

Dispute Resolution Commission

Meeting Minutes

Commission Meeting
Wednesday, December 2, 2020
8:30 am

Remote Meeting Held Via WebEx

Commission Members present: Judge Gorham, Ms. Morgenstern, Ms. Griffiths, Judge Knight, Judge Hill, Judge Tyson, Judge Farris, Ms. Isley, Ms. Wood, Mr. Wijewickrama, Ms. Nease Brown, Mr. Soni, Mr. Bolen, Ms. Zanglein, Ms. Johnson-Tonkins, Judge Gottlieb, and Mr. Nadolski.

Ex-Officio present: Ms. Laney, Mr. Schaffer, Ms. Greene, Ms. Deiter-Maradei, and Ms. Craig.

Staff present: Ms. Kozlowski, Ms. Robinson, and Ms. Brooks.

Guests present: Mr. Little.

The Honorable Judge Phyllis Gorham, Chair, called the meeting to Order.

Preliminary Meeting Instructions - Ms. Kozlowski thanked everyone for participating in the WebEx meeting, and reminded everyone to remain on mute unless speaking. All votes would be done via raising a hand if participating by video, and by voice if participating via a phone. She asked everyone on the call to be sure to state their name before they spoke and before they make, or second, a motion so the minutes would be accurate. Staff monitored the comments made and interrupted as necessary.

1. **Welcome and Announcements** – Judge Gorham thanked everyone for being on the call.
 - a. Judge Gorham welcomed the new members and asked them to introduce themselves to the group.
 - i. Zachery Bolen: An attorney mediator out of Raleigh. Mr. Bolen mentioned that was excited to be a part of the Commission, that he had been practicing about 20 years and had been with Young and Moore until about a year and a half ago, but now was mediating full time. He said that he appreciated the opportunity to be part of the Commission and looked forward to working with everybody.
 - ii. Ketan Soni: An attorney out of Charlotte. Mr. Soni has been practicing for 20 years and mediating about 10 years. His primarily practice is in domestic law but does all kinds of mediations and arbitrations. He mentioned that he had been lucky enough to work with Frank Laney on some pilot programs for online mediation training and that he was excited to be a part of the Commission.

- iii. Jayne Zanglein: A retired attorney. Ms. Zanglein has been mediating for about 30 years. She taught mediation in law school and for an undergraduate program and ran the NC Farm Mediation Program and Agriculture Mediation Program.
 - iv. Lisa Johnson-Tonkins: The Superior Court Clerk for Guilford County. Ms. Johnson-Tonkins mentioned that she received mediation training in the One Step Further Program back in the 90's but was also on the Dispute Resolution Committee for her local bar association. She mentioned that she was pleased to be on the Commission.
 - b. Introduction of new Ex-Officio Member.
 - i. DeShield Greene (replaced Lori Cole): Ms. Greene is a Court Management Specialist at the AOC and has worked with the DRC as an Ex-Officio Member in the past.
 - c. Approval of August 7, 2020 Meeting Minutes.
 - i. Ms. Griffiths made a motion to approve the August 7, 2020 meeting minutes. Ms. Morgenstern seconded. No discussion, no changes. Vote – all in favor. None opposed. Motion carried, approved.
 - d. Approval of October 9, 2020 Email Vote Minutes.
 - i. Ms. Griffiths made a motion to approve the October 9, 2020 email vote minutes. Ms. Morgenstern seconded. No discussion, no changes. Vote – all in favor. None opposed. Motion carried, approved.
 - e. Election of a new Vice-Chair for the DRC. Judge Gorham requested nominations.
 - i. Mr. Nadolski nominated Judge John Tyson. Mr. Wijewickrama seconded.
 - ii. Judge Gorham asked for any other nominations. There were none.
 - iii. Vote – was all in favor. No opposition. Motion carried Judge John Tyson was elected the new Vice-Chair of the DRC. He was congratulated by everyone.
 - 1. Judge Tyson: Thanked the members and said that he appreciated the vote and hoped that Judge Gorham would always be present to run the meetings!
- 2. **Office Report** – Ms. Kozlowski
 - a. SEI reports on new Members. Ms. Kozlowski read through the results of the new members SEI reports from the State Ethics Commission.
 - i. Zachery Bolen: The State Ethics Commission had completed their evaluation of Statement of Economic Interest filed by Mr. Bolen and they did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on the Dispute Resolution Commission.
 - ii. Ketan Soni: The State Ethics Commission had completed their evaluation of Statement of Economic Interest filed by Mr. Soni and they did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on the Dispute Resolution Commission.

- iii. Jayne Zanglein: The State Ethics Commission had completed their evaluation of Statement of Economic Interest filed by Ms. Zanglein and they did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on the Dispute Resolution Commission.
 - iv. Lisa Johnson-Tonkins: The State Ethics Commission had completed their evaluation of Statement of Economic Interest filed by Ms. Johnson-Tonkins and they did not find an actual conflict of interest or the likelihood for a conflict of interest.
 - b. CME presentations.
 - i. Staff has had the opportunity to present two 1-hr CLE/CME courses since our last meeting, as well as teach the Rules/Standards in a few training courses. Additionally, we will be presenting a course this coming Friday for the NCBA.
 - c. Conflict Resolution Week Celebration 2020.
 - i. Ms. Kozlowski thanked all who were able to participate in our celebration this year. She wanted to especially thank the Chief Justice and all past chairs, Leslie Ratliff, and Kate Deiter-Maradei for taking the time to wish the DRC well! She also thanked the 4 presenters, Jacqueline Clare, Thomas Clare, Robert Beason and Rene Trehy. The program was a great success with 128 attendees, of which 110 received CLE credit as well as CME credit.
 - d. Budget Report/Renewal. We rolled over \$184,922.00 from the 19-20 FY and received \$181,560.00 in certification fees as of 10/31/20 for the 20-21 FY. Certification fees collected were down about 13k from this time last year. Renewal, we have 1306 active and inactive mediators across the State. The number dropped slightly from last year, we lost ~ 78 mediators, but Mary is still working on reaching out to those who didn't renew to verify their intention to lapse. Moving onto remote mediations, they have certainly impacted a lot of our mediators, staff has heard from quite a few mediators who were not willing to use remote technologies and have either left the practice of mediation or are taking a break and moved to inactive status. This number is skewed a bit as we have received a number of new applications this year, but the total number of mediators available in the state continues to be high. Ms. Kozlowski projected the annual expenses would not exceed \$140k for the current fiscal year, that would leave the Commission in the positive with an additional amount to roll over into 21/22 FY. This is in part to no expenses due to remote Commission and committee meetings and to the AOC covering Maureen's salary this FY.
 - e. COVID-19 updates.
 - i. Mediations are moving forward. As you all know the Attendance Rule is set to revert when it is safe to hold in-person mediations, however due to the NC's COVID-19 numbers increasing we are not ready for that discussion just yet.

- f. Supreme Court Rule Amendment Updates.
 - i. MSC/FFS/Clerk Rule 4 Amendments were signed on Nov 17th and went into effect Nov 23, 2020. The amendments corrected the error of unintentionally deleting the ability for the parties and mediator to excuse a party from attending the mediation when we flipped the presumption.
 - g. Committee Assignments.
 - i. The new committees have been assigned as we have a number of new Commission Members. Ms. Kozlowski asked for the members to review the committee's list and let her know if they would like less work, or more. She told them that staff understands that you all have full time positions and want to be respectful of your time.
3. Committee Reports – Judge Gorham moved onto the committee reports.
- a. Executive Committee Report – Judge Gorham
 - i. Nothing to report.
 - b. Grievance and Disciplinary Committee – Debbie Griffiths
 - i. Update on complaint activity.
 - 1. Ms. Griffiths was happy to report on this go around she didn't have a lot to report. She liked to think that some of that is from folks keeping our rules in the forefront of their mind when they are doing mediations.
 - 2. One complaint came in that was filed against Mediator A. Mediator A is not DRC certified. Mediator A mediated a pre-litigation matter in family law. The DRC did not have jurisdiction over the case as the matter was pre-litigation nor did the DRC have jurisdiction over the mediator as the mediator is not a certified mediator. Therefore, the matter was dismissed.
 - ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
 - 1. One application came in for renewal that was brought to the committee's attention because it fell outside of the guidelines. Applicant Y's renewal application properly disclosed a sanction by the NC State Bar. Applicant Y timely notified staff of the pending grievance, and subsequent censure and accurately reported the information on the renewal application. The committee reviewed the file and found probable cause to believe that Applicant Y's actions were unprofessional, but there were no rule violations, the matter did not arise from a mediation and there was no probable cause to believe the applicant's conduct served to discredit the courts or the process of mediation. Therefore, the committee unanimously voted to dismiss the matter under Rule 9(d)(3)(b)(2)(i), with a Letter of Caution.
 - 2. A question was asked if the original complaint was based on the mediation being held or was it based on the mediator's behavior?

- a. Ms. Griffiths responded that it was the behavior of the mediator.
 - b. Ms. Kozlowski mentioned that yes, it was on the mediator's behavior – bias and coercion, but the DRC had no jurisdiction.
 - iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff);
 - 1. There were no applicant or pre-approval matters considered since the last meeting.
- c. New Media Committee – Judge Hill
 - i. Mediators ability to self-report CME. The mediator's ability to self-report CME continues to streamline the renewal application process. Staff only received a handful of CME reports (hard copy) from mediators this year. The mediator profile application will be updated in January to allow mediators to log into their profile to report their CME in real time for the upcoming 21-22 FY renewal period.
 - ii. Social Media Presence. Maureen is continuing to do an outstanding job with the DRC social media presence. She has provided numerous updates on Twitter and LinkedIn. She has also sent out multiple email blasts to keep mediators up to date on all relevant matters.
 - iii. Updates to website. We have modified the website to show the Chief Justice's video from Conflict Resolution Day on the DRC's main webpage. The Chief recognized the Commission's 25th anniversary and our hard work over the past year. We have also posted the full Conflict Resolution Day videos with past chairs, and Leslie Ratliff on the Commission's Articles and News page. Judge Hill mentioned that if anyone would like to view the videos, please let staff know and they will be happy to share the links.
- d. Standards and Advisory Opinions Committee Report – Judge Knight
 - i. Previous Matters
 - 1. Proposed modification to Advertising Policy.
 - a. At the August 7, 2020 Commission meeting, the Commission voted to approve adding language to the Advertising Policy. The new language provides guidance to retired judges that staff obtained from the Judicial Standards Commission. The proposed modification was posted for comment for thirty days. Staff received two emails containing 5 comments. After the committee considered all comments, the committee did not make any changes to the original language proposed and recommends the adoption of the proposed modification.
 - b. Ms. Zanglein made a motion to adopt the Advertising Policy. Ms. Nease Brown seconded. No discussion, no changes.

