



Dispute Resolution Commission Meeting Minutes

**Commission Meeting
Friday, November 8, 2019
10:00 am**

**NC Judicial Center
Raleigh, NC**

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

Commission Members present: Webb, Hicks, Morgenstern, Wijewickrama, Gorham, Isley, Nadolski, Tyson, Wood, Clare, Nease Brown, Knight, Farris, Hill. A quorum was present.

Ex-Officio Members present: Estle, Cole, Schaffer, Laney, Weyher, Craig.

Staff present: Robinson, Brooks and Kozlowski

Guests present: Andy Little

With regrets, Commission Members not present: Gottlieb, Seigle, Griffiths.

1. **Welcome and Announcements** – Judge Webb
 - a. Introduction of new Commission Members and Ex-Officio Members.
 - i. Judge Phyllis Gorham is a Senior Resident Superior Court Judge for the Fifth Judicial District, New Hanover and Pender Counties. She was appointed by Governor Easley in 2007 and has been re-elected since 2008.
 - ii. David Wijewickrama is a lawyer practicing in Waynesville, NC. His practice areas cover complex business litigation involving class actions, civil rights, wrongful deaths, officer involved shooting and other law enforcement/government related issues.
 - iii. Barbara Morgenstern is the managing partner of Morgenstern & Associates, PLLC in Greensboro, NC. Her practice is limited solely to family law and she was certified as a specialist in family law by the NC State Bar in 1994.
 - b. Swearing in of new Commission Member(s).
 - i. Judge Farris swore in the new Commission Members Gorham, Wijewickrama, and Morgenstern, and the re-appointed Commission Member, Nease Brown.
 - c. Approval of August Minutes. Page 1-14 – Judge Webb

- i. Clare made a motion to approve the August 9, 2019 meeting minutes. Wijewickrama seconded. No discussion, no changes. Vote – all in favor. Approved.

2. **Office Report** – Ms. Kozlowski

- a. Mediator renewal applications FY 19/20.
 - i. Seamless – wonderful. This renewal period has been very smooth with the new program application that allows for mediators to self-report CME courses on their renewal application.
 - ii. We have 69 mediators who lapsed so far for FY 19/20. This number could lower once mediators realize they are lapsed. Staff has been reaching out to all mediators regarding their status. Only 38 have confirmed they intended to lapse.
 - iii. Last year we had 80 mediators who did not renew their certifications.
- b. Proposed rule changes at the Supreme Court.
 - i. Meeting with Grant on Tuesday at the Judicial Building to review the rules, standards and future procedures. The SC are voting on our rules in the first week of December.
- c. Conflict Resolution Week Celebration 2019.
 - i. Review – over 65 ppl in attendance, Justice Morgan gave a great speech followed by our own Susan Hicks and LeAnn Nease Brown. It was a great event! Special thanks to all of our speakers, Michael McDaniel, Mel Wright, Judge Freeman, and Ketan Soni. Thank you also to Mel Wright and Judge Evans for participating in a panel discussion in Charlotte on the Tuesday of Conflict Resolution Week.
 - ii. Next year will be the Commission’s 25th anniversary, we have asked the AOC graphic artist to help us create a seal and update our logo.
 - iii. We are planning a big event for next year – Maureen has already booked the 1st floor of the AOC building.
- d. New Committees.
 - i. The committees have been re-assigned for the FY 19/20.
- e. Budget Report. There is no budget report, as the State has not passed a budget. However, we do show an increase in our revenues. Total amount collected to date: \$192,855. Total collected last year at this time: \$171,985. +20k.
- f. State Ethics Commission Statement of Economic Interest for
 - i. Barbara Morgenstern
 1. The State Ethics Commission proved an evaluation of Statement of Economic Interest filed by Ms. Morgenstern, stated “We did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict of interest identified does not prohibit service on this entity.”
 - ii. David Wijewickrama

1. The State Ethics Commission proved an evaluation of Statement of Economic Interest filed by Mr. Wijewickrama, stated “We did not find an actual conflict of interest, but found the potential for a conflict of interest. The potential conflict of interest identified does not prohibit service on this entity.”
- iii. Judge Phyllis Gorham
 1. The State Ethics Commission proved an evaluation of Statement of Economic Interest filed by Judge Gorham, stated “We did not find an actual conflict of interest or the likelihood for a conflict of interest.”
- b. Lawyer delegates from Azerbaijan visited AOC through the International Focus to discuss mediation and court programs with myself and Lori Cole– thank you to Frank Laney for the recommendation to International Focus to reach out to the DRC.

