

Dispute Resolution Commission

**Quarterly Meeting
Friday, November 15-16, 2018
1:00 PM**

**Marriott
Wilmington, NC**

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

Commission Members present: Webb, Tyson, Nadolski, Clare, Griffiths, Seigle, Hill, Wood, Farris, Evans, Knight, Hicks, Marcilliat, Isley, Nease Brown, and Ponton.

Ex-officio members present: Estle, Leazer, Nesbitt, Schafer, and Craig.

Staff present: Robinson and Kozlowski.

Guests present: Andy Little.

With regrets, Commission Members not present: Gottlieb.

A quorum was present at the meeting.

1. Welcome and Announcements – Judge Webb.
 - a. Judge Webb was sworn in by Judge Tyson. Webb thanked all Members and expressed his excitement for serving as the Chair of the DRC for two more years.
 - b. New Members were sworn in by Judge Tyson: Laura Isley; Judge Rebecca Knight; Deborah Griffiths; and Judge Calvin Hill. Returning Member Judge Farris was also sworn in by Judge Tyson.
 - c. Webb asked all of the new Members to provide a brief introduction of themselves to the rest of the Commission.
 - d. Approval of September 2018 Minutes – Judge Webb
 - i. Marcilliat made a motion to approve September 2018 meeting minutes. Seigle seconded. Vote - all members in favor. Approved.
 - e. Item 3.b.i.1., Rule 7 on Indigency, moved to Saturday morning agenda to allow all Members the opportunity to review comments presented by Andy Little.
 - f. Annual Report – Tara Kozlowski
 - i. The annual report has been drafted and approved. DRC Staff will disseminate the report in the following weeks.
 - g. State Board of Elections and Ethics Enforcement approval letters – Tara Kozlowski
 - i. The following language was read into the record.

- ii. LeAnn Nease Brown: **We 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 this entity.**
 - iii. Yvonne Mims Evans: **We did not find an actual conflict of interest or the likelihood of a conflict of interest.**
 - iv. Richard Samuel Gottlieb: **We did not find an actual conflict of interest or the likelihood of a conflict of interest.**
 - v. Debra A. Griffiths: **We 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 this entity.**
 - vi. James Calvin Hill: **We did not find an actual conflict of interest or the likelihood of a conflict of interest.**
 - vii. Rebecca Knight: **We 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 this entity.**
 - viii. Kevin Matthew Marcilliat: **We did not find an actual conflict of interest or the likelihood of a conflict of interest.**
 - ix. Charlot Frye Wood: **We did not find an actual conflict of interest or the likelihood of a conflict of interest.**
 - h. Election of Vice Chair.
 - i. Tyson nominated Susan Hicks for Vice Chair, Seigle seconded. No other nominations were made. Vote - all members in favor. Approved.
 - ii. Webb welcomed Hicks to the position mentioning this is the first time this position has been held by a non-attorney. He stated the position was well-deserved and looked forward to working with her as vice chair of the Commission.
 - iii. Hicks made a few brief comments, thanking everyone for their vote. She has really enjoyed the Commission and has been honored to serve on the Commission.
 - i. Committee Appointments – Judge Webb
 - i. Committee assignment list provided to all Members. If a Member has been appointed to a committee they do not enjoy, let staff know and they will change the assignment.
2. Office Report – Mrs. Kozlowski
- a. Thank you to all who completed the eCourt survey, we have created a new ad-hoc committee to help create the work-flows needed for the new court software.
 - b. Thank you to all for voting yes on staff receiving new computers and monitors, they are much appreciated.
 - c. Conflict Resolution Week. This year, we celebrated conflict resolution week by holding a reception at the AOC building. The Chief Justice Mark Martin signed a proclamation naming the third week of October as Conflict Resolution Week. The reception was fairly well attended. Thank you to all who came out to celebrate.
 - i. To encourage attendance, and celebrate mediation, staff presented an Up and Coming Mediator of the Year Award to Ketan Soni out of Charlotte.

The qualifications of the award were to be certified less than 10 years, and to have contributed to the education of mediation, as well as additional criteria.

- ii. Due to the short notice, staff created this award and selected the recipient. Is this something the Commission wants to continue?
 - 1. Discussion – Webb asked if the Commission want to present a Mediator of the Year Award? If so we will look at how to define. Staff was asked to consult with Legal to see if presenting an award presents any legal issue.
 - 2. Question was asked if the State Bar presents awards. The Section has the Peace Award, but they are not regulatory body. If we do this, we should put a lot of thought into how individuals are nominated and vetted. Concerned about presenting an award and potentially having to regulate the recipient in the future. The State Bar gives an award to someone who's career is coming to a close, it is vetted and insulated from the State Bar and may serve as a good model for the DRC. We are in awkward position as we have already given an award out. We are regulatory body but also collecting \$140 from each mediator, the State Bar does not do an Attorney of the Year award. Comment made that this just feels icky.
 - 3. Webb: We need to determine if it is appropriate first, and if so, then what is the meaningful criteria. We will wait for a response from legal to continue this conversation. If we move forward we will need a committee, and Nease Brown can chair.
- d. New Hire – Judge Webb
 - i. Reviewed need for third position per Leslie Ratliff. A second part-time secretary necessary to cover office if one person is out on holiday or sick leave. We have talked to HR and can do 20-30 hour position, but goal is 20 hours per week. Important the new hire to come in at a salary under Ms. Robinson's.
- e. Spanish brochures.
 - i. We have translated the District court brochure into Spanish, the cost was less than \$120. One of our mediators has graciously volunteered to review the translated material to ensure it reads accurately. Once this has been completed, we will translate the remaining documents into Spanish and distribute accordingly.
- f. Renewal for 2018-2019. We currently have 129 mediators who have not renewed, or responded to staff's emails.
 - i. Last year at this time we were at \$193,215. This year \$175,135. Down \$18,080. If all 129 renew we will be above last year in proceeds.
 - ii. Maureen contacted these mediators who have not responded through her email address instead of the DRC email and is receiving renewal requests.

- iii. Discussion on renewal: Question asked if sending Text Messages would be a better way to communicate. This could cause incidental charges to mediator's phone accounts. Craig said she sends the Texts for any Court issues, and it is a huge burden.
 - g. Staff will be submitting all the Rule and Standard changes for the past 4 years to the Supreme Court. Staff requests all Members to do a final review to ensure they are accurate. Please note, we are not looking for changes to substance, just form.
 - i. Please note, there are two versions of the Standards for review. The Commission voted to adopt changes to Standard III at the September 2018 meeting, however the adopted paragraph does not fit into the formatting of the previously approved changes. Therefore we are presenting a re-write version of Standard III that does not change substance but does alter formatting as well as the adopted version leaving the language as-is.
 - ii. Webb: Please review and we will discuss tomorrow morning.
- 3. Committee Reports:
 - a. Executive Report – Judge Webb
 - i. There is nothing to report this quarter. Thank you to Chief Justice for reappointing me as the Chair.
 - b. Standards and Advisory Opinions Committee Report – Seigle.
 - i. Rule 7 issue on Indigency is being reserved for tomorrow morning.
 - ii. Conflicts issue –Standard VII. Brief history presented by Kozlowski. The request for AO's by two separate mediators regarding ability to waive a conflict of interest. Scenario 1: the mediator had represented one party in absolute divorce a year prior to mediation. Scenario 2: the mediator provided a consultation only (not retained) to one party years prior to mediation. The Commission asked for Staff to contact State Bar in Sept 2018 meeting, however the questions presented would have required a formal ethics opinion that could take in excess of a year. Instead of contacting the State Bar, staff asked the two mediators to seek out informal ethics opinion, where one response was received. The response indicated a waiver was allowed – this concerned some of the committee members as it seemed to create a conflict from the 2012 Ethics Opinion (basis for AO 28, and 31) that representation after mediation was not a waivable conflict. The committee is not clear if this is or is not a waivable conflict. NC is the only one of eight surrounding states that does not have ability to create knowing and intelligent waiver for a conflict.
 - 1. Discussion: The rules give explanation for what is and what is not waivable. A question was posed asking what this change would include. There was confusion on what is the question being asked.
 - 2. Webb: suggested Members try to frame an exact question we are trying to answer. If there is one member of the Commission who is not clear, we should seek response from the Bar.

3. Discussion continued, the conflicts are in two separate areas, one is being asked to draft and one is regarding representation. In framing the question, the answer may become apparent. The issue of the small town attorney was brought up 15 years ago and keeps resurfacing. Continued to Saturday morning.
- iii. AO 41. This AO addresses reoccurring issues of mediators' non-compliance with the rules and standards. The intent is to provide an outline of mediator responsibilities. The benefit is to show what happens when the Standards are not followed. Please review.
 1. Evans made a motion to adopt AO 41. Griffiths seconded.
 2. Discussion: Concern about the party selected mediator and the timing, sometimes we receive court appointments with very little time to the deadline and need to request an extension to fit everyone's schedule. Seigle, asked for modification. Held over to Saturday for modification to AO.
 - c. Mediator Certification and Training Committee – Kozlowski
 - i. There have been no new training courses approved. Ms. Gelbin is placing finishing touches on her 40-hour FFS and 16-hour FFS training. She has class scheduled in January. Staff expects her to be approved by this time.
 - ii. Concerns about CME timing. To renew a mediator's certification, the mediator must take two hours of CME, and send to Staff to manually enter into their profile. Once a mediator's profile is updated, staff emails the mediator to let them know to log back into their account, update their information and renew their certification. Mediators have been every upset and frustrated at the requirement to report the CME and delay caused by staff having to manually enter.
 1. Proposed moving CME requirement to fiscal year, June 30 to July 1, with renewal beginning July 1 through Sept 30.
 2. Discussion: Webb, before we change the process let's see if we can change the vehicle by which people record their own CME. Staff to talk to AOC IT and see what is possible.
 3. Comment made, doesn't see why mediators can't self-report on their profile. There are also concerns that mediators assume the DRC is associated with the NCBA and so they are frustrated it takes 30 days for the Bar to report the course to us. Also not all NCBA courses meet CME requirements, so it can be confusing if the Mediator takes a mediation training that does not qualify for CME. If people self-report, we need to regulate.
 4. Webb: A main reason we went to CME was due to the egregious problems we were having with procedural issues. Staff to talk to AOC IT.
 - d. Grievance and Disciplinary Committee – Judge Evans

- i. Recertification Matters Coming Before the Committee Due to Conduct Issues.
 - 1. Applicant X applied for MSC certification renewal in October of 2018. Staff brought the application to the Committee's attention under Rule IX noting the applicant had three DWI convictions.
 - a. The applicant's convictions were spaced over a 20+ year period. After the last conviction, the applicant completed a 30-day in-patient program, was placed on supervised probation, required to complete community service and pay restitution. Staff spoke with the applicant several times, and verified with the probation officer that the applicant was compliant during his probationary period. The applicant spoke with PALS and continues to receive therapeutic treatment. The Committee recertified applicant X.
 - 2. Applicant Y applied for MSC certification renewal in October of 2018. Staff brought the application to the Committee's attention under Rule IX noting the applicant had been disciplined by the State Bar.
 - a. The Committee has yet to review Applicant Y's file.
- ii. Update on Complaint Activity.
 - 1. A Complaint was filed against Mediator Z in July of 2018. The Complainant made allegations Mediator Z ignored guidelines, was not impartial, ignored questions presented, prolonged the mediation process, discussed personal issues during mediations, and sent emails with errors in them. Staff reached out to Mediator Z, who responded to the Complaint within his 30 day time period. Mediator Z denied all allegations, however he did acknowledge the deadline for mediation was surpassed. Mediator Z filed one extension upon receiving the court appointed case, and assisted the parties in drafting a second request for additional time. The Mediator continued to recess the conference past the deadline and was thus in violation of Rule 3.D of the CMPE Program Rules. The Committee found Mediator Z was in violation of the rule, but determined the violation was relatively minor in nature, caused minimal harm to a complainant and did not discredit the program, courts, or Commission. Therefore, the Committee dismissed the complaint pursuant to Rule IX.D(3)(b)(i)(1) and provided Mediator Z with a letter advising him to avoid such conduct in the future. Additionally, the Committee provided a letter of caution to Mediator Z. The letter cautioned Mediator Z on drafting legal documents for the parties and directed him to review AO 28 and 31. The letter also cautioned Mediator Z on remarks he made to Complainant, reminding Mediator Z he is to conduct himself with a certain level of decorum and professionalism with all parties. Staff copied the Complainant on the notice of dismissal and letter of caution.