Vote – all in favor. None opposed. Motion carried, approved.

2. Proposed Amendment, Standard 9.

a. At the August 7, 2020 Commission meeting, the Commission voted to approve adding anti-discrimination language to the Standards of Conduct. The new language provides that a mediator shall not engage in unlawful discriminator behavior during the mediation. The proposed modification was posted for thirty days. Staff received 6 comments. After the committee considered all comments, the committee voted unanimously to adopt the recommendations in comment a.ii. The committee recommended the adoption of the proposed modifications to Standard 9.

i. If the new language is adopted, there is no need to re-post as the change was not substantive, per DRC Policy.

a. Ms. Nease Brown made a motion to adopt Standard 9. Ms. Morgenstern seconded. No discussion, no changes. Vote – all in favor. None opposed. Motion carried, approved.

3. Proposed Amendment to Standard 3(d)(5).

a. At the August 7, 2020 Commission meeting, the Commission voted to approve adding language to Standard 3(d)(5) of the Standards of Conduct. The new language provides that a mediator may defend themselves against a complaint filed with a professional licensing board, instead of a response limited to only the State Bar and DRC. The proposed modification was posted for thirty days. Staff received 4 comments. After the committee considered all comments, the committee did not make any changes to the original language proposed and recommends the adoption of the proposed modification.

b. Ms. Griffiths made a motion to adopt Standard 3(d)(5). Ms. Morgenstern seconded. No discussion, no changes. Vote – all in favor. None opposed. Motion carried, approved.

ii. New Matters

1. Proposed AO A-2020 regarding lienholders.

a. Staff received a request for a formal Advisory Opinion regarding the mediator’s duty to a lienholder in a superior court mediation. The question arose as a mediator had been contacted by a lienholder, who was asking questions about the mediation. Staff received a number of calls on this issue recently, as well. The proposed AO provides guidance to

party have to provide written proof to the mediator prior to mediation? So, the mediator and the parties don't get into the mediation without authority. Is there a way to require this, and put the burden on the attorneys to make sure we don't get into a mediation with missing documentation? Can we put this on the participants to provide proof ahead of time?

- c. There were other concerns with the AO. We should distinguish between parties who are individual and parties who are governmental agencies. For example, parties who are part of a governmental agency cannot attend without it becoming a public meeting. How does it work for corporate parties? The AO is written to deal with individuals, the AO did not distinguish between the different entities that attend a mediation. A request was made for the committee to work on the AO a bit more.
- d. We have not required the mediator to do anything, they should seek out the authority, so they are following best practices. An example was provided: there was a county in a mediation who signed an agreement, but it was not valid due to a statute. So, at that point the mediator was asked to ask the opposing side some questions. In this AO we are saying the mediator needs to ask for signing authority – if a party does not have it, they need to disclose to the other side. We have just crafted questions. Mediators can't make someone sign a document or disclose, they can only ask questions. We are not requiring anyone to do anything. We do need to look at this to include corporate entities but off the cuff, we are not stating legal authority. Someone else needs to figure out if the document is binding. The DRC does not want mediators to be in the position of giving legal advice.
- e. The DRC is not being encouraged to write a treatise, but when we say “should” the word should is stronger than encouraging. If we want appropriate authority, we need to have it listed. These things come up and I want us to be careful and mindful that the parties to the mediation come in all forms and all kinds of abilities. I find it troublesome in that way. If we want to encourage, the word should fall between encourage and requirement. Having “should” included in the AO, is concerning.
- f. In the mountains, a lot of the lawyers are looking to the mediator for direction on how to set up a system for the client

to respond. How do we circulate and provide final documentation? We are in a new environment. I agree, we need to be careful putting in strong language and adding additional burdens on the mediator, shall/should/encourage – the end result is, the lawyer is looking to the mediator. We need to be thoughtful and not back ourselves into a corner.

- g. The NCBA DR Section have had some informal discussions on this matter and have an annual meeting coming up. Some of us have had some success if a party is not able to sign, we try to have evidence somewhere that the attorney does have authority.
- h. Judge Gorham at this point mentioned that she felt the committee needed to do more work on the AO. The AO was tabled, and she asked the committee to do a little more work on it.
- i. Judge Knight responded that the committee would be happy to do more work on the AO.

With regrets, the following Members left the meeting to attend to other business: Ketan Soni, Judge Hill, and Lisa Johnson-Tonkins. A quorum was maintained.

e. Civil Sub Committee – Judge Farris

- i. Judge Farris mentioned he would jump around a bit to continue the conversation on *Mitchell* and moved to the proposed legislative changes prompted by the *Mitchell* case.

- 1. On November 3rd, the Court of Appeals held in *Mitchell v. Boswell* that our program enabling legislation “does not permit authorized agents to sign on behalf of a party” and that “the General Assembly unambiguously omitted the authority to sign by authorized agents as it has included in other statute of frauds contexts”. cite omitted. The COA then provided clear guidance on how to remedy this issue. The Civil Subcommittee proposed legislative changes to provide for the agreement to be signed by the parties, or their authorized agents.

- a. Judge Farris noted that if the Commission should approve the proposed legislative changes, they would not be posted for comment per DRC Policy.

- 2. A guest at the meeting requested to make a few comments about the *Mitchell* case, which Judge Gorham approved.

- a. This issue has not had full treatment and discussion, that the *Mitchell* opinion was only a month old. Has the section been invited to make a comment? It is premature to put this before the legislature without a full discussion. There are concerns about confidentiality that need to be taken into

account, mediators may not testify unless being ordered, that testifying is a violation of Standard 3 and that the Commission had sanctioned those who have violated this Standard.

3. There was echoing support for these concerns. Is it the responsibility of the mediator to determine who is the authorized agent? If it is the mediator's responsibility, then they will testify. The mediator is no longer neutral. This to be a key issue.
4. The comments were not intended to suggest the mediator has a duty to determine the authorized agent. However, there was a past mediator who did, in a case, take sides and did testify.
5. A question arose as to whether the comments are making a distinction between a mediator who testifies voluntarily, and one who is ordered?
6. Yes, there is a distinction. The Commission has sent messages that you do not testify unless ordered.
7. The idea of adding authorized agents makes me want to squirm, as we need notarized signatures. There is no easy way to do that, but if you put a procedure in place before the mediation began, there would be no issue.
8. Yes, that is a concern. Also, the plaintiff in Mitchell had sought to enforce the Memorandum of Understanding that was pending during the drafting of a more formal agreement. By the document's own terms it was not a complete and final agreement. It would be best to use the forms provided by the DRC, a Mediation Summary as there is no binding agreement of the parties and no signature lines for the parties to sign. Additionally, the defendant's refusal to sign the Memorandum of Understanding in Mitchell created a dilemma for the Defendant's attorney. If the client withdrew his willingness to sign, the lawyer is no longer able to sign for him and cannot testify about what was said in mediation. It is unclear why a lawyer would want to be in this position, as there is a conflict of interest. This case is an example as to why that should not happen. The final point is that there is a proposal, in Rule 4, which sets out the attendance requirements. There is a separation between the client and the attorney, and that this has held fast for thousands of cases. If there ever is a consensus among the Commission Members, it should be suggested to the general assembly that this not include attorneys. There is nothing in the case that needs to be fixed, nor will the proposed rules fix this. We will always have these problems, changing the rules will not help. If that change is made the attendance requirement has been relaxed, and we will see more of these cases. Because the Rules require the mediator to agree to

excuse a party, we will see more pressure on mediators, and more importantly we will experience more requests to approve attendance by power of attorney. This will not solve the problem.

9. If we put the burden on the mediator as to who is the authorized agent, this could be opening a pandoras box.
 10. It would be better to get signing authority in writing.
 11. Yes, but who is going to determine the completeness of the writing?
 12. The mediator should ask for the writing, the validity is not the mediator's concern.
 13. The mediator is not making decisions, it is not incumbent of the mediator to determine if the writing is adequate. These suggestions do not need to be included in the Family Financial Rules or legislation.
 14. It was reiterated that the changes are putting a requirement on the mediator.
 15. Is this going back to the committee for further review?
 16. Judge Gorham confirmed that the changes would be going back to committee.
 17. It was restated that we are not changing the attendance rules here, it may seem to be an invitation, but we are not changing the attendance rules. They are still in place. If someone does not attend, we need more specificity as to how the non-attending party is going to sign.
 18. Many mediators have run into this problem in the past, they can declare an impasse or recess and reconvene, the proposed change will only amplify the difficulty to get people to attend.
 19. Judge Farris thanked everyone for their comments. This is exactly what the committee talked about, we looked at ways to make this work – but we always thought this would need more discussion.
 20. Ms. Kozlowski acknowledged that the committee anticipated a discussion on this matter and wanted to get feedback from the full Commission before moving forward.
 21. Ms. Nease Brown made a motion to return the proposed legislation and proposed rule changes to Rule 4 back to the committee with the recommendation that the Civil Subcommittee work with the S&AO committee regarding Mitchell. Ms. Griffiths seconded. Vote – all in favor. None opposed. Motion carried, approved.
- ii. Proposed Rule changes prompted by *Mitchell* case.
 1. Matter returned to committee for further consideration, see discussion above.
 - iii. Previous Matters
 1. Forms still pending with AOC Civil Forms Subcommittee:

- a. Revisions to Petition and Order for Relief from Obligation to Pay Mediator's Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306.
- b. Judge Farris told the members that there was no update on the forms, that they are still on hold due to the implementation of eCourts.

iv. New Matters

- 1. Proposal originating out of GDC to allow recipient of Notice of Grievance to have 30 days from the date of their response to the governing body.
 - a. After submitting rule changes to the Supreme Court in 2019, but prior to the Court adopting new rules in 2020, the Grievance and Disciplinary Committee voted unanimously to modify the rules to provide a mediator who received a notice of a grievance from a professional licensing body (i.e. State Bar) additional time to report said notice to DRC staff. The Grievance Committee voted to modify the language to allow the mediator 30 days from the due date of the response to the professional licensing body. The committee wanted to wait until the Supreme Court had adopted the rules that were under review at the time and asked for the proposed language to then go before the Civil Subcommittee for review. The Civil Subcommittee reviewed the recommended language from the Grievance Committee and incorporated the changes into proposed Rule 8 for MSC, FFS and DCC Rules. The Clerk program defers to the MSC Rules.
 - i. Judge Farris noted that if the Commission should approve the proposed changes to MSC/FFS/Clerk Rule 8, they will be posted for comment for thirty days per DRC Policy.
 - d. Ms. Griffiths made a motion to approve the proposed changes to MSC/FFS/Clerk Rule 8. Mr. Wijewickrama seconded. No discussion, no changes. Vote – all in favor. None opposed. Motion carried, approved.
- f. Mediator Certification and Training Committee – Judge Tyson
 - i. CME offerings approved since the Commissions August 2020 meeting.
 - 1. He reminded Commissioners that mediators are required to complete 2 hours of CME each year. Staff received a few requests for the committee to review Sponsor Applications for CME credit since the last meeting. The committee approved eight courses. There was discussion in the committee to start allowing courses that include skill. However, after looking at the possible need to increase

the number of CME hours required to include courses on skill, the committee determined to leave the CME Policy and 2-hour requirement in place at this time.

ii. Applications for certification that came before the committee.