3. **Committee Reports –**

- a. **Executive Committee Report – Judge Webb**
 - i. Update on Appeal Hearing in the matter of M
 1. An appeal hearing was held in front of the Commission in the matter of Applicant M. Applicant M was previously certified, lapsed and applied for recertification. The Commission upheld the Grievance Committee’s decision to deny recertification based on applicant M’s failure to disclose certain information and moral character issues. Applicant M did not appeal the Commission ruling.
 - ii. Court-Appointment Administrative Fees.
 1. Please see page 15 in your packet. The question is if there should be an increase in the court appointed administrative fee only. The court-appointed fees have not increased since 2010, and at that time moved from \$125-\$150. The amount of work a mediator takes on, when receiving a court-appointed mediation often greatly exceeds the one-time admin fee of \$150. The executive committee recommends increasing the admin fee from \$150 to \$175.
 2. The change would affect MSC and FFS Rule 7.
 3. Nadolski made a motion to approve the increase for the court appointment admin fee to \$175. Clare seconded. Discussion- none. Vote – all in favor. Approved.
 4. Webb: Tara please post the changes.
 - iii. Mediator Renewal Certification Fees.
 1. The DRC has increased certification fees one-time, in 1996, from \$120-\$140 for a single certification. The current renewal fees are \$140 for a single certification and \$200 for a dual certification.

2. Fees are assessed under MSC Rule 8.G and FFS Rule 8.H – provides for applicants to “Pay all administrative fees established by the NCAOC upon the recommendation of the Commission”. Therefore, this modification will not require a rule or policy change.
 3. Webb proposed implementing a change to increase single certification renewal fees to \$165 and dual certification fees to \$225 annually. Opened floor for questions: no questions.
 4. Clare made a motion to approve the increase for renewal certifications to \$165 for single and \$225 for dual certification. Wijewickrama seconded. Discussion- none. Vote – all in favor. Approved.
 5. Webb: this does not require a rule change; our legislation allows us to go up to \$200 for each certification.
 6. Kozlowski recommended the change take effect at the beginning of FY 20/21 renewal period, 7/1/20.
 7. Webb: Tara although this is not a rule change, please post the information on website, to take effect July 1, 2020.
- iv. Commission Seat for Court Management Staff.
1. The executive committee met and decided to present to the full Commission the proposal of adding one seat to the Commission for court management staff. The original request was for two seats.
 2. Webb: it is a sound recommendation for one seat. Court Staff does a lot of work with the Commission, but the Clerk of Court and District Attorney positions only carry one seat each.
 3. Nease Brown made a motion to approve adding a seat to the DRC for Court Management Staff. Isley seconded.
 4. Discussion: Craig pointed out the difficulty one person would have relating all of the information from district court, superior court, and family court at the meetings. The Court Staff are divided into different groups, and while there is only one seat for the Clerk, there are multiple seats for judges. Webb responded stating the DRC has 17 members, and while each Member has a niche, they also each have the responsibility to look at the DRC as a whole.
 5. Vote one seat be added to the DRC for Court Management Staff– all in favor. Approved.
 6. Webb: Tara please address this with the proper authority at the AOC to create the seat.
- b. **Mediator Certification and Training Committee** – Judge Tyson
- i. CME offerings approved this quarter.
 1. The Committee approved four CME offerings this quarter for Conflict Resolution Week.
 - a. Charlotte – Mediation Forms – Forms for Everything, presented by Tara.