- iii. Policy Discussion
 - 1. This Committee would like to propose the Commission adopt a Policy in Interpreting and Implementing The Rules of the NCSC for the DRC, Rule IX.C.(2)(d). This policy would allow the failure to respond to a Complaint within 30 days to be reviewed by the Grievance Committee, along with the underlying complaint.
 - a. Discussion: Webb, we are a regulatory body.
 - b. Seigle made a motion to approve the policy interpreting and implementing Rule IX.C.(2)(d). Marcilliat seconded. Vote - all members in favor. Approved. Staff to Post.
 - e. New Media – Mr. Clare
 - i. Ms. Robinson has done a lot of work on the website. We have a handout showing the changes in formatting that we have requested from AOC IT. All the information is on the website, it is just poorly organized. Please let us know if anything is missing.
 - ii. Discussion. Webb, it doesn't "pop", dropdowns are standard everywhere else. Thank you to Tom for taking on this challenge.
 - f. Ad Hoc Committee Reports
 - i. Long Range Planning – No Update
 - ii. Clerk Pilot Program – Nesbitt
 - 1. The most we have had in clerk mediation cases is 13 or 14 per year, we now have 4 counties in a pilot program. We are working on gathering information on these programs. Wake has a new clerk in Wake County, so we will need to reach out to the new clerk regarding the program.
4. Ex Officio reports
- a. Mediation Network – Ms. Estle. There is a question as to whether the Medicaid cases need an Ombudsman. The Network has talked about speaking to our lobbyist and seeing where to go from there.
 - b. NC Court Managers Conference – Ms. Craig and Ms. Leazer. Court Staff held its fall conference Oct 23-26. Kozlowski was able to join and meet some of the court staff, which everyone enjoyed. Our spring conference is Feb 27 – March 1, and we have a spot for Ms. Kozlowski to speak at the conference. We have started the mentoring program, and are receiving good results.
 - i. Leazer made a few comments about the mediator who was recently reprimanded. He has apologized to court staff and is making efforts to repair the damage that has been done. He would like to apologize to the Commission one day. He is going to teach a pro bono class for court staff on how to detect substance abuse and what to look for.
 - ii. Webb: He has also reached out to us and wanted to speak. Staff was asked to let him know he could write a letter for fear he would be questioned, etc...if he appeared in person.

- c. Court Staff – Ms. Nesbitt. Ms. Nesbitt attended the Fall Court Management Conference, where Baldwin gave a long talk about civilian responses to active shooters. Things were brought to my attention that would never have been thought of before. It may be good to train the family law mediators.
 - i. Webb: We will get the information.
- d. NCBA Dispute Resolution Section – Kozlowski. The Section videotaped a mediation training video to use as a demonstration for observations on 10-15-18. Ann Anderson and Jackie Clare have spear-headed this project.
 - i. Discussion: The video was based on a real case and a lot of fun to make. Question asked if there could be a presentation of the video. Suggestion was made to allow Ann Anderson and Jackie Clare to present the video to the DRC when complete.
 - ii. Webb: That is a great idea.
- e. Industrial Commission – Mr. Shaffer. The educational conference was held in October, it was a success. Nothing new to report.
- f. Court of Appeals – Judge Tyson. 16 cases referred to appellate mediation this year, three are pending. The Court held its conference on 11/1/18. All judges on court of appeals will be on rotation to take mediations. Two new judges are coming on to the bench, one will be newly certified. All 14 judges will take mediation cases as they come up and will rotate.
- g. Federal Courts and Legislative Report – Kozlowski. Mr. Laney was unable to attend, but reported that he tried to contact Sen Randleman, but did not hear back. As she has now lost her election, we need to figure out how to proceed and who to seek as a sponsor.
- h. Ad Hoc FFS Committee Report – Robert Ponton. The issue of whether to require mediators to be certified by the DRC has created a stir in the NCBA Family Law Section. Our Committee has not been able to meet due to schedules, so we do not have a proposal today. This is a very large undertaking on how to proceed. The NCBA Dispute Resolution Section and the Family Law Section is very interested in this. I came to this meeting to hear from the group as to how everyone feels – please send me an email to let me know how everyone is feeling.
 - i. Discussion: Webb: can you invite the leaders of the two sections to come to the February meeting to talk about this? It may be best for the committee to wrap their head around this issue and then get a better feel as to where they are on this issue. At some point in time when we are further down this path, if there is no agreement between what we propose then it would be good to discuss. We are very early in the process of figuring out how to implement. We have serious concerns at the public level of the commission on handling this issue. When people take the certification training course they say they hear this is coming. When people call the office staff lets them know the DRC is considering this topic. Can anyone explain what the objection is to be certified? There are so many regulations throughout the system, why are they objecting? Change without information. If it isn't

broken, don't fix it. There needs to be a lot of discussion about this, it will be much easier to bring everyone on board if we can explain. When something goes wrong with an FFS mediation, the commission is unable to help. The AOC was sued by the Department of Justice for in-access to justice – this is a state court case and they are not certified, so who is holding the bag? It will be the AOC and that is a problem. It would be helpful if the district court judges were bought in and agreed it was the right way to go. The DRC will be more successful if the district court bench agrees, as well as the Chief Justice. When we get further along we can approach Judge Warren to bring in the AOC.

Robert Ponton and Tom Clare excused themselves from Saturday's meeting.

Meeting adjourned until tomorrow morning at 8:30 am.

Saturday November 17, 2018.

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

Tom Clare called in by phone.

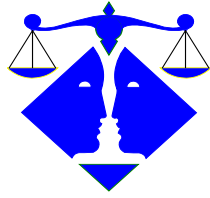
1. Welcome and Announcements – Judge Webb
2. Office Matters – Kozlowski
 - a. Rule and Standard changes for the past 4 years are being submitted to the Supreme Court.
 - i. Comments:
 1. Rule III, Commission Membership Paragraph D, insert language that Members do not receive any compensation.
 2. Rule VI.A, add the word “mediators” to the subsection (2) of the first sentence.
 3. Page 9, Rule IX.C(2) Commission – redundant regarding the provisional pre-training approval, strike.
 4. Page 10, Rule IX.C(3) first paragraph should read IX.C(4), not (3).
 5. Page 15 Rule IX.C(6), look to see why 90 days for criminal, this is a different standard than others. Need to review old Commission Meeting Minutes to determine why change was made.
 6. Page 28, Rule IX.E(13)(d)(iv) there is a typo, double spacing between public's and perception.
 7. Page 37 Rule X.D(2)(a) question is why was certification renewal deleted. Need to review old Commission Meeting Minutes to determine why change was made.
 - ii. Webb asked for a Motion to entertain the re-write version or prior approved changes to Standard III. Seigle made a motion to adopt the Standards with the re-write to Standard III. Judge Evans seconded. Vote - all members in favor. Adopted.

3. Standards and Advisory Opinions Committee Report – Seigle.
 - a. Seigle thanked all who stayed till 6:15 Friday night working on re-writes.
 - b. AO 41.
 - i. AO 41 has been modified to remove the explanation under one paragraph.
 - ii. Nease Brown made a motion to approve the AO with the proposed changes. Hicks Seconded.
 1. Discussion: Original proposal was confusing. Taking out the additional language and leaving the bullet point keeps the information clear. Statutory construction is to keep it clear and simple.
 2. Vote – All in favor. Adopted.
 - c. Conflicts Issue, Standard VII.
 - i. The committee went back to the drawing board, and presents a new proposal to resolve this issue, a re-write to Rule VII. The new re-write allows for a knowing and intelligent waiver for a mediator to accept a case if there has been prior contact with one of the parties. NC is the only state out of the seven area states polled that does not have this provision.
 - ii. Discussion:
 1. We need to stay in our lane and can only advise mediators. This will address Long’s concerns, and allow for a waiver. Little was instrumental in assisting in this draft. The proposed language will clear up the concerns for the proposed AO’s – we cannot speak to what the attorneys will do, only the mediators.
 2. Motion requested. Nease Brown makes motion to approve the proposed change to Standard VII, upon making the language consistent in the first and last paragraph listing rules and standards of professional conduct in both paragraphs. Evans seconded. Vote – all in favor. Approved. Staff to post.
 - d. Rule 7 issue on Indigency.
 - i. The committee proposes to leave the current Rule as-is with no change. We have had two complaints from mediators having to serve without pay in the last 26 years. This is the first time we have considered making a change. The committee feels the rule is appropriate and does not need to be tinkered with. It is mandatory requirement to take pro bono cases, as the mediators are making money from the court. This rule does not seem overly burdensome. The committee believe the rule was written well in the 1990’s, and mediation is the only profession where the professional can collect fees under a Show Cause action in Court.
 - ii. Call was made for a Motion to not amend the rule. Hicks made a motion to not amend Rule 7. Nease Brown seconded.
 1. Discussion: What exactly are we trying to address, this is something all mediators agreed to do when they became certified. It is not something that needs to be tinkered with. Little made comments to

change some of the language on his proposal. Little withdrew the comments and agreed no change should be made. Concerns remain on the issue of notice. The bigger problem is collecting the fees from the court and if the mediator is going to take half day to go to court to collect their fees. If a mediator goes into mediation with the presumption of a set fee, and you will be paid unless there is an indigent party, if we know a party is indigent going in, it is one thing. You expect to be paid unless someone is indigent. The fix is more complicated than the problem, and will mess with other aspects with the system on things that do not need to be fixed. The AO was based on the mediator not reading the statute correctly. As a lawyer we represent court appointed, or volunteer, but we know about one being indigent in advance, what is troublesome, is that the mediator being told after the fact. The court appointed list is not an indigent list, it was not conceived to be so.