1. Noting to report.

iii. Previous Matters

1. Proposed new language in MSC Rule 8.

- a. At the August 7, 2020 Commission meeting, the Commission voted to approve proposed amendments to MSC Rule 8. The new language provided the 6-hour legal terminology course be a pre-requisite to the 40-hour training for non-attorney applicants. Additionally, under subparagraph 3(i) and (ii) changes were proposed to clarify the threshold work-history requirements for qualifying as a non-attorney applicant. The new language removed the word “administrative” and utilized language from our Policy on how to interpret this rule. As such, the wording in the rule changed, but our threshold requirements remain the same as before. The proposed modification was posted for comment for thirty days. Staff received two emails containing 5 comments. After the committee considered all comments, the committee did not make any changes to the original proposed language and recommended the adoption of the modifications.
- b. Is the committee requiring the 6-hour course be a prerequisite for non-attorney potential applicants? As a trainer that would be difficult. Even though we ask potential applicants to take it before a training but requiring it first would be difficult.
- c. Yes, the course would be a mandatory prerequisite. Non-attorneys are from a different background and the rules can be hard to understand if they are not familiar with them or court terminology or court structure.
- d. Ms. Kozlowski stated that in the past, we have made it a suggestion, but not all follow the suggestion. Course attendees who do not plan to seek certification will not need the 6-hour terminology course as a pre-requisite.
- e. Ms. Griffiths made a motion to approve the proposed changes to MSC Rule 8. Ms. Isley seconded.
 - i. A request was made for the Commission to discuss the modification, and corrections. She asked about paralegals and wanted to know the history or reasoning behind the changes.

- ii. Ms. Kozlowski explained that historically, the DRC has only certified individuals who have a 10+ year work history of high-level management of an executive nature. Paralegals do not typically fall into that category. We have certified two paralegals in the past due to their management experience and supervisory skills. This rule change simply inserts the wording used in the DRC Policy; the new language does not change the requirements but clearly defines them.
- iii. We should not want to inadvertently disqualify a specific group.
- iv. This language would not exclude a paralegal, but it would require a preapproval and allow staff to look at work history. There are individuals who call themselves a paralegal but are more administrative. The ability is still there for staff to look at specific work history.
- v. The State Bar does certify paralegals, would these paralegals be able to certify as a mediator?
- vi. Ms. Kozlowski responded not necessarily; we look to the applicant's history of management skills of an executive nature.
- vii. The State Bar paralegal certification is not something that would completely qualify one to be certified, and that this did not sound like a change. Managing a business does not make you better or worse, what I am hearing is that the Commission has been certifying paralegals very rarely, and only with other experience. So, these changes will clarify the rules that are already in place.
- viii. When we allow businesspeople, who are non-attorneys to come in, we look for people who can be responsible and have experience making decisions, implementing decisions, and then takes responsibility for those decisions. A secretary does not necessarily meet that requirement. We have drawn the line between decision makers, or non-decision makers. We have had to look at lines in military, what grade would qualify, as well as looking at how to draw the line in other industries. The world has changed, the definition of administrative is not the same as it was 25 years ago.

- ix. The history is appreciated, so this is not a change.
 - x. Gorham then asked for any further discussion. None.
 - xi. Vote. All in favor – Judge Gorham, Ms. Morgenstern, Ms. Griffiths, Judge Knight, Judge Hill, Judge Tyson, Judge Farris, Ms. Isley, Ms. Wood, Mr. Wijewickrama, Mr. Bolen, Ms. Zanglein, Ms. Johnson-Tonkins, and Judge Gottlieb. All opposed – Ms. Nease Brown. Motion carries, adopted.
 - 1. Proposed Rule changes will be submitted to the Supreme Court for their consideration.
2. Proposed new language in DRC Rule 10.
- a. At the August 7, 2020 Commission meeting, the Commission voted to approve language amending DRC Rule 10. The new language provided for a thirty-day appeal period to the committee for applicants who were denied by staff. Staff received one email containing one comment. After the committee considered the comment, the committee did not make any changes to the original proposed language and recommended the adoption of the proposed modification.
 - b. Judge Tyson made a motion to approve proposed changes to DRC Rule 10. Ms. Zanglein seconded. No discussion, no changes. Vote – all in favor. None opposed. Motion carried, approved.
3. Proposed new language in MSC/FFS Rule 9 for training requirements.
- a. At the August 7, 2020 Commission meeting, the Commission voted to approve amending the DRC training requirements outlined in MSC/FFS Rule 9. The new language included training in the areas of substance abuse and technology. The proposed modifications were posted for comment for thirty days. Staff received two emails containing two comments. After the committee considered all comments, and reviewed the proposed language, the committee voted unanimously to remove “IT processes and methodology” from the rule. The committee recommends the adoption of the proposed modifications to MSC Rule 9 and FFS Rule 9.
 - i. If the new language is adopted, there is no need to re-post as the change was not substantive, per DRC Policy.

- b. A comment was made that a 40-hour course is already 43 hours long and the trainer couldn't imagine amending the schedule. Trainers don't have the time to devote to these subjects. Maybe the Commission mandate that in CME courses?
- c. Ms. Kozlowski responded by stating that the committee took the lead from the State Bar as they had included these provisions as required CLE courses, from complaints, and questions from mediators. She confirmed with the chair of the committee that this was correct.
- d. Due to current technology advancements, and what we are seeing now with eCourts, etc., that this training is needed.
- e. Judge Tyson made a motion to approve the proposed changes to MSC/FFS Rule 9. Ms. Griffiths seconded.
- f. A concern was raised about the mental health requirement, that the requirement was misplaced in training, and that we may need to look at extra CME for this topic. However, the technology amendments are acceptable.
- g. Could mental health training could be added to the CME requirements?
- h. Ms. Kozlowski mentioned that Judge Tyson's committee just met and discussed broadening the CME policy, but declined to do so when the committee determined there would need to be an increase in CME hours required each year. Therefore, the committee decided to keep the CME policy and 2-hour annual requirement as-is.
- i. The work that had been done by the committee is well respected and the technology requirements should be in the rules. It is understandable the trainers are in a conundrum but if we are going to certify folks and use remote technology as part of the Guidelines, they needed to be included in the training. Technology needed to be addressed.

With regrets, the following Member left the meeting to attend to other business: Patrick Nadolski.
A quorum was maintained.

- j. If there was concern on timing of the training courses, we could adjust the amount of time each subject is taught in the Trainer Guidelines.
- k. Ms. Nease Brown moved to amend the motion to delete the mental health from the program. Mr. Wijewickrama seconded.

1. No further discussion. Vote – All in favor: Judge Gorham, Ms. Morgenstern, Ms. Nease Brown, Judge Knight, Judge Hill, Judge Tyson, Judge Farris, Ms. Isley, Ms. Wood, Mr. Wijewickrama, Mr. Bolen, Judge Gottlieb. All opposed: Ms. Zanglein, Ms. Griffiths. Motion carried – approved.
4. Modifications to DRC 16-hour and 40-hour Trainer Guidelines under MSC/FFS Rule 9.
 - a. Judge Tyson told the group that the Trainer Guidelines would need to follow Rule 9, so we will need to take a look at the Guidelines again to remove the mental health component.
 - b. Could the Guidelines come off the table today to be adjusted?
 - c. Ms. Kozlowski responded that the Guidelines could be placed on hold and that they would only become effective with a vote by the Commission, and would not go into effect until the rules are approved by the Supreme Court, so there was plenty of time.
 - d. Judge Tyson said that the Guidelines could go back to his committee. He then made a motion for the Guidelines to return to the committee for modifications. Morgenstern seconded. Vote – All in favor, none opposed. Motion carried.
5. Ms. Zanglein interjected that the Commission needed to revisit FFS Rule 9 and add back in the language regarding substance abuse as it was removed with the intent to replace it with the mental health provision. All agreed.
6. Ms. Zanglein motioned to replace number 12 as substance abuse was removed based on mental health provision which no longer exists. Wood seconded. All in favor – none opposed. Motion carried.
4. Ad Hoc Committee Reports –
 - a. Committee on Long Range Planning – Ms. Nease Brown
 - i. We have not yet met as a committee, but Tara and I have a meeting scheduled for December 9, with the AOC and their technology people to see how the Commission’s requirements will fit into the eCourt plans and if there is anything that we need to do now to be sure everything runs smoothly. After that meeting, the full committee will meet.
 - b. eCourt Committee – Ms. Greene
 - i. Ms. Greene began with mentioning that she was replacing Lori Cole on the Commission and that the eCourts Committee had not recently had a meeting but could provide an update. She stated that there is a meeting next week, and that the NCAOC was in the middle of a contract with Tyler and that it

was estimated it would take 21 months to insert and then 5 years to go statewide. The 4 pilot counties, Wake Harnett, Johnston and Lee are expected to go live in June of 2021. COVID has not slowed things down too much. The biggest issue was the conversion date and existing reports and fitting into NC laws. She had been meeting with the NCAOC people with the different mediation programs and with Tyler Tech staff. One thing that she found interesting was, guide and print is the first deployment of the integrated court management system, it is also called guide and file – similar to turbo tax software. A person goes in and answers questions, where their responses will auto populate a form. We are using this in divorce cases, summary judgement cases. This is one of the first services to launch through Tyler Technologies. When we go live, instead of guide and print it will become guide and file.

- c. Legal Advice Committee – Judge Knight
 - i. Nothing to Report
 - d. Video Observation Committee – Mr. Wijewickrama.
 - i. Observational Video by NCBA DR Section update. The NCBA DR Section Observation Video is up and running. The observation video is now available to all MSC applicants to meet one of their required mediation observations. The link to the observation video is obtained by submitting a request to staff. The applicant must first complete a registration form providing verification, they have completed a DRC certified training course. Staff has received numerous comments and compliments on the video. We have included a positive comment from former Chief Justice Mark Martin in your meeting packet. As we continue to move forward in the COVID environment I think this is a positive move for the DRC.
5. Ex Officio Reports –
- a. Mediation Network – Ms. Estle – not on the call today.
 - b. Court Staff – Ms. Greene
 - i. Stats for MSC and FFS. We pull statistical reports quarterly. For the 2020 fiscal year, some highlights from the 1st quarter from July 1 to September of 2020, the family financial settlement rate was 63% for the quarter. There were 719 cases that entered into the mediation process for family financial and 486 that completed the process. For the mediated settlement conference program there was a 54% settlement rate. There were 5168 cases that were ordered, or voluntarily entered, in the program and 1205 that completed the process. The clerk mediation program, that program is underutilized. We receive data sporadically. Only 6 or 7 counties use the program. I have sent updated reporting forms to the clerks, reminding them the program is available. I am hoping we will start getting data from the counties that are using the program. I want to give a shout out to the court managers who are really doing a wonderful job adjusting to their positions during a

pandemic, working remotely, handling shutdowns and adjusting to different directives from the Chief Justice. I think they've done a great job.