- b. Charlotte - How to Handle Tough Situations in Mediations, a panel discussion with Tara, Mel Wright and Judge Evans.
 - c. Raleigh – Mediation Rules from a Mediator’s Point of View: the Do’s and Don’ts, presented by MSC Mediator Michael McDaniel.
 - d. Raleigh - When Things Go Wrong! A panel discussion with Tara, Mel Wright and Judge William Freeman.
 - ii. Provisional Pre-Training Policy and Applications.
 - 1. At the August meeting we adopted changes to the following documents: DRC Guidelines for Issuing Provisional Pre-Training Approvals; Provisional Pre-Training Approval Packet for the MSC Program; and Provisional Pre-Training Approval Packet for the FFS Program.
 - 2. The proposed language allows for staff to put an application in front of the committee chair for review, not just for clarification. The chair would then be able to make a recommendation or refer the matter to the full committee for a recommendation.
 - 3. The proposed policy and applications were posted on the DRC’s comment page for 30 days. No comments were received on the proposed policy changes.
 - 4. Webb requested motion. Nadolski made a motion to adopt the Provisional Pre-Training Policy and Applications. Clare seconded. No discussion. Vote – all in favor. Adopted.
 - iii. CME Policy Updates.
 - 1. The Committee makes the recommendation to update the CME policy and documents to allow for Podcasts. The current CME documents have been updated and modified to include language allowing NCDRC staff to create podcast(s) that may provide partial-hour CME credit to certified mediators. CME courses have been divided into two tracks: 1. “programs” will include all live and video replay CME courses that provide audio and visual presentations; 2. “podcasts” will include all audio recording created by at least one or more by staff members. All program requirements remain the same; must be at least one hour in length; must cover one of the enumerated topics; must apply for CLE credit via the NC State Bar; and must receive approval from the MCTC. The podcasts do not require NC State Bar approval for CLE, but they shall be approved for CME credit only if at least one staff member participates in the podcast. Additionally, podcast may be assigned partial-hour credit, but a mediator must have no less than 60 minutes of podcasts to qualify for one hour of CME credit.
 - 2. Podcasts will be recorded with the assistance of the NCAOC IT team, and will cover a variety of topics, all within the scope of the

CME requirements. At least one staff member will be a party to the podcast thus being able to regulate the conversation. Each podcast must be at least 10 minutes in length.

3. The CME policy has also been revised to allow NCDRC staff to remove any stale, or dated, CME courses. The new renewal application process allows staff to track what courses are being utilized. Some of the current CME courses are old and need to be updated.
 4. The Podcast sample was played for the full Commission.
 5. Webb: Thank you to Tara, Maureen and Mary for bringing us into the 21st century.
 6. Hicks made a motion to approve the new CME material to include Podcasts and allow for staff to remove stale/old CME. Nease Brown seconded. No discussion. Vote – all in favor. Adopted.
 7. Webb: Tara please post these documents.
- iv. Copyright Releases.
1. Currently, the NCDRC houses multiple videos of CME courses by various presenters. We do not have any procedures in place for obtaining the permission and release from the presenter to use and promote their materials/presentation for educational purposes. Staff spoke with NCAOC legal department, who recommended we implement a release form for presentations that will also address copyright issues, as well as a consent form for photographs and videos. Both documents have been created by staff with the help of the NCAOC legal team. If we are replaying some type of media created by another party, we would like to have a release signed by the participants.
 2. Discussion: Question about the form logistically, it might be cleaner to have one that is designed to use someone's copyrighted material. So, we would have two forms. One would provide a release to use someone else's content, for example a form for the NCBA to sign.
 3. Webb: Lets approve the concept, then create the forms.
 4. Tyson made a motion to approve the use of Copyright Releases by the NCDRC when replaying or sharing someone else's copyrighted material. Nease Brown seconded.
 5. Discussion: all agreed it would be best to work with NCAOC legal to create an additional form that provides permission for the NCDRC to replay material maintained/owned by a third party and/or entity.
 6. Webb: Tara, please work with AOC legal to create the additional form.
 7. Vote – all in favor. Adopted.
- v. Appeal to Committee of staff's denial for certification by Applicant A.

1. This Committee unanimously upheld staff's decision to deny applicant Z's application to be an FFS mediator. Applicant Z has appealed this decision to the full Commission. The Attorney General's office will be representing the DRC at the hearing on December 6th at the NCJC.
2. We currently have 5 Commission Members who have confirmed their attendance, please contact Maureen if you are able to attend this hearing. We must have 3 Members present to hear the appeal.