2. It doesn't seem to be a problem, both sides are correct, but amending the rules would be difficult and not worth amending. There have been attempts to deal with this in 3-4 different ways and it keeps getting more complicated.
 3. What is the issue of knowing first? Don't we want mediators to know? This may be ideal, but we cannot regulate that or enforce it. The rules are for mediators not the participants attending the mediation. The participants do not read the rules. We can write a regulatory statement, but we cannot enforce it.
 4. Attorneys can withdraw from cases based on inability to collect their fee, and if you keep using the attorney pro-bono as a model, notice should be present.
 5. It is an interesting conundrum, as a practical matter there is no way to enforce a pre-mediation requirement to know indigency. We can't put that on the clerks or court staff which is where it would need to be. People receive settlements in mediation, so they come in without the ability to pay but leave with the ability. There is a risk to mediating, and being on the court appointed list, mediators know what can happen. It is not mandatory for attorneys to accept pro-bono cases but that has been talked about for 50 years. Every now and again a person may get burned, but it is not worth a rule change. We have been around the circle with this about 10 times.
 6. Question presented: Does this rule apply to court appointed or party selected mediators? Answer: It applies to all mediators.
 7. Discussion about inserting expectation of payment in initial contact letters.
- iii. Vote - Webb, Nadolski, Clare, Griffiths, Seigle, Hill, Wood, Farris, Evans, Knight, Hicks, Marcilliat, Isley, and Nease Brown in favor. Tyson opposed.

- iv. Seigle recommends a change to the form, the Report of Mediator.
 1. Staff to communicate with the forms committee regarding making the necessary changes and to relay information to all Members via email.
4. Update on next meeting.
 - a. Robinson: Next meeting is scheduled in January, would like to move to February 8th or 22nd.
 - b. Webb: Let's try to piggy back with the TCA on the 27th. They have invited the Director, and I intend to go as well.
 - c. Staff will notify Members of next meeting date and location asap.
5. Evans moved to adjourn the meeting. Marcilliat seconded. Vote – all in favor.



Dispute Resolution Commission

**Quarterly Meeting
Friday, September 21, 2018
10:00 AM**

**NC Judicial Center
Raleigh, NC**

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

Commission Members present: Webb, Dollar, Clare, Caldwell, Farris, Hicks, Nease Brown, Ponton, Vincent, Evans, Tyson, Cash, and Long.

Ex-officio members and staff present: Estle, Laney, Leazer, Nesbitt, Schafer, Norelli, Craig, Robinson and Kozlowski.

Guests present: Ketan Soni and

With regrets, Commission Members not present: Marcilliat, Nadolski, Seigle, and Wood.

A quorum was present at the meeting.

Judge Webb welcomed all present, and thanked everyone for attending in light of Hurricane Florence.

5. Introduction of new Executive Director, Tara Kozlowski.
6. Announcement of new Member Laura Isley taking over Ms. Dollar's seat – Judge Webb.
7. Presentation on New Project to Overhaul Record Keeping and Statistics Gathering in the NC Courts – Brad Fowler, AOC Research, Policy, and Planning Officer.
 - a. Current records retention rule is to retain paper files for 60 years. Approximately 31 million pages are added to clerk files each year state wide. Current system, VCAP, is indexing system. AOC looking to move into a case management system, eCourts, with mandatory electronic filing within next 3-5 years. The new system will force standardization of rules, procedures, and forms throughout the districts of NC.
 - b. The DRC will have input on the data to be entered by clerk/staff/judges/mediators regarding ADR. The DRC's direct challenge "what do we want in the new system?" DRC needs to determine things that matter and things that can be measured to create work-flow. What does the DRC want to know? The DRC needs to develop uniform agreed-upon definitions.

- c. Judge Webb: Tara to send link to all Members where they can enter the information they want to know. We will form a sub-Committee to look at definitions and workflow.
 - d. Discussion. The timing, and replacement of VCAP is 3-5 years. The total cost estimate for the project is 15-18 million, with 1.5 million current secured. This project is moving forward with the anticipation the funding will be there as needed. Data migration is expected, basic VCAP information will transfer over. All historic records will be preserved.
8. Announcement Regarding Green Book – Mr. Laney
- a. There has been a request to translate a portion of the Green Book into Russian.
 - b. Nease Brown made a motion to allow a portion of the Green Book to be translated into Russian. Tyson seconded the motion. Vote -all members in favor. Approved.
9. Approval of May Minutes – Judge Webb
- a. Nease Brown made a motion to approve May 2018 meeting minutes. Vincent seconded. Vote - all members in favor. Approved.
10. Introduction of Deborah Malizia – Judge Webb
- a. Deborah Malizia and Dr. Jameson authored the research article “Hidden in plain view: The impact of mediation on the mediator and implications for conflict resolution education,” published in the March 2018 edition of *Conflict Resolution Quarterly*.
 - b. Deborah Malizia, presented her work, done in conjunction with Dr. Jameson at NC State, and Dr. Amy Halberstadt at NC State, on a research project evaluating the impact mediation has on the mental health of the mediator. The group received IRB approval from NC State for one year, and launched a pilot study with law students to determine if a mediation course has an impact on the student’s mental health. Currently there are five schools participating in the research project this fall and three more are scheduled to participate this spring. However the number of student participants is lower than the group had hoped.
 - c. Ms. Malizia requested assistance from the DRC in funding the research project by providing a \$50 stipend to each participant, \$1500 for a statistician, and funds to pay the final charge of 27% of the cost of the study to NC State for their support.
 - d. The group is also soliciting other sources and looking to other avenues for funding, including the CJCP.
 - e. Webb – the DRC does not have the funding in its budget to assist, but the DRC will endorse the project. Webb opened up to the floor for discussion, no comments.
 - f. Nease Brown made a motion that we received the report and encourage CJCP and other sources to support the research project. Evans seconded. Vote – all members in favor. Approved.
11. Introduction of Judge Nancy Norelli Black, New Liaison from NC Dispute Resolution Section – Judge Webb.
12. Hiring of third staff member – Judge Webb
- a. Webb advised when talking to Ratliff about hiring new Executive Director, she brought to his attention the need for a third staff person to assist in covering the

day-to-day calls, vacation and sick leave. Webb confirmed with Robinson that a third staff member is needed. Webb requested a vote for a third staff person be held at the end of the meeting.

13. Presentation of Plaque to Ms. Dollar – Judge Webb

- a. Dollar has been a member of the Commission since 2012, and has been vice-chair since 2014. Judge Webb commented it would be hard to replace her knowledge, hard work and friendship. Applause all around.

14. Office Report – Mrs. Kozlowski

- a. Mediator certifications issued for the end of the 2017-2018 fiscal year – as of June 30th: 1171 MSC active; 69 MSC inactive; 340 FFS active; 18 FFS inactive; 141 CMP active; 7 CMP inactive.
- a. FY 2017/18 Budget Report Total expenditures for the year were \$175,981.00, which included \$156,035.00, for salary and benefits of staff. Revenues for the year totaled \$206,055.00, leaving a cash surplus of \$30,073.00 for the year. This is the first year since 2013 the Commission has had a surplus at the end of a fiscal year. The total carryforward as of June 30, 2018 is \$103,015.40.
- b. Tentative Report on FY 2018/19 Renewal Period. We have collected \$103,640.00 thus far during this renewal period. Last year at this time we had collected \$106,315 so we are down \$2,675, but Florence may have had an impact on this number. There is \$93,660 in potential renewal fees in the holding tank, and we are receiving increased payments from trainers and application processing fees.
- c. Laura Isley, recently appointed to take over Lorrie Dollar's seat. The State Board of Elections and Ethics Enforcement sent a letter approving Ms. Isley's appointment. The following language was read into the record: **We 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 this entity.**
- d. We have not submitted rule change requests to the Supreme Court, and staff recommends dropping the requirement to send via Certified Mail as it is problematic. Staff recommends using the AOC overnight delivery method.
 - i. Discussion held and concerns about notice and due process. Matter left on the table with no resolution.
- e. Staff is requesting new laptops and monitors for the office. The current versions are old and all warranties are expiring. AOC is replacing computers throughout, and we should as well. Laptops cost \$1000/ and monitors \$130/. Laptops are better than desktops to allow for staff to work from home during inclement weather.
 - i. Webb requested to vote on this at the end of the meeting.
- f. A reminder to all members whose term is coming to completion, you are still in the position until your replacement has been appointed and sworn in. The Chief Justice is aware we are in need of the new appointments.
- g. Staff requests for members to notify us if they would rather receive electronic copies of the meeting packet to review and paper copies when they arrive to avoid mailing.

- h. Notice that all brochures will be translated into Spanish – Robinson currently working on this project.
 - i. Annual report is in the works but not complete as of yet.
 - j. With the assistance of Dollar, staff is looking to make short videos of information to members – such as AO’s - to avoid sending long articles that may not get read.
15. Legislative Report – Mr. Laney – nothing to report.
16. Long Range Planning Committee – Lorrie Dollar
- a. Committee working toward bringing all FFS mediators under DRC. Given the number of FFS mediators, there is a greater perception by the public that we cover all family mediators and we need a safeguard in place for the litigants. The goal is to take our time to bring in all FFS mediators, and grandfather mediators with a certain level of experience. Those coming in under a grandfather clause will be required to take specific training relating to the rules, mechanisms and AO’s.
 - b. Discussion. All programs should have the same expectations, FF is no different. Public perception is DRC already has authority over all FF mediators. Must be done slowly. Resistance by the family bar appears to have decreased, and the feeling is the family bar has become comfortable with becoming certified.
 - c. Webb – Ponton and Norelli to be ad-hoc Committee to find a way to implement. It is important to be transparent in this process. Once we have a proposal we will contact the chief for support.
17. Clerk Mediation Pilot – Ms. Nesbitt
- a. The maximum number of CMP cases in a year has been 13 out of all 100 counties. Since the pilot was implemented in March of this year, in only 4 counties, the number of CMP cases has increased to 23 cases. It’s a start.
 - b. Discussion. Clearest indication is in the numbers, this is real progress. It is important for clerks to make sure their judges are aware of the program. If the judges are aware, they will be more willing to use the program.
18. New Media – Mr. Clare
- a. New website is up and running. Hard to follow and navigate through.
 - b. Discussion. Offer from Judge Warren to use IT person, Ratliff declined. Ratliff spent a month organizing and putting website together, however much of the information was left off the site. AOC IT made an excel spreadsheet showing all missing data – we are trying to fix. There was no opportunity to review the website before it went live. IT is looking to modernize the renewal application. Staff has carte blanche to fix sit as necessary.
19. Ex Officio reports
- a. Mediation Network – Ms. Estle. Network has not had a meeting since last DRC meeting. Ms. Estle’s center has expanded into Johnston County. Still no Executive Director for the Network.
 - b. Court Staff – Ms. Craig. Fall conference Oct 23-26, invitation to Kozlowski and Webb to join conference if available.
 - c. NCBA Dispute Resolution Section – Judge Norelli. We are videotaping a mediation to use as a demonstration for observations on 10-15-18. Ann Anderson

is spear-heading this project. There have been suggestions for a FFS training video as well, the section will consider this after receiving feedback from MSC video. We have had one meeting this year, Robinson, Ratliff and Kozlowski attended. We have an annual meeting in March in Charlotte with a slot for the DRC ED to speak at the event.

- d. Industrial Commission – Mr. Shaffer. The settlement rate for mediations in the 17/18 year was over 75%. The number of mediation conferences held steady, just under 10k even through the number of cases sent to mediation had declined slightly. Next month is the educational conference, all are looking forward to robust conversations.
 - e. Court of Appeals – Judge Tyson. 13 appellate mediations completed this year. Losing three of the most experienced mediators – two at the end of the year, and one next April. We have a meeting on November 1st to discuss the issue of requiring all appellate judges to mediate cases. There has been discussion of having new judges complete a one-day training. Judge Tyson would prefer them to complete 40 hour training and become certified through DRC. Judge appellate mediators do not charge a fee.
20. Update on November retreat – Ms. Robinson. The hotel took in some damage from hurricane Florence, but will be up and running by our retreat. A reminder email will be sent out.