- ii. A question was asked if the mediation numbers had gone up or down due to COVID.
 - iii. Ms. Greene replied that she did not do a comparison between this quarter and last quarter. However, I did look at that numbers that were entered into the system, but there is not a huge difference in superior court cases, we had 1568 and 1486 entered in the same quarter last year. So, a difference of not more than 100 cases. The biggest difference was seen in the FFS program, where this quarter 719 cases were ordered into mediation, for the same period last year only 419 cases were entered. Another interesting change, there were 135 disposed without a mediation conference this year, and last year there were 212 cases disposed of without an ADR conference. There are some slight differences. 15 cases settled last year during an ADR recess, and this year 101 settled during a recess.
 - iv. Ms. Kozlowski thanked court staff for all of their hard work through COVID. We have had a great time dealing with court staff this year. Everyone has done an amazing job. Ms. Greene has also been great this year, she jumped right into the DRC. My statistics do show the mediation settlement rates are down, but please keep in mind the data we are able to mind is very limited. This is one reason we are very excited for eCourts as we will have greater access to statistics. Right now we are looking at a 63% settlement rate in FFS and last year we were over 70%. For superior court we are at about a 54% MSC settlement rate. Last year we were over 60%. Court staff have indicated mediators are filing interim report of mediators and a lot are impassing, even though cases are settling as they cannot obtain signatures. Mediators are doing this when they think they need to keep the courts aware of what is happening, but interim reports of mediators are not necessary.
 - v. Ms. Greene agreed the interim reports of mediator that are being filed are causing extra work for everyone as the clerk are trying to process the forms and really not sure what to do with them.
- c. NC Court Managers Conference – Ms. Craig
- i. It means a lot to hear the comment, we are really overworked right now. There are some districts that are significantly behind in their case management work as we are overwhelmed with COVID protocol. The case management numbers may be down as the case coordinator may not have time to report accurate data – there is not enough time. So, if the numbers are low, don't panic, it may be that we are just behind. One trend I have noticed, attorneys are not as pro-active to designate their mediator. It may be due to the status of our current courts. It may have to deal with jury trials – but yesterday I went through some of my cases and had to designate mediators for about 20 of them. The delay from attorneys may be due to

stand still, or they may have other things going on, but that is the trend. There are districts where there are jury trials, so we are getting a lot of extension requests to complete mediations. So, a few districts are extending to 30 days prior to trial date, so the end date automatically moves. That helps to manage the paperwork as we are having to keep pushing back jury trials due to COVID. We had a local mediator recently pass-away, Judge Spainhour, and that he will be missed dearly.

- d. NCBA Dispute Resolution Section – Ms. Deiter-Merida
 - i. Only had a brief report – that the section had a successful event in September that we hosted, that was a dialogue about race and the pursuit of justice. We have a newly reestablished race and equity committee within the DR section council; they are working to develop a pipeline of racially diverse mediators. We are not able to lawfully procure the information regarding the number of certified mediators in NC that come from racial and ethnic minorities. So, if anyone has any clever ideas about permissibly determining this information, please contact me offline. We want this committee to be actionable and a dynamic that makes a difference.
- e. Industrial Commission – Mr. Schafer
 - i. We had our annual educational conference in October 13-16, it included a session on IC mediation. Tom and Jackie Clare joined me and gave a presentation, that was informative. The second thing is our attendance rule, we had to scramble to protect the safety of our mediators, litigants, and attorneys. We had to do this with one arm behind our back as we are subject to the administrative procedures act. However, it has gone well. We mirrored the rule currently in effect in the MSC Rules. We did it that way on the assumption that the MSC Rules will revert as soon as it is safe to do so. We want to return to in-person when it is in safe to do so. We went through the emergency APA process, temporary APA process and are now in the permanent APA process. On December 10th the IC is having a public hearing on the permanent rule. January 4 is the end of the public comment period, and January 7 the IC will vote on the permanent rule and send it to the Rules Review Commission. At that point if we receive approval from the RRC, our current rule should be in effect. If there is a legislative review, however, then we will have to go through that part of the process. However, the temporary rule is now in effect.
- f. Court of Appeals – Judge Tyson
 - i. The COA picked up 5 mediations. Our program has been severely impacted by the lack of civil trials and cases. Most of the appeals we are getting are from guilty pleas and such other cases that are not good for mediation. We did go to a virtual format. Most of the parties want to wait for a live mediation but we have not resumed them yet. We have 5 new judges out of 15 that will be coming onto the court of appeals, 4 of the 5 are sitting judges, 3 district court judges and one superior court judge. I am not sure

if any of the judges are mediators and we do not yet know who will replace Judge Berger who is going to the Supreme Court. One part of our court is turning over, including our Chief Judge, but hopefully we can get them trained in mediation.

- g. Federal Courts – Mr. Laney
 - i. Nothing to report.
 - h. Legislation – Mr. Laney
 - i. Working with Andrew Simpson, legislation liaison with NCAOC, to implement the new Commission seat for Court Staff and the indemnity clause.
 - ii. Ms. Kozlowski, I met with Andrew a few weeks ago to make sure we are still on his radar. He gave me permission to be persistent as there is a lot going on. The AOC is planning to propose a long bill that will include our changes, it will go to the general assembly during the long session.
6. Ms. Kozlowski requested Ad Hoc FFS Committee be dissolved as the committee has met its goals. Judge Gorham approved the request.
 7. Update on next meeting – Ms. Robinson
 - a. We will look to set the next meeting via WebEx in early March.
 8. Adjournment – Judge Gorham
 - a. Ms. Griffiths made a motion to adjourn the meeting. Judge Tyson seconded. Vote – all in favor, none opposed. Motion carries.



Dispute Resolution Commission
Meeting Minutes
Email vote sent October 9, 2020

Email sent by Tara L. Kozlowski to all Commission Member and Ex-Officio Members:

The Mediation Certification and Training Committee have a proposal for the full Commission to vote on extending the pilot remote training program. Please see the attached memo for your review and consideration, surveys completed by the remote training attendees, and the current Pilot Remote Training Guidelines. I believe this matter may be handled via email, however, if any Member would like to discuss this matter please let me know and I will schedule a WebEx meeting. Please respond to this email by October 16, 2020 voting YES to extend the pilot program or NO to extend the pilot program. If you vote YES, please indicate the termination date of 11/6/21 or 12/31/21. Please note, as we are voting on Guidelines there is no requirement to post for comment, per the DRC Comment Policy. Any decision made by the full Commission will be effective immediately.

Response:

14 responses received via email. 13 in favor. None opposed. 4 in favor of December date and 7 in favor of November date. Ketan Soni asked to be recused from the vote as he is a trainer.

Results:

The pilot remote training guidelines will be extended until November 6, 2021.



Dispute Resolution Commission Meeting Minutes

**Commission Meeting
Friday, August 8, 2020
8:30 am**

Remote Meeting Held Via Webex.

The Honorable Susan Hicks, Vice-Chair, called the meeting to Order.

Commission Members present: Hicks, Morgenstern, Wijewickrama, Gorham, Isley, Tyson, Wood, Clare, Nease Brown, Knight, Griffiths, Seigle. A quorum was present.

Ex-Officio Members present: Cole, Schaffer, Laney, Deiter-Maradei, Craig.

Staff present: Robinson, Brooks and Kozlowski.

Guests present: Zachary Bolen, Ketan Soni.

With regrets, Commission Members not present: Webb, Gottlieb, Farris, Hill, Nadolski.

Preliminary Meeting Instructions: Ms. Kozlowski thanked everyone for participating in the first full Commission meeting held via remote technology. Our last full meeting was in November of 2019, and with COVID, we have been very busy and have a lot of information to cover. Thank you all for reviewing the meeting packet material prior to the meeting. When voting on a matter, if there are no objections, we will not do a vote by rollcall. If there is an objection to a motion on the floor, the vote will be taken by rollcall. Please mute yourself during the meeting unless commenting, or voting, on a matter. Ms. Brooks will be monitoring online comments and will address them as necessary throughout the meeting. Unfortunately, Judge Webb is not able to join us this morning, so I will be presenting his reports and Vice-Chair Hicks will be running the meeting today.

1. Welcome and Announcements – Ms. Kozlowski

- a. Thank you to all Members rotating off the DRC in September. The following Commission Member appointment's will be expiring on September 30, 2020:
 - i. Tom Clare: Tom has served on the Commission for the past six years, receiving his original appointment on October 1, 2014 by Senate President Pro-Tempore, Phil Berger. Tom was reappointed for a second term on September 30, 2017.
 - ii. Susan Hicks: Susan was appointed by Chief Justice Sarah Parker on February 24, 2012 to finish a term for retired Clerk Curran. Susan was then appointed to the DRC by Justice Mark Martin on November 5, 2014 and

reappointed for a second full term on September 20, 2017. Susan was elected vice-chair of the DRC on November 15, 2018 and was the first non-attorney to serve as vice-chair in the history of the DRC.

- iii. Diann Seigle: Diann was appointed by Chief Justice Sarah Parker on May 16, 2013 to fill a seat of a Member who had resigned from the DRC. Diann was then appointed for a first full term by Chief Justice Mark Martin on November 5, 2014 and reappointed for her second term on September 30, 2017.
 - iv. Judge Webb: has served this Commission for the past six years, the last four years as our chair. Judge Webb was appointed by Chief Justice Mark Martin on November 24, 2014 and was subsequently reappointed by Chief Justice Mark Martin for a second term on September 21, 2017. Judge Webb was named chair of the Commission on November 8, 2016 and was again reappointed chair on September 26, 2018. Judge Webb is the first African American chair of the DRC. He has served this Commission with determination, strength and compassion, and he will be missed by all.
 - v. New appointments should be in place by the next Commission meeting. Thank you all for your time and dedication to this Commission. As we are not able to present you each with a service plaque at a live meeting, you will receive your plaque through the mail.
- b. I am pleased to introduce a new Ex-Officio Member, Kate Deiter-Maradei. Kate is the current chair of the Dispute Resolution Section of the NCBA and will be the liaison for the NCBA DR Section.
 - i. Ms. Deiter-Maradei introduced herself and acknowledge she was very happy to be here and looks forward to being part of the Commission.
 - c. Approval of November 8, 2019 Minutes.
 - i. Ms. Morgenstern made a motion to approve the November 8, 2019 meeting minutes. Ms. Nease Brown seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - d. Approval of May 28, 2020 Minutes.
 - i. Special Meeting held at Chief Beasley’s request for amendments to the attendance rules.
 - ii. Ms. Isley made a motion to approve the May 28, 2020 meeting minutes. Judge Gorham seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - e. Approval of June 4, 2020 Minutes.
 - i. Special Meeting held to meet Chief Justice Beasley’s Directive for proposed mediation rules for summary ejection matters.
 - ii. Ms. Morgenstern made a motion to approve the November 8, 2019 meeting minutes. Judge Tyson seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
2. **Office Report** – Ms. Kozlowski
- a. Rule amendments effective 3/1/20.
 - i. Rules were signed by the supreme court on January 23rd and went into effect on March 1. All 7 sets were modified, re-leveled, re-formatted, and re-

worded, 41 forms were updated. The requested amendments included all changes from 2014 to April of 2019.