c. Grievance and Disciplinary Committee - Judge Hill

- i. Update on complaint activity.
 1. The prior complaint filed against DCC mediator X, which was dismissed with a letter of caution to the respondent was not appealed by the complainant. The matter is closed.
- ii. Update on conduct, fitness update on applicant issues (character concerns raised by staff) currently under review;
 1. Mediator N has allegedly failed to report accurately on her renewal applications for two years but did disclose the pending grievance to DRC staff. She subsequently received a reprimand from the State Bar.
 2. Mediator O allegedly failed to disclose a pending grievance to the DRC, and subsequently did receive a reprimand from the State Bar.
 3. Mediator P self-reported a complaint filed with the Senior Resident Superior Court Judge regarding his actions as a mediator. Mediator P responded to said complaint. Mediator P's response is being reviewed under allegations of violating the Standards of Conduct in his response to the court.
 4. Mediator Q has allegedly failed to disclose two prior grievances filed against her, both dismissed. Additionally, she allegedly failed to report accurately on her 2016 renewal application by failing to disclose a pending grievance. Mediator Q has a current pending grievance with the NC State Bar containing allegations of lying to the court and falsifying records.
- iii. Update on conduct, fitness update on applicant issues (character concerns raised by staff);
 1. Applicant R's application fell outside of the guidelines, as Applicant R had received a public reprimand in 2014 from the State Bar. This committee determined Applicant R's behavior was an isolated occurrence which did not discredit the DRC. This committee determined to certify Applicant R.
 2. Staff has sent a number of letters of warning to those who failed to provide timely notice of a pending grievance but accurately reported on their renewal application.

- iv. Discussion: We seem to have a pattern as to the reporting and when this is coming into play. Staff needs to curtail to get behind this moving forward.
 - v. Webb – I have sat in on an appeal, where this was the issue. Lawyers are presumably well versed to read and know the rules. A podcast would be perfect to address. Maybe send out an email blast.
- a. **New Media Committee** – Mr. Clare
- vi. Consideration of proposal submitted by Ketan Soni for listserv.
 - 1. We considered a proposal from dually certified mediator and trainer, Ketan Soni, for the Commission to reconsider its position on a listserv for DRC mediators. After discussing the matter, the committee unanimously voted that a listserv is not warranted at this time and denied Mr. Soni’s request for reconsideration. The decision was based in part on the fact the DRC has adequate standards set in place, such as DRC staff providing guidance as needed, and CME programs that cover the program rules, standards, and advisory opinions. Listservs seem to metastasize, and they are hard to regulate – there are a number of listservs out there, so there was no endorsement to do one.
 - 2. Discussion: This is why we implemented CME’s. Plus, moving forward a podcast can cover brief discrete issue, one at a time, to cover material that is not well known to most mediators. CME’s, podcast and a blast email when needed is sufficient to provide mediators with the necessary information.
- b. **Civil Sub Committee** – Judge Farris
- vii. Forms still pending with AOC civil forms subcommittee:
 - 1. Revisions to Petition and Order for Relief from Obligation to Pay Mediator’s Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306.
 - 2. Nothing to report. For the benefit of new members, we have asked for the above forms to be revised and are waiting on a response from the AOC.
- c. **Standards and Advisory Opinions Committee Report** – Kozlowski on behalf of Ms. Seigle
- viii. Matters previously before the Commission
 - 1. Standard III.
 - a. The proposed re-write of Standard III, provides for staff to fall within the cone of mediator confidentiality. Allowing staff to manage mediator notes and/or files without the mediator violating the Standard of Confidentiality.
 - b. Please review the comments received by the DRC staff. The comments do not relate to the revised language or the goal of

the Commission to allow for staff to handle confidential information.

- c. Webb asked for a Motion. Clare moved to adopt the Standard III changes to allow staff to handle confidential information. Wijewickrama seconded. Discussion – none. Vote – all in favor. Adopted.
 - d. Kozlowski: These changes will be submitted with the other Rule changes to the NCSC in the spring of 2020.
2. Advisory Opinion Proposed Draft AO, A-19.
- a. Please take a moment to review the proposed AO, A-19. This AO address Conflicts of Interest and provides that a Mediator may not mediate a case then in the future act as a Parenting Coordinator for the parties.
 - b. Webb: Let’s discuss this matter after lunch to allow all Members to review the draft.

ix. New Matters

- 1. Proposed AO Request Form.
 - a. A party may only request an AO in writing, per the AO policy. Staff believes a fillable form will simplify the request process for mediators. This committee recommends adopting a form to request an AO.
 - b. Vote - All agree to implement form.
- 2. Request for AO received regarding Conflict of Interest.
 - a. The Chair of this committee considered the request and determined a formal AO was not warranted under VIII.B of the DRC Rules, and requested staff to provide informal advice on the matter. The question posed was can a Mediator who mediated a matter represent a party’s attorney in an action against the party for attorney fees arising out of the same cause of action that was originally mediated.
 - b. Discussion: this is a clear conflict and has been covered.