Webb and Dollar excused themselves to attend to other business, Hicks to act as Chair for remainder of meeting.

Break for Lunch

21. Mediation Training and Certification Committee – Mr. Long.
- a. We have had a good response for renewals, people like the free CME's and we have heard positive feedback.
 - b. We have a new 40-hour FFS training program in Charlotte by RSR. Ms. Gelbin has been approved for a 16-hour flip in her MSC training course. She has also submitted a proposed 40-hour, and 16-hour, flip training manual for FFS that is currently under review.
 - c. We have a series of 2-hour CME's that have been approved: Review of Rules and Recent AO's; By the Book: Avoiding Trouble Spots in your Mediation Practice; Ethics & Continuing Mediator Education; and Mediation Ethics Family Feud.
 - d. One application for a 2-hour CME was denied as the program discussed rules that had not yet been adopted by the Supreme Court.
22. Ex-officio report on statistics – Ms. Nesbitt.
- a. MSC number of cases ordered over 6k, all issues resolved was 1943, so we are at almost 1/3 of cases where all issues are resolved in mediation. 585 cases settled prior to a settlement conference. Half the cases are being settled before or during mediation.

- b. FFS the number of cases ordered in was slightly down from 16/17 year. However, in 16/17, 42% of the cases were all or partially resolved, this year it has increased to 44%.
 - c. Arbitration. The number of cases heard was 1958, out of 4,000 cases. Trial de novo was only 502 cases. Less than 10% of cases noticed for arbitration went to trial or jury trial.
23. Grievance Committee – Judge Vincent.
- a. This Committee has been busy. We denied a request for certification as applicant was suspended from the Bar in Florida. He has applied to the NC Bar, but has not been admitted. Three applicants with history of minor criminal offenses in the past, bankruptcy, and/or tax liens were all approved after verifying no all issues have been cleared up and all are in good standing, if admitted to a Bar.
 - b. McDaniel has caused such problems: He did not comply with the requested terms and has been suspended. Discussion: He did meet with Judge Hudson, but did not come into compliance with remainder of requests.
 - c. A complaint was filed in WC claim. Chair dismissed with staff recommendation, mediator received letter of warning about public perception. Complaint was appealed, appeal was denied by full Committee.
 - d. There is a current complaint pending, staff is working on gathering information.
 - e. DRC meeting in May of 18 – discussion was held regarding how to handle non-response to complaint from DRC. The Grievance Committee met and determined staff needed support, they propose adding the following language “if a mediator fails to respond to a Complaint within the 30-day period of time, the matter will automatically be referred to the Grievance Committee.”
 - i. Discussion. There is a need for a compliance mechanism, it needs to be a credible threat. Would the Committee consider the following: “even without a meritorious allegation, no response to the underlying complaint may be grounds for suspension.” Concerns were expressed about mediator’s being blind-sided if not aware of the complaint. Staff noted they would call and follow-up prior to expiration of 30 day period. Staff to work with Committee to draft language for next meeting.

Robert Ponton excused himself from the meeting.

24. Standards and Advisory Opinion –Rule 7 - Mrs. Kozlowski standing in for Ms. Seigle.
- a. Rule 7. This rule has been on the table for a while. A draft re-write was approved at the February 2018, meeting, and posted for comment. A lot of comments were received, most expressing concern on the notice of the parties inability to pay. At the May 2018, meeting the Members requested the matter go back to the drawing board. The S&AO Committee met with the Grievance Committee in August and developed the current proposed draft. The current proposed draft allows for early notice of the inability to pay, as the party seeking relief shall file the Petition of Inability to Pay the Mediator Fee within 21 days from the date of the Order to Mediate in MSC matters, and prior to the Scheduling Conference in FFS matters. This will then trigger the court to appoint a mediator from the court appointed

mediator list. If a party to a mediation wishes to file a Petition to avoid the mediator fees, they lose the ability to party-select a mediator. The rule now places the burden on the party seeking relief from the mediator fees to file the Petition. Thus the mediator is no longer required to file any paperwork on behalf on the parties.

- b. Discussion. Ratliff Memo Surveying Other States' Rules on **Indigency** and Conflicts of Interest. Positive reaction to party filing their own petition and not the mediator on behalf of the party, esp. as not all mediators file paperwork timely. Concerns about putting extra burden on judges when a party doesn't file the paperwork correctly. Need to clarify whether there is a hearing or not on the ability to pay, the mediator is to go forward with the mediation. Concerns that party who files petition cannot select a mediator even if mediator agrees to take pro bono – staff advised this was not intent, and a party can select mediator but will just not be able to seek relief from court – need to clarify. Concerns were expressed that not all counties use the same forms, so trying to implement will be a problem. A question was raised as to why this is even an issue if an award has been generated through mediation. Agreement that is a party settles and receives an award, they then have the ability to pay. It was acknowledged that if a conference ends in impasse then a party may not be able to pay. Agreement by all members that the responsibility to file the Petition should be on the party and not the mediator. Discussed how a party is supposed to learn they need to file the petition, what happens if they are not told, is it the mediator's responsibility to inform the parties they can file? What is the obligation of the mediator? Staff reported the office receives calls often regarding the inability to pay, and the information is provided by our office. Mediators also call staff upset they are not getting paid, and are advised they agreed to take pro bono cases when they became certified. Concerns were raised about a situation where someone does not know how to proceed. Need to know who (judge/staff/mediator) tells what. Comments were made that people are not going to read regardless. Concerns were expressed mediators would not take pro bono cases if not required. Court appointed lists are diminishing.
 - c. The Committee and staff to re-consider the issue. All members agreed the party without the ability to pay should be responsible for filing the petition, and that notice to the mediator is very important. There also needs to be clarification a party can still party-select a mediator even though no ability to pay if mediator agrees to take case pro bono.
25. Standards and Advisory Opinion –Other matter previously before Commission - Mrs. Kozlowski standing in for Ms. Seigle.
- a. Revised Standard III in lieu of previously proposed AO 36 on Confidentiality and New Lawyer Hire. Two different mediators posed related scenarios to the Commission and both requested AO's. The scenarios both involved mediations ending in impasse, where a litigant either changes lawyers or hires a lawyer for the first time. The current Standard III.A prohibits the mediator from communicating with the new attorney in both situations. The Commission posted AO 36 for comment, answering the communication was prohibited in both scenarios. We

received multiple comments and concerns about the need for ability to communicate in these circumstances. At the May 2018, meeting, the Committee suggested best practice would be to modify the Standard. The Committee met with staff and drafted additional language for Standard III that would allow this type of communication. The new language allows discussions to occur between the mediator and a new lawyer to a case so long as all parties consent and the mediator feels comfortable in their memory and can preserve confidential information.

- i. Discussion. If all parties consent the mediator is not put in much jeopardy. We are here to settle cases so why have an absolute bar on this. A mediator should be able to bring attorney up-to-speed. Concern was expressed that other attorney hold too much power by having ability to withhold their consent. Concerns this creates situation where other party has incurred costs since last offer that may have been time specific. Counter comment was for no concern is there is a time limit, but concerned about having to rely on client to obtain all information.
 - ii. Motion to adopt Standard III revision by Cash. Seconded by Caldwell. Vote – all members in favor. Approved.
- b. Revised AO 37 on Food and Beverages. A mediator contacted the Commission asked whether Standard VII.H would preclude her sponsoring a CME or CLE offering and being recognized for doing so on program registration or other materials or on a sign. Second, the mediator asks whether she could sponsor a dinner or open bar at a CLE or CME event and be recognized for doing so. The original AO denied the ability to sponsor a dinner or open bar. The AO was posted for comments, and we received a comments recommending limiting the sponsorship. After discussing the matter with the full Commission at the May 2018, meeting, and taking into consideration the comments, the Committee has revised its position and drafted the proposed AO to allow for mediators to sponsor CME and CLE events, and provide food and beverage, if they so wish. The CLE and CME event would need to be for educational purposes and open to the public.
 - i. Discussion. Open to the public does not mean free. It was suggested to change “open” to the public to “available” to the public.
 - ii. Motion to adopt AO 37 with the change from “open” to “available” by Judge Evans. Seconded by Nease Brown. Vote – all members in favor. Approved.
- c. Revised AO 38 on Designation of Mediator (completion and filing of form). This AO addresses completing the Designation of Mediator Form as defined in MSC Rule 2.A. This AO was before the Commission earlier this year, and was approved. AO 38, states Rule 2.A does not allow for the responsibilities for completing the Designation of Mediator Form to be delegated to the mediator selected, or any third party. The AO was posted for comment. We received a comment from Mr. Jason James making us aware that potentially mediator services were pre-populating the Designation Forms with information prior to sending them to the attorneys to file. As such, AO 38 has been revised to address this issue. The language has been

modified to define “completing” and clearly state a mediator may not complete, sign or file these forms.

- i. Discussion. Suggested to delete “mediation firm” and include “or anyone acting on behalf of mediator.” Concern about how to police this, response that is not the issue.
 - ii. Motion to adopt AO 38 with change from “mediators and mediation firms,” to “mediator, or anyone acting on their behalf,” by Clare. Seconded by Judge Farris. Vote- all members in favor. Approved.
- d. Revised AO 39 on Evidence for Attorney’s Fees. We received an inquiry asking if offers made and rejected in mediation be used later in the same action to support a motion of attorney’s fees, and may the mediator’s notes related to offers and counter-offers be subpoenaed and used as evidence for the same purpose? This AO was presented at the last Commission meeting, answering NO to both matters. The AO was approved by the Commission pending an additional revision. The language has been modified, and approved by the Committee and is awaiting final approval by the Commission.
- i. Discussion. None. Motion to adopt AO 39 by Nease Brown. Seconded by Clare. Vote – all members in favor. Approved.

Judge Vincent excused herself from the meeting. Meeting quorum was maintained.

- e. Discussion of FFS Conflicts of Interest Scenarios, State Bar Inquiry Question (Re: AO 31). This deals with the inquiries where the attorney/mediator has contact with a party to a mediation prior to the mediation. Can an attorney/mediator who was interviewed by a party, but not hired, or who represented a party in simple divorce, later conduct a mediation of a family dispute for the same party? The Committee believed that both scenarios violated the current Standard as the Standard is currently written.
 - i. Staff - Ratliff polled seven other states regarding their rules and regulations on conflicts of interest. We are the only state that does not allow a knowing and intelligent waiver in any circumstance. A few of the states have very broad language, while other states are more narrow, however all states have a catch all provision that even with a knowing and intelligent waiver by both parties, a mediator must decline if the conflict is too great.
 - ii. The SAO Committee presents multiple approaches on how to address these scenarios.
 1. Proposed AO 40 interprets Standard VII.C as prohibiting both mediators from conducting these mediations, even if the parties give a knowing and intelligent waiver in writing.
 2. Proposed revisions to Standard VII.C reflect Mr. Long’s concerns and would permit the mediators in these scenarios to serve, provided that the parties have given a knowing and intelligent wavier in writing. The rule revision was drafted in a broad manner pursuant to rules our surrounding states already have in place.