- b. Rule amendments effective 6/10/20.
3. Rules were submitted to the supreme court on 5/6/20 that included this past years' recommended changes. The rules were signed on June 3rd and went into effect June 10th. These amendments include allowing staff to be under the cone of confidentiality, requiring mandatory certification for all FFS matters, and Rule 4.
 - a. The Rules adopted on June 10th included a modification to Rule 4 attendance, as requested by the chief justice. The remote attendance rules are intended to be temporary until such time as in-person conferences can be safely held. However, it has been brought to my attention by Frank Laney that the newly adopted rules inadvertently removed the ability for all ordered attendees to excuse a party from attendance. I have had one other person bring this to my attention, a mediator who was studying the rules while preparing a CME presentation.
 - i. The question becomes do we provide a fix now to the supreme court or wait for: 1. The rules to revert to in-person; or 2. For the next submission to the supreme court in the spring of 2021? Please see the proposed language to correct the oversight.
 - ii. Discussion: This would affect the MSC program, it is not an emergency but I would be in favor to have the rule revert back to allowing parties to excuse a participant before the rules revert to in-person, especially since we do not know when that will be. Other Members agreed, the rules should be corrected now. Superior court cases often have nominal parties, such as banks or utility companies that do not need to participate. If they were required to attend, I would be inclined to postpone the mediation. This is a significant error that we need to correct.
 - iii. As this was an inadvertent mistake, a scrivener's error, the members agreed this can be corrected with a submission directly to the supreme court and may bypass the DRC comment policy.
 - iv. Mr. Clare made a motion to submit proposed language to correct the error in Rule 4 of MSC, FFS and Clerk Rules to the supreme court immediately. Ms. Nease Brown seconded. No further discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - b. CME presentations.
 - i. Staff was involved with a number of CME presentations this past year, many which were sponsored by the NCBA. Thank you to the NCBA for providing us a forum to present training for DRC mediators.
 - c. Conflict Resolution Week Celebration 2020.
 - i. We have Conflict Resolution Week quickly approaching, and while we were planning a large reception as this is the DRC's 25th anniversary, we have been reduced to an online celebration. Any thoughts on how staff should proceed in planning this event? We have one speaker lined up, thank you to Jackie Clare, and have put the planning on hold to seek feedback on how to proceed. The NCBA is holding its annual review over the same Thursday and Friday, so we are not sure how attendance will be affected.

- ii. Discussion: Many organizations are moving forward with remote conferences, holding a couple of CME courses remotely on Thursday would be the best option.
- d. Budget Report/Renewal.
 - i. In FY 19-20, we collected \$203,035 in dues and certification fees. \$6,855 was replaced into our account from funds inadvertently placed into a retirement account the prior year, bringing our legislative carryforward of \$127,000. Our total FY 19/20 revenues of \$330,052 less our expenditures of \$145,130 leaves us with a carryforward of \$184,922 into this FY.
 - ii. Renewal: Last year on Aug 6th, we had collected \$66,060, in mediator dues. This year, we have collected \$65,239 as of Aug 6th. Today, August 7, we have collected over \$67k. Collections are on track even with COVID.
- e. Termination of Pilot Clerk Mediation Program. Lori Cole will be addressing the matter further down on the agenda.
- f. COVID-19 updates.
 - i. During these uncertain times, DRC staff has worked diligently to keep our mediators informed and current on each of the Chief Justices Emergency Orders. Thank you, Maureen and Mary! With the help of numerous mediators, we were able to provide mediators access to courses, videos, and PowerPoint presentations on how to conduct remote mediations. To name a few contributors, our thanks to Jackie Clare, Frank Laney, Ketan Soni, and Advocates for Justice. Miles Mediation also gave us access to their training links so we could share the information with DRC mediators.

4. Committee Reports –

- a. **Executive Committee Report** – Ms. Kozlowski on behalf of Judge Webb
 - i. Update on appeal hearing in the matter of TS. On December 6th, an appeal of the Mediator Certification and Training Committee’s decision was held before the full Commission.
 - 1. The Mediator Certification and Training Committee unanimously upheld staff’s decision to deny an application to be certified as an FFS mediator. The applicant appealed this decision to the full Commission. Applicant appeared pro-se, and the Attorney General’s office represented the DRC.
 - 2. 5 Commission members heard the appeal. After reviewing evidence and hearing testimony from the respondent and DRC staff, the hearing panel unanimously voted to uphold the Mediation Certification and Training Committee’s decision to deny applicant certification in the FFS program.
 - ii. Update on Executive Committee Meeting 3/24/20. Under DRC Rule 4(d)*
 - 1. Suspension of increase to mediator dues. The AOC is unable to modify the on-line application to reflect the increase as all of their resources have been directed toward eCourts. The AOC has offered to absorb staff salary to offset the difference until the application can be updated. Therefore, the committee voted to suspend the increase until such time that the AOC can modify the application to reflect the increase in mediator dues.

2. Court-Appointed Admin Fee Increase. At the November 8, 2019 meeting, the Commission approved a rule change to MSC and FFS Rule 7, providing for court-appointment mediators to charge a one-time administrative fee of \$175. The proposed rule change was posted for comment for 30 days. We did not receive any comments. However, staff has received numerous calls to see when this rule is going into effect. The committee voted to adopt the increase.
 3. CME Documents allowing for Podcasts. At the November 8, 2019 meeting, the Commission approved changes to the CME Policy and supplemental documents to allow for podcasts. The proposed changes were posted for comment for 30 days. Staff received comments, the comments were reviewed, and some non-substantive modifications were made. The committee voted to adopt the new CME Policy and supplemental documents.
 - a. With COVID, we have not had the opportunity to create any podcasts just yet but are looking forward to providing these to mediators in the future.
 4. Proposed Advisory Opinion, A-19. At the November 8, 2019 meeting, the Commission approved the proposed Advisory Opinion, A-19. The proposed AO provided that a mediator may not become a Parenting Coordinator for the parties to the family financial mediation in the future. The proposed AO was posted for comment, and all comments were reviewed by the committee. Only non-substantive changes were made. The committee adopted the AO, A-19, now posted as AO-40 (2020).
- iii. Update on Executive Committee Meeting 5/6/20. Under DRC Rule 4(d)*
1. Observation Guidelines. Observation Guidelines proposed by the Mediator Certification and Training Committee. The proposed guidelines called for an attorney applicant to be able to conduct one observation remotely, and a non-attorney applicant to conduct two observations remotely. The committee voted to adopt the proposed guidelines. No posting is required for DRC Guidelines per the DRC Comment Policy.
 2. Pilot for Remote Training. The Mediator Certification and Training Committee also proposed a 6-month pilot program to allow for remote training. The pilot allows already DRC approved trainers to teach a number of training courses through the use of remote technology. The committee adopted the proposed guidelines.
- b. **Grievance and Disciplinary Committee** – Ms. Griffiths
- i. Update on complaint activity.
 1. Complaint filed against Mediator A. The complaint alleged the mediator was biased and held the mediation past the ordered deadline.

- a. The committee met and discussed this matter in detail reviewing the complaint and answer filed by Mediator A. The mediation while scheduled and held after the deadline, had been previously scheduled over 5 times where the complainant requested to cancel, or consented to the continuance of each scheduled mediation. The committee determined while there was a rule violation, the violation was minor in nature, did not harm the complainant nor did the violation discredit the courts and dismissed the complaint with a warning letter to the mediator. The remaining alleged violation had no basis, however the committee determined Mediator A could use a refresher on the program rules and assigned Mediator A to complete 2 additional hours of CME within 60 days and provide a letter to DRC staff that they have reviewed the Program Rules and Standards.
 - b. Mediator A did not appeal but accepted the committee's letter and terms including the 2 hours of CME. Mediator A has completed all requirements as set by the Grievance and Disciplinary Committee.
- ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff);
 1. Sanction imposed to Mediator Garber. The committee found probable cause that Mr. Garber acted in a manner inconsistent with good moral conduct by making inappropriate and lewd comments to an elected state official. Mr. Garber was disciplined by the NC State Bar for his actions, and this committee determined to issue a public admonishment and bar Mr. Garber from accepting court-appointed mediations for a three-year period. Mr. Garber did not appeal the committee's decision.
 2. Sanction imposed on Mediator Gott. The committee found probable cause that Ms. Gott failed to report accurately on her renewal applications for two years, she did disclose her pending grievance to DRC staff however the disclosure was not timely. The committee issued a public admonishment. Ms. Gott did not appeal the committee's decision.
 3. Letter of Warning to Mediator P. Mediator P self-reported a complaint filed by a party to the action with the resident superior court judge regarding his actions as a mediator. Mediator P responded to said complaint. This committee found there was probable cause to believe Mediator P did violate the Standards of Conduct, but dismissed the matter with a warning letter to Mediator P. Mitigating circumstances include that the breach of confidentiality was made to a judge and was not disseminated to the public. Additionally, mediator self-reported the matter, believing he

- had the ability to respond to the court. The mediator did not appeal the committee's decision.
4. The next matter, I recused myself from and Judge Knight will provide the report at the end of my report.
- iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff);
1. Applicant Y's application fell outside of the guidelines and was reviewed by the committee. Applicant Y had received two misdemeanor convictions in his past, one conviction occurring in January of 2019. This committee determined Applicant Y's behavior does not create a concern of habitual behavior as one conviction occurred over 20 years prior, and the charge date for the recent conviction was in 2015, more than 5 years ago. The committee determined the convictions do not discredit the DRC. This committee determined to certify Applicant Y.
 2. Applicant Z's application fell outside of the guidelines and was reviewed by the committee. Applicant Z had received three public sanctions from the State Bar over 25 years ago within a two-year period. Two of the three reprimands were related to the same incident. Due to the low level of each sanction, the length of time that has lapsed since the last incident, and the applicant's prestigious career over the past 20 years, the committee voted to certify the applicant.
 3. Pre-Approval of Mediator T. Pre-approval request from a lapsed mediator, Mediator T, who was seeking to recertify. The mediator T acknowledged conducting two mediations as a non-certified mediator within the past 5 years, in violation of the Rules. The mediator lapsed in 2005, prior to the MSC rules requiring the use of certified mediators (2006). The committee voted to pre-approve Mediator T based on the admission of conducting mediations as a non-certified mediator prior to application and the desire by Mediator T to take responsibility.
 4. Pre-Approval of Mediator S. Staff brought pre-approval to me, the chair, for review. I determined matter did not warrant going before full committee. I denied the pre-approval based on repeated history of financial issues and non-payment of taxes which included a criminal misdemeanor for failure to pay city tax.
- iv. Proposed change to DRC Guideline for Complaint Protocol.
1. The committee met and reviewed a revised DRC Complaint Protocol Policy to bring the policy in-line with the current rules.
 2. Ms. Seigle made a motion to adopt the revised Guidelines for Complaint Protocol. Mr. Wijewickrama seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.