Webb- some members of the commission have expressed that there is not enough of an agenda to justify travel and meeting itself. At the Executive Committee meeting we discussed that we should only meet when a meeting is needed. We should not schedule a meeting, just because it is time. We will look at this moving forward to see if we need to meet more than the two meetings that are required by DRC Rules. We move through meetings quickly, and this is due in part to the work done with staff at a committee level. And staff will be working diligently to make sure no one’s time is wasted.

4. **Ad Hoc Committee Reports –**

- a. Committee on Long Range Planning – LeAnn Nease Brown

- i. This committee's initial concern was to get the FFS certification committee in place. As this has occurred, there is nothing to report at this time.
- b. FFS certification – Kozlowski
 - i. I have been invited to speak to the DR Section and Family Law Section of the NCBA.
 - ii. Proposed Rule changes will be submitted to the SC in the spring of 2020.
- c. eCourt Committee – Ms. Craig
 - i. The updates that we have received have been mainly from the AOC. Brad Fowler will be speaking with us at a more in-depth at that meeting, on Dec 13th. In some emails we have received, there is a statewide roll out in the first half of 2020. There is a schedule of when the courts will be affected. There are a total of 12 tracks or phases and every phase or track with 3-4 months. The pilot counties include Wake, Harnett, and Johnston. Tyler Tech is the company that has been brought in to implement eCourts.
 - ii. Discussion: Question was asked, will the mediators be able to electronically file their own forms? This has been brought to staff's attention as a possibility but have been waiting for the right time to investigate if this would be effective.
 - iii. Webb: we moved to e-filing in the western district and were nervous about having atty's file their own documents, however it worked well. It would alleviate a lot of work from the clerk's office.
 - iv. Cole: I'm local on this project and work with the data, starting Tuesday I will be involved with working with Tyler to build the process and their needs. I will be sitting in there for this reason – to ask if mediators can upload on their own. We will be talking about permissions; the users will only have the permissions they need. I have sat in for a few weeks and it has a large capacity.
- d. Clerk Pilot Program Committee – Ms. Cole
 - i. The reporting for clerks is very limited. I spoke to Jamie Lassiter and she had a good idea on how to make the reporting easier. If they had a short survey, it might help streamline the process. Not sure if it is reporting or if not, enough cases are being sent to mediation.
- e. Legal Advice Committee – Judge Knight
 - i. Discussion of next steps.
 - 1. This committee has been tasked with researching the benefits/downfalls to providing guidance to DRC mediators on the definition of legal advice. Based on the reaction from the Commissioners at the August meeting, this committee is recommending holding off on providing any form of guidance on the issue of legal advice at this time. However, the committee will review the issue annually, or as needed.
- f. Video Observation Committee – Mr. Clare.
 - i. Update on progress.

1. For the benefit of the newer members, we discussed replacing the one of the observations with a video. In collaboration with the NCBA we filmed a mock mediation based on real events at the NCBA. Script written by M. Ann Anderson and Jackie Clare, who are both long time participants of the DRC. The video contains many actors with many years of mediation experience. Very well produced and very well done. We will be asking the Commission to approve allowing the video to count as one observation after we hold our committee meeting over lunch. We have the video and would like to show you all a short sample clip.
2. Webb: Let's continue this discussion after lunch.

5. **Ex Officio Reports –**

- a. Mediation Network – Ms. Estle
 - i. A lot of changes, Jody is 90% done with the training manual that all centers will use. There will be three teaching facilities, one being Cumberland county. A lot of centers have lost funding mediating with DSS so Jody is in the process of looking into 50B cases and checking to see if that is something the Network can do. Judge Keever is on our board and wanted to push this through a few years ago, but she retired. With technology we don't need to do in person mediations, this is a great step forward.
- b. Court Staff – Ms. Cole
 - i. Statistics for MSC, FFS, and Arbitration Programs.
 1. The data is in the back of the packet – we are looking to make sure we are including everything we need. We are also able to see who is and who is not reporting.
 2. Kozlowski: MSC – 60% settlement rate, FFS 70% settlement rate.
- c. NC Court Managers Conference – Ms. Craig
 - i. The next Court Managers Conference will be held December 10th-13th at the Blockade Runner in Wilmington, NC. We are looking to provide educational training at the spring conference.
 - ii. Also, Tara emailed me this week, and we need to make sure the new hires are paired up with a mentor. I plan to meet with Tara after December, to make sure the mentors are doing what they need to do to help the new staff.
- d. NCBA Dispute Resolution Section – Ms. Weyher
 - i. Our sections annual meeting in March 12, 2020, in Pinehurst. John Sarratt, and Ketan Soni are the course planners. Will have 2 hours of CME, an hour of Substance abuse and a section on collaborative law.
- e. Industrial Commission – Mr. Schafer
 - i. This year, 9275 cases were referred to mediation – this is the IC's 18th year with over 8500 cases being sent into mediation. This past FY was 5th FY the settlement rate is above 72.5%. This FY the rates have increased,