3. Alternate Proposed revision to Standard VII provides a re-write to the entire rule 7. The proposed re-write was presented to the Committee to assist in clarifying the language within the rule.
 4. Seek guidance from the State Bar and request an Ethics Opinion. It has been brought to the Committee's attention this issue is somewhat similar to the one addressed in AO 31. AO 31, and also AO 28, speaks to the issue of a mediator being barred from drafting an agreement at the conclusion of a mediation. These scenarios deal with the conflict coming from actions prior to the mediation. However, the Committee felt although the scenarios' are different, they are close enough to possibly warrant seeking guidance from the State Bar.
- iii. Discussion. Rule 1.9 Knowing and Intelligent Waiver was discussed. No issue going through State Bar is completed in a timely manner. Re-presented parties are not typically the problem, but pro se individuals can create an issue. The few times a Member had not recused himself and all parties agreed to have him hear the matter, came back to bite him. It is always a problem and the Member now has a bright line rule against this. State Bar Ethics Committee is meeting in October and their agenda is set, if this Committee is to hear the issue it will not be discussed until January. Staff is to call State Bar to see if issue can be addressed by State Bar Staff and not full Committee.
 - iv. All agree Staff is to call State Bar and draft letter seeking opinion on matter.
26. Standards and Advisory Opinion – New Matters Before Commission - Mrs. Kozlowski standing in for Ms. Seigle.
- a. This AO addresses some reoccurring issues that mediators seem to have with case management. Specifically, this AO speaks directly to the McDaniel suspension. The intent of this AO is to provide an outline of the mediator's requirements so they can manage their active cases more effectively. The ancillary benefit is to show the consequences of failing to follow proper procedure pursuant to the Rules and Standards.
 - i. Discussion. Propose to remove language that it is rare for the Commission to take action, and just list that it is extreme. Delete commentary that staff rightly resents badgering mediators to keep AO matter of fact. Proposal to include that the failure to respond will be automatic referral to grievance Committee – however can't make that change if it modifies a rule, but can make the change if it is just a policy change.
 - ii. Motion to adopt AO 41 with proposed language changes by Tyson. Seconded by Nease Brown. Vote – all members in favor. Approved.
 - b. Partition Inquiry. The office received a call from a mediator asking about the mediator's obligation to notify all parties whether she is a MSC mediator and/or a Family Financial mediation prior to a mediation. The mediator is FFS certified. She was party selected to mediate a partition action as the parties to the action were

dealing with a separation (not married). The mediator did not disclose that she was not MSC certified, nor was she asked about her certification by either attorney. A Superior Court action had been filed, but had not yet been ordered to mediation. She mediated the case which ended in an impasse. The parties were then ordered into mediation with a MSC mediator. One of the parties was upset about the need to go through the process again. The mediator was contacted by the attorney of the distraught party and let her know she should have disclosed that she was not MSC certified. This office provided guidance to the mediator, documented in an email.

- i. Discussion. If you are not a certified MSC mediation, the mediator should have the duty to tell the parties requesting the mediation. This matter should go through the Grievance Committee– advised the matter was self-reported. Proposal for letter to mediator regarding best practice. Staff advised Ratliff had sent letter to mediator advising best practice is to provide notice of certifications to parties. Commission all agreed this resolved the issue and no AO was needed.

27. Re-visiting earlier items on the agenda.

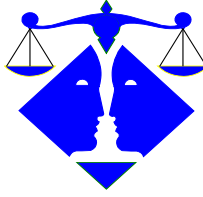
a. Hiring third staff member.

- i. Discussion. There have always been three people in the office. Amazed at how much work comes out of the office, both part time staff are likely working in excess of their required hours. A third person seems reasonable.
- ii. Motion to hire third staff person for part time admin position by Long. Seconded by Cash. Vote – all members in favor. Approved.

b. New computers and monitors for staff.

- i. Discussion. None. Motion to purchase 3 new laptops with 24” monitors for staff by Clare. Seconded by Long. Vote – all members in favor. Approved.

12. Adjournment – Ms. Hicks.



Dispute Resolution Commission MINUTES

**Friday, May 18, 2018
NC Judicial Center, Raleigh NC
10:00 AM**

Members present: Nease Brown, Cash, Dollar, Hicks, Long, Marcilliat, Nadolski, Seigle, Tyson, Vincent, and Wood. Ex-officio members and staff present: Estle, Leazer, Nesbitt, Ratliff, Robinson, and Schafer. Guests present: Burns, Craig, Harrington, Igou, Kozlowski, and Little.

In Judge Webb's absence, Vice-Chair Dollar welcomed everyone and asked those present to introduce themselves to the Commission's new member District Attorney Patrick Nadolski (District 15A, Alamance County). She noted guests, including two affiliated with the Mediation Network of North Carolina. Next, Ms. Dollar called for Mr. Nadolski to take the oath of office. Ms. Ratliff noted for the record that the State Board of Ethics Enforcement had reviewed Mr. Nadolski's Statement of Economic Interest and found no actual conflict of interest or the likelihood of a conflict and that, as such, nothing prohibited his service on the Commission.

Ms. Dollar updated everyone regarding the court's new website. She reported the rollout was still on target for June 19. She added that the site will be user friendly, particularly with regard to mobile devices. She noted that the court will be stressing information like caseload statistics. She also noted that eCourts and eFiling are expanding and mentioned various scanning apps that could facilitate the filing of Reports of Mediator with the court. She suggested that the mediators in the room should take a look at those apps. Ms. Ratliff and Ms. Robinson said they will be showcasing those apps in the next edition of the newsletter.

Next, Ms. Dollar asked Ms. Nesbitt, who needed to leave early, to report on the Pilot Clerk Mediation Program. Ms. Nesbitt said she was pleased to report that the pilot is now underway in Ashe, Buncombe, Mecklenburg, and Wake Counties. Next, she spoke about program caseload statistics. She first reported that 4,852 cases were submitted to the District Court Arbitration Program. She noted this is a higher number than last year, so that Program was growing. She further reported that 2,552 family cases were referred to the FFS Program and that number was stable relative to last year. Lastly, she noted that 5,877 cases were referred to the MSC Program. That number had fallen the past few years. Ms. Nesbitt noted that she is concerned about mediator reporting. She described a recent call she received from a TCA who told her that reports were not being filed in 60-70% of her MSC cases. Ms. Leazer and Ms. Craig echoed the same concerns and suggested that court staff did not feel supported by the Commission and were tired of having to spend time calling and emailing mediators about their tardy reports. They suggested that some court staff were beginning to question whether they should bother to collect statistics. Both Ms. Dollar and Ms. Ratliff reported that they were hearing similar sentiments from other court staff. Ms. Nesbitt suggested that the Commission needs to be more adamant that mediators get their reports in on time. She stressed that these statistics are the only concrete way to establish that Programs are working. Ms. Seigle added that she, too, is concerned about reporting. She suggested

mediators should not be permitted to mediate further if they are behind. Judge Cash suggested the issue is more complicated than it appears; mediators are sometimes waiting on attorneys and don't want to alienate them at the risk of losing future business. Ms. Seigle asked Mr. Schafer whether the Industrial Commission has a similar reporting problem? He responded that they do, but not to this degree. He personally contacts mediators and advises them that they cannot mediate further if they are behind. Ms. Leazer noted that she has heard from some court staff that they are no longer accepting Designations which name mediators who are not current. Ms. Dollar suggested establishing an ad hoc committee to look at the reporting issue. The Commission agreed. Judge Vincent suggested that the Commission may want to specify that a certain number of failures to report will automatically trigger a grievance.

Next, Ms. Dollar called for approval of the February, 2018, minutes. They were approved. She next asked for Ms. Ratliff's office report. Ms. Ratliff noted this has been a busy quarter, especially given that she had "lost" most of the month of February editing the website. She noted that the Commission's website consisted of 125 web pages. She reported that she culled some, though not a lot of pages, and, for the remaining pages, had focused on reducing text and prioritizing information based on constituent interest. In keeping with the consultant's directives, she incorporated more bullets, headings, and subheadings. She said she felt good about what she had done and had received positive feedback from AOC staff. She said she still did not know how the material on the Commission's website would be grouped or organized. She added that while the main rollout was scheduled for June 19, she had been advised by AOC Communications staff that the roll out for commissions and other ancillary programs may be slightly later. Ms. Ratliff next reported on the temporary Tech position that Judge Webb had spoken about at the last meeting. She said she completed the paperwork that HR required. She noted that she and/or Ms. Robinson had met with AOC Security, IT, and Communications staff regarding the Tech. She reported that both she and Ms. Robinson were advised that the tasks the office wanted undertaken by the Tech, i.e., addressing spamming and phishing concerns and ensuring the functioning of the interface between the new website and the database and online renewal application (which are not part of the website) could be handled by exiting AOC staff who were already working on the issues. Moreover, it was suggested to Ms. Ratliff and Ms. Robinson that the Commission would have to pay for the Tech position, if it chose to go that route rather than utilizing existing staff. Ms. Ratliff reported that she referred AOC staff to Judge Webb for clarification as to any additional tasks he might want the Tech to tackle and to address the cost issue, i.e., whether someone would be brought in or the AOC would assign existing staff to the Commission. She said she understood that Judge Webb had contacted Judge Warren, but did not know what had happened beyond that.

Next, Ms. Ratliff reported that after she completed the editing of the website, she turned her attention to the Pilot Clerk Mediation Program. She noted that program forms had to be revised in keeping with directions from pilot clerks and there were edits to the Benchbook as well. She passed around the final version of the Benchbook, forms, and flow chart and noted that these materials represented a major effort on the part of staff. She added that she had already had some calls from clerk staff, mediators, and parties regarding referrals so she felt like things were starting to move. Next, Ms. Ratliff reported that she turned her attention to personnel matters. She said that she had completed the paperwork necessary to begin advertising the Executive Director position and the job had been posted. She added that Ms. Hicks would have more to say in her report for the Ad hoc Staffing and Funding Committee. Next, Ms. Ratliff noted that she and Ms. Robinson were gearing up for the 2018/19 renewal period. She added that steps taken to improve security would be discussed during the report of the New Media Committee. She added that given that the website rollout was on June 19 and the Renewal period begins July 1, she was concerned that there was not a lot of time to ensure that the interface between the new website and the database and online renewal application were seamless. Ms. Robinson noted that the Commission may also be transitioning to a new website address, www.ncdrc.gov, which may cause confusion. Ms. Ratliff noted that she and Ms. Robinson have raised their concerns with the

appropriate IT, Security, and Communications staff and been assured that they are on top of things. Lastly, Ms. Ratliff noted that both the Grievance and SAO Committees had kept the staff busy this quarter. Ms. Ratliff added there was one task she had not gotten done this quarter --she had not forwarded the rules adopted to date to the Supreme Court. She explained that there had been comments on the proposed MSC/FFS Rule 7 changes and Ms. Seigle had wanted the matter back before the Commission. Moreover, she added that she and Mr. Laney were still trying to clarify with the Supreme Court whether the ADR Committee of the State Judicial Council and the State Judicial Council were still functioning and should receive the proposed rule changes.

In Mr. Laney's absence, Ms. Ratliff called attention to his written Legislative Report on the General Assembly's ongoing effort to address the difficult issue of homeowner/homeowner association disputes. She noted the report suggested this might be a matter the Long Range Planning Committee could explore.

Ms. Estle, who also needed to leave early, gave her liaison report for the Network. She indicated that there was general agreement among the centers that they all needed to participate in the DCC Program. She added that the Network had agreed to recognize Piedmont Mediation Center as the Network's official trainer for purposes of the DCC Program and she said she expected the Commission's office would begin receiving more applications in the near future. Ms. Ratliff asked for clarification regarding Mr. Minor's role and Ms. Estle responded that he was no longer involved with the Network beyond the Medicaid Mediation Program.