- a. Guidelines do not fall under the DRC Comment Policy and will be effective immediately.
 - v. Proposed change to application regarding disclosure of past misdemeanor conviction.
 - 1. The committee also discussed limiting the disclosure of misdemeanor charges to convictions within the past 10 years.
 - 2. We talked a lot about folks that have young and dumb mistakes and at some point, they should not have to keep paying for it. Often applicants must be reviewed by the Grievance and Disciplinary Committee due to convictions that were isolated events 20+ years ago, such as open container or public intoxication. These are the ‘young and dumb’ convictions.
 - 3. Vice-chair Hicks made a motion to adopt the proposed change to the DRC application asking for disclosure of misdemeanor convictions for the past 10 years. Mr. Wijewickrama seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - a. DRC applications do not fall under the DRC Comment Policy and will be effective immediately. The forms will be updated as soon as possible as the AOC has a freeze on all form updates due to eCourts.
 - vi. Judge Knight’s report on the sanction imposed on Mediator Tyler and Decertification of Tyler:
 - 1. The committee found probable cause that Mediator Tyler failed to disclose two prior grievances filed against her, both dismissed. Additionally, she allegedly failed to report accurately on her 2016 renewal application by failing to disclose a pending grievance. The committee determined to issue a public admonishment. Ms. Tyler did not appeal the committee’s decision.
 - 2. Subsequent to our sanction, the State Bar suspended Mediator Tyler’s license to practice law for a 5-year period. Under Rule MSC and FFS 8(c) the committee determined to decertify Ms. Tyler as she is no longer meets the threshold requirements for certification. Ms. Tyler did not appeal the committee’s decision.
- c. **New Media Committee** – Mr. Clare
 - i. Mediators ability to self-report CME.
 - 1. Maureen has done great work on this. I want to thank Maureen and will miss working with her. Tara has done a boat load of work too – I will miss you all,
- d. **Civil Sub Committee** – Ms. Kozlowski on behalf of Judge Farris
 - i. Forms still pending with AOC Civil Forms Subcommittee:
 - 1. Revisions to Petition and Order for Relief from Obligation to Pay Mediator’s Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306. The AOC has a freeze on all system enhancements until eCourts is implemented.

- ii. I failed to note this on the agenda, the AOC modified a total of 41 forms to align with the supreme court rule amendments effective March 1, 2020. Please let me know if you would like a full list of the modified forms.
 - iii. Forms modified to align with new Rules: AOC-CV-811; AOC-CV-813; AOC-CV-181; AOC-CV-824; AOC-CV-825; AOC-CV-826; AOC-CV-827; AOC-CV-829; AOC-DRC-03; AOC-G-301; and AOC-G-303. A number of forms were revised to align with the supreme court rule amendments effective June 10, 2020.
- e. **Standards and Advisory Opinions Committee Report** – Ms. Kozlowski on behalf of Ms. Seigle.
- i. Ms. Seigle is on the call but has a lot of background noise and has asked staff to present her reports to the Commission.
 - ii. New Matters
 - 1. Proposed modification to Advertising Policy.
 - a. It was brought to staff’s attention that the Judicial Standards Committee does not allow retired judges to advertise using the title judge without qualifying their status as retired or former. As such, the committee reviewed the DRC’s current Advertising Policy and made updates to align with the Judicial Standards position.
 - b. Judge Gorham made a motion to approve the proposed language in the DRC Advertising Policy. Ms. Morgenstern seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - i. Policy amendments fall under the DRC Comment Policy and will be posted for comment for 30 days.
 - 2. Proposed Amendment to include Anti-Discrimination Language in the Standards.
 - a. The ABA adopted language in 2016 where 35 states and the District of Columbia have adopted a similar version of this language into their rules or comments. The NC State Bar is considering the addition of anti-discrimination language into their Rules of Professional Conduct as well.
 - b. The language proposed by the committee removes the defined classes from the language as protected categories are evolving, allowing the DRC to present a more inclusive and concise standard.
 - c. Judge Tyson made a motion to adopt the proposed anti-discrimination in the Standards of Conduct. Ms. Isley seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - d. Standard amendments fall under the DRC Comment Policy and will be posted for comment for 30 days.
 - 3. Proposed Amendment to Standard 3(d)(5) to include other professional licensing boards.

- a. Ms. Griffiths brought this matter to staff's attention, asking why other professional regulatory bodies are not included in this Standard. Staff discovered an original recommendation made in 2016 to add this language. The committee reviewed the recommendation made in 2016 to allow a mediator to defend themselves against other professional licensing boards, not just the DRC and NC State Bar. The original recommendation may have been lost in the weeds, and this committee would like to re-introduce the language.
 - b. Ms. Griffiths made a motion to adopt the proposed language for Standard 3(d)(5). Ms. Seigle seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 - c. Standard amendments fall under the DRC Comment Policy and will be posted for comment for 30 days.
4. Request for formal AO denied by chair. In April, a mediator requested a formal AO regarding Rule 7, when fees are due. Mediator indicated it is often difficult to get a party to pay and would like qualifying language inserted into the rule such as “the funds are ‘immediately’ due”.
 - a. Pursuant to the rules, staff forwarded the request to the chair for consideration. The chair determined a formal AO was not warranted and informal advice was provided to the mediator. The informal advice given by staff included that the payment is due at the end of the mediation. The mediator has the ability to seek the assistance of the court through contempt if the parties fail to pay at the conclusion of the mediation. Mediators are not meant to be in the collection business.
5. AO's affected by the Rule 4 attendance presumption flip.
 - a. Under the direction of the chief justice, the Commission flipped the physical attendance presumption to remote attendance in June of 2020. The rule change, while temporary may be in place for some time. There are a number of AO's that were affected by the rule change, specifically AO 2, 19, 24, 25, and 35. The only AO where the substance of the AO is modified by the rule change is AO 2. The rest remain “good” opinions despite the rule change. As such, the committee recommends posting notice on all affected AO's, and a notice across AO 2 indicating AO 2 is temporarily suspended.
 - b. Ms. Griffiths made a motion to approve the temporary suspension of AO 2 and warning language on AO 19, 24, 25, and 35. Ms. Seigle seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.

- c. The modifications are based on a rule change and do not fall under the DRC Comment Policy and will be effective immediately.

5. Ad Hoc Committee Reports –

- a. Committee on Long Range Planning – Ms. Nease Brown
 - i. Our committee had been working on the FFS rule change, and this has been accomplished. Nothing further to report.
- b. eCourt Committee – Ms. Craig
 - i. There have been a few things that have come along in the last few months. Some due to COVID. Some clerks have now started to receive laptops and dual screens so they can work remotely but this will be helpful for later down the road. We are now in the process of implementing a “guide and file” program that will be demonstrated today and tomorrow. This is for pro se litigants, it will be a Q&A for pro se parties where their answers will help set up the form (or pleading). With COVID there has not been a halt in eCourts based on what I understand. This is full steam ahead and ready to go. The “guide and file” is going to be our first glimpse for attorneys and court staff.
- c. Clerk Pilot Program Committee – Ms. Cole
 - i. The Clerk Mediation Program was created by statute in 2006, but without the benefit of a pilot program to gauge its success. After 10 years, the program had still not taken root, the DRC became interested in invigorating the program, if possible. After researching the program and speaking with a variety of clerks, the DRC determined to create a pilot program giving the clerks more flexibility with the rules.
 - 1. Four counties agreed to participate in a pilot program that was signed into effect by Chief Justice Mark Martin on March 16, 2017. The program waived Rule 2.A, 2.B and 7.B, allowing for clerks to use non-certified mediators and waiving any fees for the first two hours of mediation.
 - 2. The participating counties had the pilot up and running by March of 2018. The pilot ran for the two-year period, with little result. Prior to the pilot program, the clerk mediation program was reportedly used approximately 9 times per year. 9 times in the whole state. The pilot years increased the use of the program up to approximately 20 cases per year. The end result did not provide sufficient evidence that modifying the rules to align with the pilot program would have a significant impact in this program.
 - 3. DRC staff reached out to all participating clerks who echoed the same position, the program is beneficial in times of a conflict, but it is not necessary to put many of these cases into mediation. Staff thanked all clerks for their participation in the program, as well as all mediators who agreed to accept pilot clerk mediations.
 - 4. The Clerk Program Rules, signed by the supreme court in January of this year effective March 1, 2020, superseded the order providing for the pilot program.

- ii. Conclusion of pilot program. Request for dissolution of ad-hoc Clerk Committee. Vice-Chair Hicks granted the request, the Ad Hoc Clerk Committee is hereby dissolved.
- d. Court Staff – Ms. Cole
 - i. Caseload statistics were provided in the supplemental meeting packet. In the family court statistics, we have been listing the completed number of cases, but the DRC stats show the number of cases that actually settle or impasse. The court program sheet has different numbers as we consider the number of cases that complete the programs. The DRC pulls out the cases that don't go into mediation. The DRC focuses on the cases where a report of mediator is filed. There were 3220 MSC cases that completed mediation with a 60.2% settlement rate. The rate increases to 66% when you include cases that settle prior to or during mediation. The FFS program reported 904 completed mediations with a 70.5% settlement rate. When we add in the cases that settle prior to and during the mediation we have a 75.1% settlement rate.
 - ii. In case you were curious about COVID and its impact, we pulled number's for just those months and compared to last year's months during the same time period to see if there was a different settlement rate. This provides a view of the impact.
 - iii. Page 12 on supplemental materials, shows the statistics for the Clerk Mediation Program, we had 6 cases this past FY. The usage is lower than below the pilot but there are a lot of factors to consider such as COVID.
- e. Legal Advice Committee – Judge Knight
 - i. Nothing to Report
- f. Video Observation Committee – Ms. Kozlowski on behalf of Ms. Seigle.
 - i. Ms. Seigle is on the call but has a lot of background noise and has asked staff to present her reports to the Commission.
 - ii. Observational Video by NCBA Dispute Resolution Section update. As of 8/3/20 we have a fully executed contract with the NCBA assigning all rights of the video (less the use of the NCBA name and logos) to the DRC in consideration for only using the video for its intended purpose, applicant observations. The NCBA is no longer seeking the \$2k payment we voted on last year. We have confirmed the Dispute Resolution Section will not be charged for the DRC's failure to provide the \$2k. Staff has been working with the AOC communications team to house the video on the Judicial Branch's secure YouTube account. Each applicant will be required to register for the video and provide verification to staff that they watched the video. We have revised the Observation Guidelines, also on the agenda for the Mediator Certification and Training Committee. Please note, this committee's changes are highlighted in yellow.
 - iii. Discussion: The \$2k came about as the then section chair asked for help to fund the film. Ms. Nease Brown mentioned that she didn't know about the request and that the NCBA wants to gift the video to the Commission. No funds will come from Dispute Resolution Section to provide the DRC the video.

