their certifications on demand.
- VII. **Commission activities in FY 2008/09:** The Commission operates with four committees:

Executive Committee: Judge Steelman/Judge Lee (after October 1st), Chair. This Committee is charged with considering matters relating to legislation, budget, and personnel.

Program Oversight Committee: Judge Lee/Mr. Little (after October 1st), Chair. This Committee is charged with insuring that mediated settlement conference programs operate effectively and with recommending revisions to the statutes and rules to achieve that end.

Mediator Certification and Training Committee: Mr. Criner/Mr. Huckel (after October 1st) Chair. This Committee is assigned responsibility for considering issues that arise in

connection with mediator training program and mediator certification or certification renewal and that relate to an applicant's education, training and/or professional experience. This Committee is also responsible for overseeing the Commission's continuing mediator education reporting requirement and with making recommendations on certification fees.

Standards, Discipline and Advisory Opinions Committee: Professor Morris, Chair. This Committee reviews conduct/disciplinary matters self-reported by mediators or applicants for mediator certification and certification renewal and investigates and reviews complaints filed by court staff, litigants, attorneys, and others regarding mediator conduct. This Committee is also responsible for recommending revisions to the Standards of Professional Conduct for Mediators and the Commission's Rules enforcing those Standards and with drafting Advisory Opinions.

The committees undertake the work of the Commission and make recommendations to the full body. Committees meet as needed. The full Commission met four times this fiscal year. Meetings rotated around the State and were held in Greensboro (August 15), Blowing Rock (the Commission's annual retreat November 7-8 at the Green Park Inn), Raleigh (February 13) and Charlotte (May 8). During fiscal year 2008/09, the Commission and its four Committees undertook a number of projects designed to improve operations of the Mediated Settlement Conference, Family Financial Settlement, Clerk Mediation, and District Criminal Court Mediation Programs and to facilitate the work of our State's courts and mediators. Highlights of fiscal year 2008/09 (July 1, 2008 - June 30, 2009) are as follows:

- A) **Commission Responds to State Bar Comment Request.** The Commission's Standards, Discipline and Advisory Opinions Committee has worked diligently over nearly a three year period to respond to a comment request from the NC State Bar. The State Bar asked the Commission to address whether mediators who are also attorneys are obligated to report Rule 8.3 violations to the State Bar when they became aware of those violations during mediation. Standard III of the Standards of Professional Conduct for Mediators stresses the mediator's obligation to preserve the confidentiality of information exchanged during mediation and does not permit the mandatory reporting required by Rule 8.3. The Committee wrestled with the Rule 8.3 scenario as well as with the larger issue of what happens when a mediator's ethical obligations conflict with the standards of conduct of another profession to which he or she belongs.

This fiscal year the Committee reviewed comments it received from the State Bar relating to proposed revisions to Standard III that the Commission had approved the previous fiscal year. Realizing from the Bar's comments that there could be problems in implementing the proposed changes to Standard III, the Committee held additional discussions. Following those discussions, the Committee determined to recommend to the Commission that it ask the State Bar to revise Rule 8.3. to exempt mediators from reporting under the Rule. The Commission adopted this recommendation at its May meeting and Judge Lee contacted the State Bar to request the exemption. The matter is currently before the State Bar.

North Carolina is one of the first States to tackle this difficult issue which has

significant ramifications for the practice of mediation.