Ms. Dollar next asked Ms. Seigle to report on the comments she received regarding the proposed MSC/FFS Rule 7 changes (indigency). Ms. Seigle noted that 7 comments were received and she briefly summarized each. She then called attention to proposed additional revisions. The new revisions permitted parties or the mediator to forward the Petition for a finding of indigency to the court. (The previous revisions had placed the responsibility to forward the Petition solely on the mediator). There followed spirited discussion regarding how to address parties seeking a determination of indigency. Judge Tyson is concerned that this Rule invokes the notion of involuntary servitude as it requires mediators to serve without pay. Mr. Long echoed that concern. Judge Tyson is also concerned that judges will have to spend time making these determinations. Ms. Nease Brown suggested that perhaps a balance needs to be struck. Judge Cash suggested that the Commission make an effort to find out how often such Petitions are being filed around the State. Judge Vincent suggested maybe the Petition should be beefed up to ask more questions about the parties' inability to pay. Mr. Little suggested that the real issue is notice, should the mediator get notice earlier? Ms. Seigle responded that she thought the whole idea behind the Rule was to protect mediator neutrality and the perception of neutrality by having the party wait till after mediation to file the Petition, i.e., if a mediator did not know of the claim until after the conference was held, s/he could not rush the conference or refuse to hold it. Mr. Little acknowledged that was the original intent, but said that he no longer believed that would happen. Ms. Seigle asked whether the Grievance Committee had not recently disciplined a mediator on those very grounds? Judge Vincent nodded that was the case. Ms. Ratliff said that court staff had told her that they think parties equate mediation fees with filing fees which are easily waived. Ms. Leazer and Ms. Robinson suggested attaching a copy of a Petition to the order of referral, though that would require more effort from court staff. Mr. Seigle agreed to table the matter for now and to discuss it further with her Committee. The Committee will make an effort to explore how widespread claims of indigency are and to consider beefing up the financial questions on the Petition.

Ms. Dollar reported for the Executive Committee and noted that a number of members' terms would be expiring on September 30, 2018.

Judge Vincent next reported for the Grievance Committee. She highlighted the issues the Committee dealt with this quarter. She first noted two applicants for certification who were before the Committee on conduct

matters. The first, an applicant for FFS certification, had 3 misdemeanors as a youth and young man, domestic violence charges, and a social work license that was suspended due to substance abuse issues. That suspension was stayed for some seven years. Judge Vincent noted that the applicant's license was fully restored in February of 2018, so the Committee certified him. A second MSC applicant had substantial federal tax liens and judgments. The mediator's financial problems were traceable to the Great Recession and the Committee determined to certify him. Judge Vincent next spoke about a complaint filed by a party against a mediator. The party listed a number of allegations against the mediator. Judge Vincent said that, after a full investigation, including speaking with the complaining party's attorney at length, staff could find no corroborating evidence. The Committee dismissed the complaint.

Judge Vincent next spoke about a DRC staff complaint filed against an MSC mediator. She noted that Ms. Ratliff had filed the complaint after being contacted by three different court staff in three districts over a two-week period. All staff were highly frustrated and characterized the mediator in question as having long-term, chronic problems both with reporting and meeting deadlines. Judge Vincent added that staff in one district had told Ms. Ratliff that the mediator had ignored her SRSCJ's request that he meet with him to discuss reporting concerns. All three districts advised Ms. Ratliff that this mediator conducted a substantial number of mediations. Ms. Ratliff, Judge Vincent reported, originally sent a letter to the mediator on February 2, 2018, asking him to "immediately" contact her and the court staff and SRSCJ identified in her letter to address case management concerns. The mediator responded with a brief email, saying he would be in touch with Ms. Ratliff, but never followed up. Two weeks later, Ms. Ratliff contacted court staff and learned that only one had heard from the mediator. At that time, she also learned the situation was deteriorating and one of the districts was refusing to take additional Designations naming the mediator and another was requiring attorneys to name another mediator in cases assigned to the mediator in question. She also learned that a fourth, very urban district was having similar problems with the mediator. At that time, Judge Vincent reported, Ms. Ratliff determined to file a staff complaint against the mediator (DRC Rule IV.B(3)). The complaint was filed on February 15, 2018, and Judge Vincent reported that the mediator never responded. She added also that he never met with the SRSCJ and was not fully caught up in any of the districts, though he had made a substantial effort in one. Judge Vincent reported that her Committee determined to suspend the mediator's certification for one year, but stayed the suspension for 45 days to permit him to meet certain conditions. There followed a lengthy, spirited discussion of this matter. Judge Tyson and others wondered why the suspension was stayed given the mediator's failure to respond to either the DRC staff complaint or the SRSCJ and noted the State Bar would not have permitted a lawyer to continue to practice under these circumstances. He suggested the DRC Rules should provide that a mediator who fails to respond to a staff or other complaint will be suspended automatically. Judge Vincent asked Ms. Ratliff to take a look at the State Bar Rules on this point and get back to the Committee. Judge Cash noted that MSC Rule 6.B(4)(d) permitted SRSCJs to sanction mediators who failed to report. Ms. Ratliff noted that she had contacted the School of Government and been told emphatically that it was not good policy to encourage judges to play a regulatory role for a number of reasons, including the need for consistency across the State. Mr. Little noted that judges had concurrent authority with the State Bar over attorneys. Judge Vincent responded that judges almost never exercise that authority. Moreover, she stressed that the General Assembly and Supreme Court had named the Commission as the regulator. Judge Tyson asked whether the mediator had been reported to the State Bar and Judge Vincent responded that he had not. Ms. Leazer noted that a lot of time had lapsed since court staff originally brought the matter to the Commission's attention and the initial letter was sent by staff on February 2, 2018. She was very concerned that this mediator was still mediating and she felt sure many court staff would share her concern. Staff, she insisted, should not have to contend with this kind of behavior. Judge Vincent noted that her Committee would meet as soon as possible after the 45-day stay expired. She added that they would discuss contacting the State Bar and that the punishment would be public and districts notified.

Judge Vincent next reported on a second staff complaint filed this quarter against an MSC mediator. In 2015, Ms. Ratliff was asked by court staff in 19B to contact a mediator who was signing and filing Designations naming herself as the mediator. Judge Vincent indicated that Ms. Ratliff told the Committee that her notes indicated that she had contacted the mediator by telephone and explained that MSC Rule 2.A required a party or attorney to sign and file Designations. The matter was resolved and the mediator said she would sign no more Designations. However, this year, two additional court staff contacted the Commission about the same mediator signing Designations. The mediator responded that in 2015, she had understood court staff in 19B and Ms. Ratliff to have been referencing a local rule, i.e., that MSC Rule 2.A was a District 19B local rule only. Moreover, she suggested this was a widespread practice which attorneys favored. The Committee determined to issue a Letter of Warning to the mediator. Judge Vincent added that the mediator had requested should she be disciplined, that the Committee consider either revising MSC Rule 2.A to permit mediators to sign Designations or to issue an AO clarifying that mediators may not complete, sign, and file Designations. Unless the Committee took such action, the mediator insisted that she would be at an economic disadvantage relative to other mediators engaged in the practice. Judge Vincent asked Judge Cash to report on a recent survey of court staff regarding Designations. He revealed that this is not a widespread practice. In light of that information, Judge Vincent said that, unless others disagreed, she did not believe MSC Rule 2.A should be revised and called attention to proposed AO 38 clarifying that the practice violated Rule 2.A. Thereafter, following discussion and with a slight revision, AO 38 was approved for posting.

Ms. Seigle next gave the report for the Standards and AO Committee, noting that her Committee had received several requests for Advisory Opinions this quarter. She first called attention to proposed AO 36 and proposed revisions to Standard VII.C, Conflicts of Interest. She explained that these were alternate and mutually exclusive means of addressing two scenarios raising conflict of interest questions under current Standard VII.C. In the first scenario, a family lawyer-mediator had been asked to mediate a case for a party whom he had earlier represented in a simple divorce. In the second scenario, another family lawyer-mediator was asked to mediate a case for a party who had earlier interviewed the lawyer-mediator regarding legal representation. In both scenarios, the question was whether Standard VII.C would permit the lawyer-mediator to conduct the mediation? Ms. Seigle added that she had asked Mr. Long to participate in her Committee's discussion given that he was a family lawyer. Mr. Long noted that he felt the AO, which would bar the lawyer-mediator from mediating in either situation, would fall disproportionately hard on more rural family attorneys and mediators who work in districts where there is a smaller client pool. As such, he had proposed revising Standard VII.C to permit parties to waive such conflicts. Judge Cash noted this is a real world question which can be resolved with a knowing, intelligent waiver. Judge Tyson noted that judges can hear some cases where they had some previous involvement as long as there is a knowing, intelligent waiver. Ms. Seigle said she understands the view Mr. Long articulated, but asked whether the revising the Standard to include a waiver would invite parties to make complaints about conflicts of interest. Mr. Long noted that there has to be full disclosure. Ms. Nesbitt suggested that perhaps the Commission should develop a waiver form. Ms. Seigle noted that the Committee was only bringing the matter forward today to seek input from the Commission. She noted that her Committee would continue to consider these scenarios and asked Mr. Long to work with them. Mr. Little suggested that the first paragraph of Standard VII.C is indecipherable and should be reviewed as well.

Ms. Seigle next called attention to AO 37. She explained that a family lawyer-mediator had asked her Committee to consider whether evidence of offers made and rejected in mediation could be used later in the same action to support a motion for attorney's fees. She noted that proposed AO 39 clarified that G.S. § 7A-38.4A prohibited the introduction of such evidence. Ms. Nease Brown noted that the opinion did not touch on Standard III, Confidentiality, and said she thought such a reference should be included. AO 39 was adopted with revisions to the last paragraph and the inclusion of a reference to confidentiality.

Ms. Seigle next called attention to proposed AO 36. She explained that two mediators had each sought an AO following mediations that impassioned and raised similar confidentiality concerns post-mediation. Following impasse, new attorneys were hired in both cases by parties who had participated in the mediations. (In Scenario #1, the original attorney had been fired and a new one hired; in Scenario #2, a pro se party had hired a lawyer post-mediation.) The new attorneys had contacted the mediators and asked to be briefed regarding what happened in mediation. Both mediators, Ms. Seigle continued, were concerned that such conversations would violate Standard III, Confidentiality. Ms. Seigle added that proposed AO 36 validated the mediators' concerns in that it provided that Standard III would prohibit such conversations. She opened the floor to discussion. Judge Cash wondered whether this should be a waivable matter. He agreed such conversations would violate Standard III, but questioned whether the Standard should be revised. The Commission voted to adopt AO 36 as submitted.

Ms. Seigle next called attention to AO 37 on gifts. She explained that a mediator had asked whether she could financially sponsor a CME/CLE program and have her sponsorship noted in registration materials or posted on a sign. The same mediator had also asked about sponsoring a dinner or open bar and having that contribution noted as well. Judge Tyson commented that lobbyists can provide food and drink to legislators without violating the gifts ban as long as that food and drink are for immediate consumption at events. Ms. Seigle responded that since the Commission prohibited the giving of mouse pads, pens, coffee mugs and the like, she did not feel comfortable suggesting that buying food and drinks was permissible. She added that permitting such would be tantamount to favoring more affluent mediators. AO 37 was adopted as submitted.