settlement at conferences were at 73.04% and when you include the matters that settle prior to the hearing the number increases to 76.53%.

- f. Court of Appeals – Judge Tyson
 - i. I mediated on Monday. The NCCOA’s program is 15 years old and is entirely done by consent. We have an internal rule to require all judges mediate, for no fee. We do not mediate parental rights/juvenile/criminal/ - which leaves some civil matters. Numbers are constant, at 12-15 mediations per year. We have a number of new judges and we are getting them trained and getting them observations. We are making progress to make sure all judges do mediate. We have a court conference next week on how to improve to make the process more available. The clerk does send out information in the initial statement, but we can probably improve this process. The settlement rate is about 65-70%. The program is a service to the public. There is still disagreement within the court whether or not the program is effective. It enhances the standing of the court and provides a service to the court. Monday’s mediation was appealed in the last 45 days – if we can get the cases into mediation before they are invested and file their brief, we are more likely to settle. Anything dealing with monetary sum is also easier to settle than trying to force someone to convey a deed, etc. The average appeal will cost a party about 20k minimum. Mediation is a real opportunity for both sides to save a lot of money.
- g. Federal Courts – Mr. Laney
 - i. Noting to report.
- h. Legislation – Mr. Laney
 - i. HB470. After much effort and time, our technical change has been signed. If applicant A does not show up for a hearing, we can bill them for the cost of the hearing, up to a limit of \$2500.

Robinson played a clip of the Observation Video produced by the DR Section of the NCBA.

Webb: We will break for lunch and reconvene at 12:30.

Webb: Reconvened the meeting. With regrets, the following Members, Ex-Officio Members, staff and guests did not remain for the conclusion of the meeting: Isley, Estle, Schafer, Brooks, and Little. A quorum was present.

3. Committee Reports – Continued.

- a. **Standards and Advisory Opinions Committee Report** – Kozlowski on behalf Ms. Seigle
 - ii. Matters previously before the Commission. Draft AO, A-19.
 - 1. Discussion: Concern was expressed about the sentence “A conflict arises when a mediator acts as a professional”. The concern is with the word ‘professional’ used to define when a conflict arises. It was

suggested ‘fiduciary’ or ‘has obtained confidential information’ should be used instead. The committee discussed this in detail and used “professional” as not all work involves being a fiduciary and/or obtaining confidential information.

2. Concerns were expressed from being firewalled from ever working with the parties from a mediation again in the future. It was pointed out the Standard does require that a conflict will only occur out of the same cause of action.
3. Discussion continued that this AO is consistent with the Standard as adopted. This AO address the specific question asked.
4. A recommendation was made to delete a sentence that was broad and addressed more information than necessary. The Standard is clearly tied to things related to the matter and an outgrowth of the issue. But it is hard to draw a bright line as things will roll over from one matter to another. It is impossible to draft an AO that will cover the behavior of every condition.
5. Nease Brown made a motion to approve the AO, with deleting the sentence at issue. Morgenstern seconded. Vote – all in favor. The AO is approved, without one sentence, and will be posted for comment.

b. Video Observation Committee – Mr. Clare.

iii. Update on progress.