1. Ms. Dieter-Maradei– there was a trailer created for the observation video, I wanted to make sure we can play the trailer. Please contact the NCBA directly regarding this matter.
- iv. Judge Tyson made a motion to adopt the proposed language to the DRC Observation Guidelines to allow an observation video. Ms. Griffiths seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
- v. Guidelines changes do not fall under the DRC Comment Policy and will be effective immediately.

6. Ex Officio Reports –

- a. Mediation Network – Ms. Estle, not present.
- b. Court Staff – Ms. Cole
 - i. See above.
- c. NC Court Managers Conference – Ms. Craig
 - i. We have been through the ringer. The end does not appear to be anywhere in sight. With COVID we are having to work remotely, and the regular duties in case management have come to a halt or response times have been delayed. In my district we have not been able to stay open due to infection. If you work in court facilities, you may have experienced this yourself. The spring and fall conferences have been cancelled. Chief has said jury trials may start in October, court managers have decided we are not going forward with a virtual conference as we will not have the time to sit down and work on conference related things.
 - ii. Court managers have been working a whole other full-time job. I had the chance to watch a one-day jury trial, and to watch all the measures that are put into place to make that happen is very interesting. Things are going to look a lot differently. Many of our facilities are not set up to distance for jury trials. Many attorneys have requested continuances and some judges are postponing jury trials until after the 1st of the year. To see what things will look like – we are extending deadlines for mediations and we are extending them to 30 days prior to jury trial. A lot of cases seem to be booked in January and February, so that will be “go time”. If you’re dealing with a court manager, and your response time is delayed, we apologize but we have our hands full. We have worn many, many, hats and we are doing the best we can. We are looking to March 2021 if the virus is no longer around.
- d. NCBA Dispute Resolution Section – Ms. Deiter-Merida
 - i. I wanted to report that the Dispute Resolution Section is hosting a virtual dialogue for race and the pursuit of justice. This is a way for all to participate in a discussion of systemic racism. I have worked with this group before and it will be dynamic. The discussion will be held on Sept 24th from 6-7:30 pm. Please feel free to join. This is a discussion event, it is not going to be someone talking to you, it will be dynamic so all may participate.
- e. Industrial Commission – Mr. Schafer

- i. We have been dealing with the same COVID issues, and the most important issue was attendance. Let me assure you that as complicated and challenging as it may seem to amend our supreme court rules, and other mediation rules, for the Industrial Commission to make request for the supreme court it is at another level. The Industrial Commission changes are not designed to move quickly, so we have amended our rules. An emergency rule is now in effect, the Industrial Commission has approved a temporary rule – bottom line is the rule we are following mirrors the superior court rule, designed to implement safety for our litigants, attorneys, and judges by conducting mediations remotely.
 - ii. Statistics: It has been a good year for statistics, all cases into mediation have increased with 9671 cases referred in. The settlement rate 73.19% which is an increase from last year. The settlement rate that includes cases that settle prior to the conference increased to 76.71%.
 - iii. The Industrial Commission Educational Conference is being held virtually on Oct 13-16. There is a mediation panel on Oct 15, with Tom and Jackie Clare on the panel.
 - f. Court of Appeals – Judge Tyson
 - i. All judges are accepting mediation assignments on a rotating basis. We have lost 5 of our mediators over the past few years. This is a huge turn over. Loss of our folks who regularly mediated court of appeals cases. Frank Laney and Diann Seigle provided training for our judges. We encourage all judges to certify through the DRC. We had 5 mediations from January of this year through the middle of March – they are currently suspended due to COVID. We have not had live arguments since April and they will not be scheduled until October. Mediations are suspended indefinitely. We are going to remote arguments next week, on Tuesday. But we are hopeful we will be back to live hearings and mediations by January, and the virus will be behind us so we can assign cases back into mediation on a regular basis.
 - g. Federal Courts – Mr. Laney
 - i. No report.
 - h. Legislation – Mr. Laney
 - i. Working with Andrew Simpson, legislation liaison with AOC, to implement the new Commission seat for court staff and the indemnity clause.
7. **Committee Reports Continued –**
 - a. **Mediator Certification and Training Committee – Judge Tyson.**
 - i. We have been very active over the past 6 months. Many of the training courses have been done in virtual formats. Our committee is proposing rule changes that are in response to COVID – to allow virtual observations to meet the required observations. We want a virtual presentation to make sure the training provided the rules in the packet were implemented to allow for a virtual presentation and a virtual observation. Thank all committee members, we have had to jump through very quick hoops to address the

- issues from moving an in-person format, a lot of hours and a lot of hard work. Tara, do you want to add anything?
- ii. Ms. Kozlowski: Judge Tyson, I'll run through the proposed rule changes as found in the meeting packet.
 - iii. Proposed new language in MSC Rule 8.
 1. This proposed language clarifies the work experience required for non-attorney applicant. The committee decided to take a closer look at the language in MSC Rule 8, requiring work experience of professional management or administrative experience in a professional, business, or governmental entity.
 - a. The committee determined the meaning of the word "administrative" has changed over time and is no longer an accurate description for the high-level management experience the DRC seeks for applicants. As such, the committee proposes amending the rule.
 2. Additional proposed language within Rule 8 making the 6-hour legal terminology course a prerequisite to the 40-hour training.
 - a. The committee reviewed the requirement for a non-attorney to take the 6-hour legal terminology course. After receiving comments from trainers, the committee proposed this course be made a prerequisite for the 40-hour training.
 3. Ms. Griffiths made a motion to adopt the proposed language to MSC Rule 8. Judge Tyson seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 4. Proposed Rule changes fall under the DRC Comment Policy and will be posted for comment for 30 days.
 - iv. Proposed new language in DRC Rule 10.
 1. The proposed language creates a 30-day period for an applicant to appeal staff's denial of an application. The committee reviewed the DRC Rules allowing for an applicant to appeal staff's decision to deny an application based on matters that relate to the education, work experience, training, or other qualifications of an applicant. The current rules do not have a time-limit for the applicant to file an appeal. We had an applicant denied by staff who appealed the decision months later, where the appeal to the committee contained additional experience gained between the original application and the appeal. The committee recommends a rule change to provide a 30-day appeal period for the applicant to appeal staff's decision to the committee.
 2. Judge Gorham made a motion to adopt the proposed language to the DRC Rules, Rule 10. Ms. Griffiths seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 3. Proposed Rule changes fall under the DRC Comment Policy and will be posted for comment for 30 days.
 - v. Proposed new language in MSC/FFS Rule 9 for training requirements. The committee reviewed the training requirements set forth in Rule 9 of the

MSC and FFS Rules. The committee determined it would be in the best interest of the DRC to include Substance Abuse Training and Technology Training for all mediators.

1. Proposed modifications to DRC 16-hour and 40-hour Training Guidelines under MSC/FFS Rule 9. The committee also reviewed and modified the DRC Guidelines Amplifying Rules for Certification of 40-Hour and 16-Hour Training Programs for FFS and MSC programs. Please see page 74. Guidelines are to be read in conjunction with the Rules. No vote is necessary on the Guidelines until such time as the Rule Amendments are adopted. They are here for review so you all can review the guidelines with the rule proposals.
 2. Judge Gorham made a motion to adopt the proposed language to the MSC/FFS Rules, Rule 9. Judge Tyson seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 3. Proposed Rule changes fall under the DRC Comment Policy and will be posted for comment for 30 days.
 - a. The Guidelines will be brought before the Commission with the comments on the proposed Rule 9 changes.
- vi. Proposed new language for Guidelines for Observer Conduct. This committee met in May of 2020 and proposed one observation for attorney applicants and two observations for non-attorney applicants may use a remote mediation for observation purposes.
1. In June of 2020, the supreme court amended our attendance rules to flip the presumption to remote attendance. As such, this committee met on June 25 and propose all required observations be allowed to be done through remote technology on a temporary basis until the rules revert to physical attendance.
 2. Mr. Clare made a motion to approve the Guidelines for Observer Conduct providing for remote observations on a temporary basis. Judge Tyson seconded. No discussion, no changes. Any opposition? None. Vote – all in favor. Approved.
 3. The Guidelines do not fall under the DRC Comment Policy and will be effective immediately.
- vii. CME offerings approved since the Commissions Nov 2019 meeting. The committee approved eight CME offerings since our last Commission meeting.
8. Ms. Kozlowski thanked all committees and staff for their hard work over the past few months.
9. Hicks: I have enjoyed this Commission; I feel like you are my family. I appreciate all the work you all do as part of the Commission, it was a pleasure to meet you all. Thank you for allowing me to serve as your vice-chair.
10. Round of applause for all rotating off the Commission.
11. Ms. Seigle: I want to give a special thank you to the NCBA for their gift of the Observation Video. This video is so important, and it is very gracious and generous of the NCBA to provide the DRC with this amazing tool!

12. Update on next meeting – Maureen Robinson

- a. Nothing to report – we are awaiting the appointment of the next chair and will let everyone know as soon as possible when the next meeting will be scheduled.

13. Adjournment – Vice-chair Hicks: meeting adjourned – stay safe.



Dispute Resolution Commission Meeting

Meeting Minutes

Commission Meeting
Thursday, June 4, 2020
8:30 am

Remote WebEx Meeting

The Honorable Judge Webb, Chair, called the meeting to Order.

Commission Members present: Judge Webb, Susan Hicks, Debbie Griffiths, LeAnn Nease Brown, Tom Clare, David Wijewickrama, Judge Tyson, Charlotte Wood, Diann Seigle, Laura Isley, Judge Gorham, Judge Tyson, Judge Knight, Judge Gottlieb, Pat Nadolski, Judge Hill, Judge Farris.