Ms. Seigle next briefly reported for the Criminal Subcommittee. She indicated that Mountain Mediation would be joining the ranks of community mediation centers participating in the DCC Mediation Program. She also reported that a new form was being used, AOC-CR-701, waiver of dismissal fee.

Mr. Long next reported for the Mediator Certification and Training Committee. He noted that the Committee had approved two new CME offerings this quarter, one to be held in Greensboro and the other in Charlotte. He added that a 24-hour DCC training package submitted by One Step Further in Greensboro had also been approved. Next, he noted that a trainer applicant had asked the Committee to consider whether a CME offering could be incorporated into a 40-hour training program. The Committee agreed to allow this, noting that the presence of seasoned mediators at rule and ethics discussions could benefit trainees and that such an approach could also help make CME more widely available. He added that permission came with two caveats: 1) to minimize disruption, there could be no more than one CME offered per 40-hour training program and 2) the cap on attendance would be waived only for the CME portion. Mr. Long reported that renewal materials for mediators and trainers were being updated for 2018/19 and new downloadable certificates would be available for those who renewed. Ms. Robinson passed around samples of the certificates noting they were designed by AOC graphic artist Jodie Lanning.

In Mr. Clare's absence, Ms. Wood reported for the New Media Committee. She noted that Ms. Ratliff had already provided some information about the new website and she asked Ms. Robinson to play the introductory video which will appear on the Commission's landing page. Next, Ms. Wood asked Ms. Robinson to display some of the recent activity on its Twitter page. Both Ms. Ratliff and Ms. Wood thanked Ms. Robinson for taking the lead on tweeting for the Commission and noted she was doing a great job. Next, Ms. Wood talked about efforts being undertaken this renewal period to combat the spamming and phishing that occurred last year: 1) that Mediator Profiles were being edited by AOC IT staff to make it harder to troll the site for information, 2) that DRC staff would be working with AOC Security staff to develop a short video to educate mediators about spamming and phishing, and 3) that renewal materials would also seek to educate mediators and to remind them that they may remove their email address from public view if they wish. Ms. Ratliff added

that DRC and AOC staff are working hard to ensure that all three of the above items are implemented in time for the 2018/19 renewal period. Lastly, Ms. Wood reported that the Committee was very sorry to lose Scott Sutton who had relocated to New Orleans. She noted how much his efforts had benefitted the Commission in launching its social media platforms.

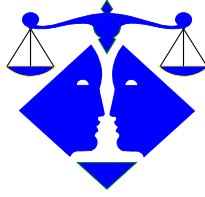
Ms. Dollar next reported for the Committee on Long Range Planning. She pointed out materials in the packet which catalogued dispute resolution processes and programs available in NC. She asked members to let her know if they had ideas for programs or other outreach the Commission could explore that might expand its footprint. She added that the Committee had met this quarter and determined to focus on mandatory certification of FFS mediators.

Ms. Hicks reported for the Staffing and Funding Committee. She reported that 14 applicants had applied for the Executive Director position and she had made arrangements to interview 7, but one had dropped out. She had conducted interviews of the remaining 6 and was waiting for guidance from Judge Webb as to how he wanted to proceed. She said she was extremely pleased with the quality of all the applicants.

Next, Ms. Dollars asked for Liaison Reports. Ms. Leazer reported for the NC Court Managers Conference, noting that they had just held their conference. She thanked Judge Cash for participating. She called attention to the results of a survey intended to gauge court staff interest in a mentoring program for new court staff. She noted that few court staff had responded to the survey, but most were likely away at the conference. She noted that Ms. Craig would likely be the point person on this project and would work with Commission staff to get mentors assigned to new court staff. Ms. Nease Brown reported for the Section that Nancy Norelli would be its new chair. She also reported that the Section would be creating videos to serve as MSC/FFS Rule 8 observation opportunities. She added that Ann Anderson and Jackie Clare were developing scripts. She noted that the Section's Annual Meeting had been well-attended. Mr. Igou added that the Section has resisted going from a newsletter to a blog format, but was in the process of doing so now. Mr. Schafer announced that the Industrial Commission's annual conference would be held October 10-12, 2018. Judge Tyson had no report for the Court of Appeals Mediation Program.

Ms. Robinson noted upcoming meeting dates: September 21, 2018; November 16-17 at Shell Island for the retreat; January 18, 2019; and May 17, 2019. She said she would soon be sending out reservation materials for the retreat and that a code would be required to register.

There being no further business, Ms. Dollar thanked everyone for attending and adjourned the meeting.



Dispute Resolution Commission MINUTES

**Friday, February 2, 2018
NC Judicial Center, Raleigh NC
10:00 AM**

Members present: Webb, Caldwell, Clare, Dollar, Evans, Farris, Hicks, Marcilliat, McCullough, Nease Brown, Ponton, Seigle, Tyson and Wood. Ex-officio members and staff present: Estle, Laney, Leazer, Nesbitt, Ratliff, Schafer, Sutton, and Robinson. Guests present: Steven Barbara, Kinsley Craig, Tara Kozlowski, Mark Riopel, Heidi Risser, and Ketan Soni.

Judge Webb welcomed everyone. He introduced new members, Judge John Tyson and Judge William Farris and recognized guests. Judge Webb noted that some of the guests present were there to talk about a proposed request for an Advisory Opinion (AO).

Judge Caldwell administered the oath to new member Chief District Court Judge William C. Farris (District 7) and to members who had been re-appointed: Judge Webb, Ms. Seigle, Ms. Hicks, and Mr. Clare. Next, Judge McCullough administered the oath to his friend and former colleague, Judge John M. Tyson of the NC Court of Appeals. Ms. Ratliff reported that the SEC had found no conflict of interest and no potential for a conflict with regard to either Judge Tyson or Judge Farris. Lastly, Judge Webb recognized retiring member Judge Doug McCullough for his service to the Commission. He thanked Judge McCullough and presented him with a plaque.

Judge Webb called for approval of the September minutes which were approved as submitted. Judge Webb reported for the Executive Committee that Judge Warren had authorized a Temporary Tech position for the Commission.

Judge Webb asked Ms. Ratliff for her office report. She first called attention to her November 5, 2017, memo on the creation of the Commission's Deputy Director position and the hiring of Harriet Hopkins. She also called attention to the documents attached to the memo and to Mr. Little's October 30, 2017, letter to the Committee on Staffing and Budget. Ms. Ratliff said she intended to incorporate these documents in these minutes and to post them in an effort to create a record in these matters. She noted that Ms. Hopkins' last day was October 16, 2017.

Ms. Ratliff continued her report by noting that staff wrapped-up the 2017/18 renewal period in mid-November. She indicated it was a lengthy and difficult renewal due to mediator confusion over the new CME requirement (despite receiving repeated notices) and a problem with spamming and phishing that resulted in many calls and emails from mediators to staff. She noted that renewals were down significantly and the Commission had lost 183 mediators, resulting in nearly a \$27,000 financial loss for the Commission. Ms. Ratliff called attention to a survey Ms. Dollar had done on why mediators had not

renewed. Judges McCullough and Tyson noted that CME was the reason most often cited by mediators for not renewing followed by retirement and lack of mediation work.

In response to Ms. Nease Brown's request for a more user-friendly budget report, Ms. Ratliff called attention to the "Comparison of Budget Reports" which had been distributed this morning. She asked members to let her know if they had suggestions for further refining the budget report and noted that, in the future, this document would be updated and distributed along with the AOC Budget Report at the end of each fiscal year.

Ms. Ratliff next reported on the success of Conflict Resolution Week in North Carolina, October 15-21, 2017, a joint project of the Commission and Dispute Resolution Section. In connection with that event, she reported there had been a well-attended reception with the Chief Justice and that proclamations had been issued by both the Chief Justice and Governor. She noted also that Representative Cynthia Ball had read both proclamations into the record at the General Assembly. Lastly, she noted three Webinars had been held and she singled out and praised Messrs. Soni and Sutton for their help with the Webinar on online mediation. Ms. Ratliff added that that immediately following Conflict Resolution Week, she and Ms. Dollar had attended a SE Regional ADR Conference in Charleston, SC. She distributed a copy of the agenda for the conference, noting that both she and Ms. Dollar had been presenters.

Ms. Ratliff next reported that she had been very busy with District Criminal Court Mediation Program matters this quarter, including two training applications. She noted also that she would likely need to devote most or all of February to editing the Commission's website.

Lastly, Ms. Ratliff reported that former Commission member Barbara Ann Davis of Leicester, NC had died. Ms. Ratliff noted that Ms. Davis had been a member of the Commission from 1999-2003 and had served as chair of the Mediator Certification and Training Committee.

Judge Webb next called on Ms. Nesbitt to report for the Ad hoc Clerk Mediation Program Committee. She reported that materials had been prepared for pilot site clerks, including a benchmark, forms, and a flowchart. She noted that the Clerks were ready to launch the pilot. Ms. Nesbitt next reported on caseload statistics. She noted that civil filings had been flat the past few years. She expressed concern as to how few cases were referred to mediation by clerks and noted that was the reason for the pilot. She noted that the arbitration program enjoys a very high success rate with no trial de novo sought in 87% of cases arbitrated. She added that referrals to arbitration are up.

Mr. Laney gave his legislative report. He explained that, during the last legislative session, the Commission proposed assessing an administrative fee of mediators and complaining parties when they failed to attend a hearing without good cause. The legislature had been unwilling to enact such a revision without a cap. He presented information about the cost of previously held appeals and proposed the administrative fee be capped at \$2000. Judge Evans asked about the cost of mailing notices and printing notebooks. She suggested the fee be closer to \$2500. Judge Webb called for a vote and a \$2500 cap was approved. Ms. Dollar reported that Ryan Boyce and Jonathan Harris would be serving as the Commission's legislative contacts while Mr. Murray was deployed.

Mr. Clare reported for the New Media Committee. He introduced Steven Barbara, AOC Chief Security Officer. In response to spamming and phishing problems that occurred this renewal period, Mr. Barbara gave a presentation on email security. Mr. Barbara offered to provide training to help mediators identify fraudulent emails. Judge Webb suggested that staff send an email to mediators notifying them

of the problems and suggesting they consider removing their email addresses from the Mediator Profile. Ms. Robinson noted that the Profile allows a mediator to withhold his/her email address from public view. Mr. Barbara suggested other more technical ways the Commission could secure its website, but noted further programming and cost would be required. Judge Webb added that the new Tech would assist with this project. Judge Webb asked that members share their ideas regarding the website, its design, and security issues with staff. Lastly, Judge Webb called attention to photos of the reception that were looping before the meeting started. He said he was pleased with the New Media Committee's use of Twitter and wants the Commission to have a growing online presence.

Judge Webb next called on guest Ketan Soni to give a presentation on UNC Charlotte's proposal to host a Regional Intercollegiate Mock Mediation Tournament in April, 2019. Mr. Soni noted that the professor leading the effort to bring the tournament to North Carolina, Dr. Vivian Lord, was seeking the Commission's endorsement. He explained that she hoped the Commission would help with publicity and that Commission members and certified mediators would serve as judges. He clarified that the tournament is open to both undergraduate and law students. The Commission indicated that it would be willing to help with announcements and would encourage members and mediators to offer assistance as judges. The Commission indicated that it looked forward to learning more about the event.