1. Clare: We need to approve a change to the DRC policy for observations. Authorizing the executive director and committee to finalize the licensing agreement with the NCBA. We have updated our Observation Guidelines to include allowing for mediator applicants to use the video in lieu of one of the required observations, as well as guidelines on how to qualify a video for DRC approval. I will now defer to LeAnn Nease Brown who has the history on how this project came about.
2. Nease Brown: In 2016, Leslie Ratliff, the then executive director, asked if the DR section would consider creating an observation video. Ms. Ratliff told the section that because it is very hard for applicants to find observations, and because the DRC at that time, was not in a position to create the videos, she sought help from the section. Ratliff asked Nease Brown who was the then chair of the DR Section of the NCBA for help in creating a video. Nease Brown met with Ann Anderson, Jackie Clare, and Ratliff to discuss designing a project that would provide a mediation that would include commentary on the actions of the mediator/parties. This project was not designed for any other purpose than providing an applicant a mediation observation. The Bar Association took this on as a project and used an internal videographer. The DR Section

of the NCBA worked closely with the Commission, hired another videographer outside of the NCBA, to help provide a professional end product. Judge Norelli asked for funds from the DRC to help pay the videographer a few meetings ago and the Commission voted unanimously to provide \$2k to help pay for the video. To protect the rights of the NCBA as producers of the video, they want to re-label the 2k as consideration in a licensing agreement. The licensing agreement will allow the DRC to use the video for applicant training purposes moving forward. The video was done as a labor of love where the quality of mediation does not change. I can vote on the guidelines generally but am recusing myself from any vote on the licensing agreement.

3. Discussion: Webb verified the Commission had already voted on providing \$2k to the DR Section of the NCBA for the video. However, the funds have not yet been paid.
4. Clare motioned to approve the use of an observation video for one of the required observations during the application process and to approve the proposed changes to the DRC's Observation Guidelines. Tyson seconded. Vote – all in favor. Approved.
5. Webb: Tara please post the proposed policy for 30 days and send out video link out to full commission to view.
6. Kozlowski: How would the Commission prefer to deal with reviewing and signing the Licensing Agreement with the NCBA?
Webb: This is something the Executive Director can handle and sign.

6. **Update on next meeting** – Maureen Robinson

- a. The next DRC meeting was scheduled for February 21st, 2020; however, we are cancelling this date and re-scheduling the meeting for March 20, 2020, at the AOC building. More information on the meeting will follow. We are looking to August of 2020 for the retreat, at the Graylyn.

7. **Adjournment** – Judge Webb

- a. Webb: May I have a motion to adjourn?
- b. Nease Brown made a motion to adjourn the meeting. Farris seconded. Vote – all approved.



**Dispute Resolution Commission
Meeting Minutes**

**Quarterly Meeting Retreat
Friday, August 9, 2019
1:00 pm
Saturday, August 10, 2019
8:30 am**

**Graylyn Resort
Winston-Salem, NC**

Susan Hicks, Vice Chair, called the meeting to Order.

Commission Members present: Clare, Farris, Hill, Ponton, Griffiths, Seigle, Wood, Knight, Tyson, and Evans.

Ex-Officio Members present: Laney, Cole, Craig, Estle, and Leazer.

Staff present: Brooks, Robinson, and Kozlowski.

Guests present: Ketan Soni.

With regrets, Commission Members not present: Webb, Gottlieb, Nadolski, Isley, Nease Brown, and Marcilliat.

A quorum was present on Friday August 9, 2019.

8. Welcome and Announcements – Susan Hicks

- a. Hicks presented a plaque of appreciation to Robert A. Ponton, Jr., for his dedication and service to the DRC from 2013-2019.
- b. Introduction of new ex-officio members:
 - i. Lori Cole is a Court Management Specialist at the NC AOC. Cole has a vast employment history within the legal field and has been involved with the Commission in numerous capacities over the years. She is replacing Ms. Stephanie Nesbitt as the Court Programs Ex-Officio Member.
 - ii. Barbara Weyher, the Chair of the NCBA DR Section was not able to be present today, so we will do a more formal presentation next meeting.
- c. Approval of May Minutes – Susan Hicks
 - i. Evans made a motion to approve the May 17, 2019 meeting minutes. Farris seconded. Vote – all in favor. Approved.