- B) Commission to Recommend Revisions to the Standards of Conduct.** Over the last few years, a number of mediators had raised questions and concerns about some provisions in the Standards of Professional Conduct for Mediators. Since a comprehensive review of the Standards had not been undertaken since their inception, Judge Steelman determined to chair an *Ad Hoc* Committee to undertake this assignment (less Standard III) with the questions and concerns that been expressed in mind. The review took the better part of a year and, at the close of FY 2007/08, the *Ad Hoc* Committee was in the process of finalizing its work. The Committee presented its recommendations for revising the Standards at the Commission's August 15, 2008, meeting and its recommendations were adopted by the Commission. The recommendations will be submitted to the ADR Committee of the State Judicial Council and the Supreme Court in the coming fiscal year.
- C) Commission Reviews Enforcement Provisions.** The review of the Standards noted above gave rise to discussion among members of the Standards, Discipline and Advisory Opinions Committee regarding Rule VIII of the Commission's Rules. That Rule enforces the Standards and establishes a framework for investigating complaints against mediators and training program personnel and for hearing such matters. The Committee's Chair, Professor Morris, was concerned that Rule VIII provided only a formal process for investigating and hearing complaints. It did not, he observed, allow Commission members the flexibility of addressing complaints informally or of referring them to other organizations which might be in a better position to provide assistance such as the Chief Justice's Commission on Professionalism or the State Bar's Lawyer Assistance Program. Though they recognized the need for formal investigative and hearing procedures, the Committee also agreed that these softer approaches were more in keeping with the win/win ideals of mediation and conflict resolution and they determined to revise Commission Rule VIII to provide some less formal alternatives to the procedures established by the current Rule. Their work on this project was ongoing at the end of the fiscal year.
- D) Commission To Recommend Rule Revisions.** This fiscal year the Commission voted to recommend to the Supreme Court that it make revisions to the Mediated Settlement Conference, Family Financial Settlement and Clerk Mediation Program Rules. Most noteworthy among the revisions, is a recommendation to increase the cap on court appointed mediator fees from \$125.00 per hour to \$150.00. This change would impact all three programs noted above. If adopted by the Court, this fee increase would be only the second to occur since 1995 when a \$100.00 per hour cap was placed on court appointed mediator fees. The recommendations will be submitted to the ADR Committee and Supreme Court in the coming fiscal year.
- E) Commission Re-Vamps On-Line Renewal Process.** Two years ago, the Commission instituted on-line mediator certification renewal. Many mediators did not find the on-line process to be intuitive and there were many technical problems. This past winter the Commission worked with AOC technology staff to completely

revise the renewal process for the purpose of making it more user friendly and addressing the myriad technical problems that had surfaced. The revised and refined on-line application process was up and running for the FY 2009/10 renewal period. In addition, for the first time this year, the start of the renewal period was pushed out to early June to enable the Commission to bring its fiscal year more into synch with that of the AOC.

- F) First Full Two-Year District Criminal Court Mediator Certifications Issued.** This fiscal year, the Commission issued its first full two-year certifications for District Criminal Court Mediators. Previous certifications were issued for a one year provisional period only during which time applicants could conduct district criminal court mediations while working to comply with the requirements for the two-year certification.
- G) Disciplinary proceedings conducted and advisory opinions adopted.** The Commission's Standards, Discipline and Advisory Opinions Committee continued its work of responding to complaints regarding mediator conduct and reviewing ethical matters involving applicants for certification and certification renewal. This fiscal year the Committee reviewed seven formal complaints relating to mediator conduct and addressed several issues relating to the conduct of applicants for certification or certification renewal. In addition, the Standards, Discipline and Advisory Opinions Committee drafted and the Commission adopted one advisory opinion (08-15). The opinion addressed the issue of whether it was appropriate for a mediator conducting a mediation of a dispute over who should serve as the administrator of an estate, to agree to serve as the administrator himself.

VIII. Plans for Fiscal Year 2008/09. In the coming fiscal year, the Commission will focus on the following projects:

- Work with the State Bar to insure that the Commission's request to exempt lawyer mediators from reporting Rule 8.3 violations is addressed;
- Complete review of the Commission's Rules and forward proposed revisions to the ADR Committee of the State Judicial Council and Supreme Court; and
- Continue refining the Commission's on-line renewal process to include a credit card payment feature.

IX. Conclusion: The NC Dispute Resolution Commission had a successful year working to help the Mediated Settlement Conference, Family Financial Settlement, Clerk, and District Criminal Court Mediation Programs operate more effectively and to improve mediator performance.

Mediation has now become an integral and indispensable part of nearly aspect of our court system. Without mediation, our courts could not handle the volume of cases that are filed each year. It is a process that does not rely on the taxpayers for funding, but is a party-pay program, with mediators voluntarily assisting indigent parties.

The Dispute Resolution Commission pledges to continue to work to make the mediation process responsive to the changing needs of our State's court system, through innovation and thoughtful re-evaluation of the mediation process.