Ex-Officio Members present: Tina Estle, Lori Cole, John Schaffer, Frank Laney

Staff present: Kozlowski and Robinson.

With regrets, Commission Members not present: Barbara Morgenstern, Kinsley Craig.

1. Welcome and Announcements – Judge Webb

- a. Webb: Chief Justice Beasley issued an Emergency Order on May 30, 2020 containing Emergency Directive 19, as follows: There is hereby established a voluntary mediation program for summary ejectment actions. The Dispute Resolution Commission is directed to submit proposed rules governing such program to the Supreme Court for adoption no later than 7 June 2020.
- b. Webb: Staff has provided a proposed rule set to the Commission and the Mediation Network for consideration.
 - i. Comments received from the Network: They requested to delete the ability to request a pro bono mediator within the rule set. We have never precluded pro bono work, and the courts have indicated there are a large number of attorneys willing to serve as pro bono mediators.
 - ii. Nease Brown made comments concerning a clear division of the mediator fee between the parties, and concern for our authority to govern such a program. These are good points.
- c. Discussion:
 - i. Webb: We are statutory creatures; we cannot implement a system because we have been asked to provide best practices. I am in favor of taking out

- all DRC references and provide the rule set as recommended language. We cannot regulate a program without legislative authority.
- ii. The idea of removing references to the DRC would solve the problems we would create with our current rules, this would be a favorable approach to provide the Chief with a set of model rules.
 - iii. On behalf of the community mediation centers, Estle stated they could not afford to take the time to mediate cases without funding. The centers do not have the capability to survive if all services were provided at no cost.
 - iv. Webb acknowledged the Commission is sensitive to the cost of providing services, but we are providing a set of rules per the written directive and the centers may address the issue of pro bono services with the Chief's staff.
 - v. Rule 5 places the burden on the court to provide notice, who is required to initiate and send out the orders? Unless someone is tasked with that job, it will not be done right. It will not work from a timing perspective in a case.
 - vi. Kozlowski advised that staff was not provided with guidance on how to implement the program, only a request to draft the model. The AOC has a summary ejection workgroup who may be the better option to review and adjust the model rules for implementation.
 - vii. The discussion moved to an email from AOC legal regarding filings for summary ejection matters. It was determined the email was sent to in-house AOC persons only and was not intended for mass distribution to all persons.
 - viii. There was concern the rules would be used for non-residential summary ejections. All agreed the intent was for residential summary ejections only. The Commission determined it would be best to state the rules do not apply to non-residential property rather than listing the different properties that will not be affected by the rules.
 - ix. Final position: Remove all references to the Commission, split the fee 50-50, modify the language to include this does not apply to non-residential properties, and leave in the pro-bono language. Transmit the model rules to the Chief with a cover letter explaining the model set of rules were designed to provide guidance but the Commission is not in a position to opine on how to implement the program.
 - x. Webb: LeAnn will you work with staff to draft the cover letter?
 - xi. Comments: none.
 - xii. Gorham made a motion to adopt the final position defined above. Seigle seconded. Vote – all in favor. Motion carries.
 - xiii. Web: Meeting Adjourned.



Dispute Resolution Commission Meeting

Meeting Minutes

Commission Meeting
Thursday, May 28, 2020
8:30 am

Remote WebEx Meeting

The Honorable Judge Webb, Chair, called the meeting to Order.

Commission Members present: Judge Webb, Susan Hicks, Debbie Griffiths, LeAnn Nease Brown, Tom Clare, David Wijewickrama, Judge Tyson, Charlotte Wood, Diann Seigle, Barbara Morgenstern, Laura Isley, Judge Gorham, Judge Knight, Judge Gottlieb, and Pat Nadolski.

Ex-Officio Members present: Kinsley Craig, Tina Estle, Bonnie Weyher, Lori Cole, John Schaffer
Staff present: Kozlowski and Robinson.

With regrets, Commission Members not present: Judge Farris, Judge Hill, Frank Laney (ex-officio).

1. Welcome and Announcements – Judge Webb

- a. The Chief Justice is looking to move away from issuing emergency orders every 30 days and would like the changes to be made on a permanent basis and has asked with recommendations from the Commission for a temporary modification to the attendance requirements. I appreciate the Chief soliciting our view. Yesterday the Executive Committee recommended the redlines staff prepared. Tom Clare provided alternate language for the Commission to consider, we will take those up after we address the draft from the Executive Committee. I will ask the Committee's draft to be adopted.

2. Recommendation from the Executive Committee:

- a. Webb requested a motion. Diann Seigle made a motion to adopt the proposed rule changes from the Executive Committee. Debbie Griffiths seconded.
- b. Discussion:
 - i. Access to technology is a big concern, we are seeing more and more people that do not have access to justice or technology. Libraries and schools are closed, as we move forward with the rule, we need a safety in place to recognize if technology is not available to a party. A party may waive the requirement, but the mediator may not waive, and you have a stand-off.

- ii. Another issue in some areas of NC there is not reliable internet service and few mediators. The only way to do on-site mediations is at the court houses, and those spaces are not going to be accessible as they once were. We have some counties that can facilitate, but some cannot.
- iii. Over the past 10 years, we have been doing Medicaid mediations by phone, it isn't just zoom or teleconferencing, you can actually conduct them by telephone. We have a 79% settlement rate, these are medically fragile people who are extremely poor, but they usually have a phone or a family member who has a phone and it can be done.
- iv. Tom's second alternative proposal calls for a mask, this is a minimal requirement that should be included. I will recommend we do that at mediations that are conducted in-person. I strongly recommend the DRC do the same.
- v. Concern was expressed about this being put out for public comment. It was advised this would not be posted, the request for recommended language came from the Chief for the Court to consider. The Chief was kind enough to ask us for our opinion, we have no idea how long this pandemic will last. Questions were asked about this being temporary and if there would be a trigger. A term of 12-18 months was discussed between Stearns and Kozlowski; however, it is up to the Supreme Court to determine.
- vi. Agreed that mediators have great success from phones. Most clients no matter how poor have a great cell phone.
- vii. Most people read remote technology as not including a phone. The solution may be to specify telephonic means is acceptable and should be accessible. We want to make sure this program can be used throughout the state. I want us to be very careful to make sure all participants have full access.
- viii. Webb: Kozlowski, please include the use of telephone in the drafts.
- ix. Can we address the issue raised by Tyson and his request to limit the rule?
 - x. Webb: Does anyone think it should be shorter than 18 months? Discussion ensued about the time frame and leaving the timeline up to the Chief. A recommendation was made to include a request for an 18-month review.
 - xi. Webb: Kozlowski, please add a request for a review of the rule at least 18 months after implementation.
- xii. The mask requirement was addressed. While it is a good idea, there is a 2-fold factor. Some individuals have medical issues and cannot breathe under a mask. Additionally, it can be very hard to see the person under a mask, there is concern a judge may not be able to see the parties during a remote hearing.
- xiii. One of the things about a mask requirement, if one party does not wear a mask do we impasse, does the mediator become the "mask police", how is this handled?
- xiv. Masks have been discussed at great length, but when we enter into a mediation with a private mediator, we sign that contract. If a mediator puts

in the contract that they require a mask to use their services, I think it addresses it. There is a concern about liability if they don't make PPR a requirement. Mediators need to work with their own attorneys, I don't know if we can mandate if a mask can be worn, but a mediator can include that in their contract.

- xv. If we default to remote technology, it seems to me if all parties choose to be in-person that can be addressed between the parties. We are seeing a wide range of views on masks. That will add a layer of concern we should look at on a case by case basis.
 - xvi. I do not think there is a mask requirement as part of the courts reopening. Different Members added their courts would not be requiring masks but will recommend them.
 - xvii. Mediators want leeway to be able to make that ask. Again, I take from the discussion the mediator needs to consult their own attorneys that nothing in this order prohibits a mediator from asking for stricter health requirement.
- c. Vote: All in favor, none opposed. Motion carries. Recommendations will be provided to the Court for consideration

Judge Gorham left the meeting at 9 to attend court, meeting still held a quorum.

3. Recommendation from Tom Clare.

- a. Tom Clare: The difference between my proposal and the one approved by the executive committee makes it more likely that remote technology will be used. There is usually one party who has deeper pockets, and if the other party wants to resolve they are going to feel pressure. I am sure in many cases the attorney will not consult with the party and will just tell the party they are doing this. That puts the mediator in the position of having to tell the parties what is going on or having to withdraw. The subcommittee came up with good cause language, what it does is state that the mediation shall be through remote technology. The rule says it is what it is, but a court can change it. Good cause is whatever the judge says it is, they would have discretion as in many areas of the law and we would not know until the rule is challenged and this will all be over by then. The general idea is to prevent the transmission of the virus. A conference is one of the more likely places to spread the virus.
- b. Discussion:
 - i. A mask is not the best idea. First and foremost, we need safety and I don't see how this can be done. It is problematic, it is only going to take one person to expose 10-15 other people, it hits the news and it tarnishes the whole program. It is working so well remotely. I have a great concern we cannot even do jury trials. Even if we can minimize the possibility of a problem, there is just no good solution.
- c. Webb: please make a motion to approve. Clare moved to also submit the proposal with good cause language. Seconded by Morgenstern.

- d. Discussion:
 - i. I am opposed to this, I don't want any more hearings to decide these things, it would put people at risk. Adding to a calendar is a problem. Just like the chief did for a jury, we are suspending in-person. I would be against preventing in-person mediation, where it is able we should not prevent. It is very difficult to distant connect, yes it can be done, but these are very human events – you have to realize the connection the mediator makes with the parties sometimes is the catalyst. If we totally suspend mediation in person, we are doing a disservice.
 - ii. I don't want to ban the in-person, I agree. If there is a good cause requirement, one is by agreement and one is by the court. It seems to be a way that they can still go to court if the parties do not all agree. I am not opposed to have a good cause requirement if there is a disagreement, but I would hesitate to take the autonomy out of mediation. It may mean that we may lose some business but that is the way it is going to be.
 - iii. The current draft approved by the executive committee does exactly this, if there is no agreement, they can then go to court to make that determination. The language is already in there.
 - iv. Recommendation to add good cause to the court order line.
 - v. Vote: All in favor – Clare and Morgenstern. All against - Webb, Griffiths, Nease Brown, Wijewickrama, Tyson, Wood, Seigle, Isley, Knight, Gottlieb, Nadolski, Hicks. Motion fails.
4. Clare: I would also like to propose a motion for the wearing of a face mask for the duration of the conference- a mandatory mask requirement. Wijewickrama seconded.
 - a. Discussion: none.
 - b. Vote: All in favor – Clare, Wijewickrama, Wood, Morgenstern, Isley, Nadolski. All against – Webb, Griffiths, Nease Brown, Tyson, Seigle, Knight, Gottlieb, Hicks. Motion fails.
5. Webb: Meeting adjourned.