Judge McCullough reported for the Mediator Certification and Training Committee. He first called attention to CME offerings and noted he was pleased that so many sponsors had stepped up. He added that two new CME programs had been approved this quarter. Judge McCullough next noted that an applicant had observed a mediation this quarter which did not satisfy MSC Rule 8.C. Staff asked the applicant to observe another mediation and the applicant sought a waiver from the Committee under Rule 8.C. Judge McCullough reported the Committee did not grant the waiver and advised the applicant that she must strictly comply with the Rule. Judge McCullough next reported that the Committee had considered the question of whether, for purposes of MSC Rule 8.C(3), a COA judge holding inactive MSC certification could be observed mediating a COA case by an MSC certification applicant. The Committee responded "yes", but only as to COA mediations. The inactive mediator COA judge could not be observed mediating MSC cases. Ms. Ratliff reported that a new MSC trainer, Ellen Gelbin working through and with Wake Forest Law School, had begun to train this quarter. Judge McCullough noted this concluded his final Committee report to the Commission and that he would miss participating and wished the Commission well.

In Judge Vincent's absence, Judge McCullough gave the report for the Grievance Committee. He first reported that an appeal scheduled to be heard on December 7, 2017, had been withdrawn. He described the applicant involved as a Florida lawyer with a significant disciplinary history, including two suspensions of his Florida law license and an admonishment. Judge McCullough added that the applicant had entered into a stipulation with the Florida Bar wherein his license was reinstated, but he was placed on a 2-year probationary period beginning January 1, 2017. The Committee denied the application given the applicant's disciplinary history and the fact that he was still on probation and the applicant appealed to the full Commission. Judge McCullough reported that the Commission's attorney, Assistant AG Kathryn Shields, had spoken with the applicant and they had agreed that he would withdraw the appeal.

Next, Judge McCullough reported that the Committee had issued a Letter of Warning to an FFS mediator who had repeatedly continued a mediation date for a wife who had advised the mediator that she intended to seek a determination of indigency. The mediator made no effort to inform the wife of AOC-

CV-828 (Petition for Relief from Obligation to Pay All or Part of Mediator's Fee in FFS case). The Committee found that the mediator's conduct violated FFS Rule 6.B(5) in that the mediator failed in her duty to conduct the conference, FFS Rules 7.E and 8.H in that the mediator failed to serve an indigent party, and Standard VII in that the mediator put her own financial interests above those of the party. Judge McCullough added that, based on this situation and other recent disciplinary matters involving parties claiming indigency, the Grievance and SAO Committees had met jointly to consider whether there was a need to clarify MSC Rule 7.D and FFS Rule 7.E. Judge McCullough noted that the mediator issued the Letter, had complained that Rule 7.E was unclear and cited language in the Rule which, she contended, permitted her to postpone indefinitely. Judge McCullough indicated Ms. Seigle would have more to say about this later. He added that Ms. Dollar has also suggested that the Committees reach out to court staff in an effort to educate them about the indigency rules and the need to avoid the delay caused by repeated continuances.

Next, Judge McCullough noted that the Grievance Committee had approved two certification applications this quarter which raised conduct issues (an FFS applicant had two dated misdemeanors and another FFS applicant's law license had been suspended for three years, but the suspension was stayed and the matter was dated with the mediator having no further problems). Lastly, Judge McCullough reported that one formal complaint was pending against an MSC mediator and staff was now investigating.

Ms. Seigle gave the report for the Standards and Advisory Opinions Committee. She noted first that there had been a comment on proposed AO 35 which had been tentatively approved at the fall retreat. The mediator commenting suggested replacing the "may" in the last paragraph of the opinion with "shall". Ms. Seigle reported that the Committee determined to leave the AO as it was in the interest of giving mediators wider latitude. She asked for final approval of AO 35 and AO 34 on which there was no comment. Both AOs were given final approval.

Ms. Seigle next reported that the SAO and Grievance Committees had jointly determined to propose revisions to MSC Rule 7.D and FFS Rule 7.E. She noted that the Committees believed these rules were confusing as written and lacked references to the forms developed to implement them, i.e., AOC-CV-814 and AOC CV-828. As such, they did little clarify matters for self-represented parties. Moreover, Ms. Seigle reported that the Committees could discern no reason for differences between the two rules, i.e., the MSC Rule provided for a party to seek a determination of indigency only after the mediation was conducted whereas the FFS Rule provided for the determination to be made either before or after the conclusion of the conference. Ms. Seigle explained that the revisions proposed by the Committees were intended to: clarify the rules, make them more user friendly by inserting form numbers, and provide for uniformity. She noted that it was unusual for the SAO or Grievance Committee to propose rule changes, but that they had taken on this project because each had significant exposure to the indigency rules through complaints and the drafting of AOs. She called for a vote on the revisions and they were approved. Ms. Ratliff was asked to post them for comment. Judge Webb indicated that a final email vote could follow in an effort to get previously approved matters before the Supreme Court this spring. Ms. Seigle next noted proposed revisions to AOC-CV-814 and AOC CV-828, forms implementing MSC Rule 7.D and FFS Rule 7.E. She explained the form revisions tracked the rule changes noted above. The forms were approved as revised. Ms. Ratliff indicated the forms would go before the AOC Civil Forms Committee once the Supreme Court approved the Rule 7 changes.

Next, Ms. Seigle called attention to proposed AO 36. She explained the Grievance Committee had requested the AO after issuing a Letter of Warning to an MSC mediator in 2016 for violating MSC Rule

7.D, the indigency rule. She described the AO as having two purposes: 1) to alert mediators to the Public Records Disputes Act which incorporates the MSC Rules, Standards, and DRC Rules and 2) to remind mediators of their obligation to serve indigent parties. She called for a vote on AO 36 and it was adopted without change. Ms. Ratliff was asked to post it for comment. Ms. Seigle noted that the Committee was also considering reissuing/recirculating AO 27 in light of the Letter of Warning issued to an FFS mediator this quarter. She noted that the Committee believed it might be more efficient to reissue/recirculate the AO rather than draft a new one on the same topic, i.e., the obligation of FFS mediators to serve indigent parties. The Commission indicated it had no concerns about the Committee reissuing the Opinion. Ms. Seigle next noted that AO 19 will need to be revised or withdrawn assuming the Supreme Court adopts the proposed revisions to FFS Rule 7.E approved by the Commission today. Lastly, Ms. Seigle noted that there are four requests for AOs currently pending before her Committee.

Ms. Seigle reported for the Criminal Subcommittee. She observed that the Committee was interested in promoting uniformity among community mediation centers participating in the District Criminal Court Mediation Program. She added that the matter of court-issued mediator badges had come up and she intended to speak to participating centers about it.

Ms. Hicks reported for the Civil Subcommittee, noting that members had met during the lunch hour to consider an issue raised by a mediator with Commission staff. The mediator told Commission staff that court staff had advised him that his local judges would no longer finalize, i.e., execute, mediation agreements signed by the parties and their attorneys. Ms. Hicks reported that the Committee had asked Ms. Ratliff to speak with the Chief District Court Judge about the matter. If the matter can't be resolved informally, she added that the Committee will consider the need for a rule change as suggested by the mediator.

Ms. Hicks next reported for the Staffing and Funding Committee. She reported that this Committee had a very productive initial meeting. She said the Committee was seeking permission to put together an announcement and post Ms. Ratliff's position. She noted the Committee would like to fill the position by June 1 with Ms. Ratliff working through the end of August. She reported that Ms. Hopkins, already an experienced mediator, had indicated that it took her about four months to feel comfortable fielding questions. Judge Webb asked the Commission to allow Ms. Hicks and her Committee to develop a position description and announcements and to post them as necessary to move forward with the hiring process. The Commission agreed. Ms. Hicks reported that the Committee will be advertising the Executive Director position at $\frac{3}{4}$ time. Once a new Executive Director is hired, the Committee will work with that person to possibly add another administrative or paraprofessional position.

As for funding, Ms. Hicks reported that her Committee proposed adding a \$50.00 processing fee to MSC and FFS applications. She explained that staff often spend a considerable amount of time on applications that are ultimately denied with no application fee forthcoming. The Commission decided that if an applicant applies for certification within one year of training, s/he would get a \$10.00 discount on the \$50.00 processing fee. This might, they thought, help with dated training issues. The Commission agreed to the imposition of this fee beginning with FY 2018/19. The fee would apply not only to new applications, but to ones filed by lapsed mediators. Next, Ms. Hicks reported that the Committee was recommending that the \$200 annual MSC/FFS trainer fee be eliminated in favor of a \$10.00 per participant fee, excluding law students. Ms. Seigle noted that she thinks this will result in additional revenue. This new fee will be effective with the start of FY 2018/19. Ms. Hicks reported that the Committee was also recommending that all FFS mediators be required to be certified.

Ms. Dollar reported for the Long Range Planning Committee. Because the meeting had run long, she said she would save the materials she circulated for this meeting for the spring meeting. She asked everyone to review the memo on ADR programs and processes already available in NC and to give her their ideas for expanding the Commission's mission.

Judge Webb next called for Liaison Reports. Ms. Nease Brown reported for the Dispute Resolution Section calling attention to her memo dated January 10, 2018. The memo, she noted, described a project that the Section was considering undertaking, i.e., to develop a video or videos that could serve as an observation(s) for purposes of MSC/FFS Rule 8. She noted that observations are an important part of training, but are difficult to arrange. Moreover, cases sometimes settle pre-mediation, a mediation may be of very short duration, or the mediator observed may be ineffective. She suggested that substituting a well-crafted video, salted with ethical and other issues, may be a more effective learning tool than an actual observation. She noted that Jackie Clare and Ann Anderson had agreed to serve on a committee to develop videos. Ms. Nease Brown asked whether the Commission is willing to consider this option. Mr. Sutton asked whether there were already videos available such that the Section would not have to start from scratch. Ms. Nease Brown indicated she thought it preferable to have videos that addressed NC program rules and standards. Ms. Nesbit asked how the Commission could be sure that mediators watched the video. It was suggested there were ways to address that concern. The Commission indicated it was open to the idea. Ms. Nease Brown reminded everyone of the Section's upcoming annual meeting on March 16, 2018, in Pinehurst.

Ms. Estle reported that Jennifer Plaster (Conflict Resolution Center of Cabarrus County) had been elected the Mediation Network's new President and changes were coming. Mr. Laney indicated he had no report for the 4th Circuit Appellate Mediation Program. Ms. Leazer reported for the NC Judicial Support Staff Conference and Conference of Court Administrators had merged to form the NC Conference of Court Managers. She added that she has been working with Ms. Ratliff to develop a survey to begin to implement a mentoring effort for court staff. She noted that, assuming court staff express interest in a mentoring program and are willing to serve, things will get underway. She noted that she is already beginning to see a lot of turnover in court staff. Judge Tyson reported that Judge Arrowood has completed mediator training and that other COA judges are scheduled to take the training.

Judge Webb asked about upcoming meeting dates. Commission members favored May 4 or May 18. Possible fall retreat locations mentioned were Shelton Vineyard, the Waynesville Inn, Shell Island at Wrightsville Beach, and Sea Trail at Sunset Beach. September 14, 21, and 28 were mentioned as possible retreat dates. Commission members also favored an early January meeting. Judge Webb asked Ms. Robinson to circulate possible dates within the parameters mentioned and to look into some of the retreat locations suggested. There being no further business, Judge Webb adjourned the meeting.