9. Office Report – Ms. Kozlowski

- b. Mediator certifications issued for the end of the 2018-2019 fiscal year.
 - i. As of June 30, 2019, the DRC had 1146 active MSC and 83 inactive MCS mediators, 348 active FFS and 20 inactive FFS mediators, 140 active Clerk and 9 inactive Clerk Mediators, and 53 District Court Mediators.
- a. FY 2018/19 Budget Report.
 - i. The AOC has corrected the issue of overpayment to my retirement fund and will be able to finalize the corrections/numbers once the state budget has been approved. Monies due to the DRC in the amount of \$6,855.57, will show on the FY 19-20 budget.
 - ii. The FY 18-19 end of year budget shows a rollover of \$120,162.00. This amount plus the replaced retirement funds of \$6,855.57, provides a total rollover of \$127,017.57 for the FY 18-19. Last year the DRC had a rollover of \$103k. Therefore, the DRC has a surplus of over \$24k for this year. This amount is impressive considering all the changes in office staffing, especially with Ratliff's one-time retirement payout of approximately \$25k.
- a. Proposed rule changes at the Supreme Court.
 - i. I spoke to Grant Bucker at the Supreme Court, the DRC proposed rules are set to be reviewed in August and September, and hopefully will be signed in September. DRC staff has requested a 60-day runway to allow time to update website/forms/brochures/etc. before the rules take effect. Please bear with staff during this time as we will have a lot of information to update.
- b. Conflict Resolution Week Celebration Oct 17 & 18.
 - i. The plans are underway and have expanded to Charlotte on October 15th. The Mecklenburg County Bar, via Judge Norelli, will be presenting a 2-hour CME/CLE and an hour intro to Collaborative Law on Tuesday the 15th. The celebration in Raleigh is in the final stages of the planning process and staff hopes to send out a save-the-date card soon.
- c. Renewal is underway.
 - i. New application for Mediator Renewal. The new application allowing mediators to self-report their CME has been amazing. Staff reports this is renewal period has been seamless thus far. The AOC IT team has been fantastic to work with, and they have really provided us with a workable solution for streamlining the renewal process. Credit Card renewals are at a record high – we have collected \$71,830 in credit card renewals so far for the FY 19-20, last year we had collected \$55,610 at this time.
 - ii. Robinson stated this has been the easiest renewal period in her 14 years with the Commission.
- d. News article out of District 30 on DCC Mediation.
 - i. This article was published in the Western part of the state regarding a DCC mediation matter. Please review. No action is necessary at this time.
- e. Ad Hoc Committee for the video –

- i. Webb has authorized the creation of an Ad Hoc committee comprised of S&AO and MCTC committee members to develop standards and policy changes regarding video observations. The Ad Hoc committee members are: Seigle, Griffiths, Laney, and Clare.
- f. NC State Ethics Education is coming due for a few members.
 - i. Maureen has sent out reminder emails to those who are due, so please be on the lookout.
- g. Commission Seats.
 - i. We have 2 seats with members rolling off, and 2 seats up for re-appointment. Please note, for those of you set to expire at the end of September, you remain on the Commission until your successor has been named AND approved by the NC State Ethics Commission – so hang in there!

10. Ad Hoc Committee Reports –

- a. Committee on Long Range Planning – LeAnn Nease Brown - not present no report.
- b. FFS certification – Kozlowski for Bonnie Weyher and Robert Ponton
 - i. This committee was charged with bringing the FFS Rules in-line with the MSC Rules to require all mediators who mediate in the FFS program be certified by the DRC. In doing this, we revised Rule 2 and Rule 8 of the FFS Rules. At the May 17th meeting, the full Commission reviewed the proposed language to modify the FFS rules and voted unanimously to approve the rules. The red-lined rule modifications were posted on our website for comment and sent to all mediators as well as Heidi Bloom, the immediate past Chair of the NCBA Family Law Section – not sure if this information was past along to the section members or not.
 - ii. I met with Heidi Bloom to discuss the DRC’s position on the FFS rules. The conversation went very well, I asked Heidi to encourage the section members to post comments on the proposed changes.
 - iii. I also had a quick 15-minute presentation at the Judges Conference in June, where I reviewed the proposed rules and requested comments.
 - iv. Please see the comments provided to the Commission.
 - 1. Note, staff did not receive many comments over the past two months, and some comments relate to grammar not content.
 - a. One comment to Rule 8 is inaccurate, as any applicant will still be required to take the 12-hour family law course.
 - b. We did receive a comment from a District Court Family Judge, she expressed interest in having mediators that are properly trained performing family financial mediations, and who are subject to and bound by the Dispute Resolution Commission’s authority. She also expressed concern about

the number of mediators available and the possibility of not having enough mediators to serve the courts.

2. The Ad Hoc FFS committee reviewed the comments and opted to let the rules stand as drafted.
 - v. The Commission did discuss bringing the proposed rules to the NCBA via Nease Brown, but this has not occurred at this time.
 - vi. Discussion - Ponton commented that we put people on the ad hoc committee who this rule would specifically affect. We expanded our ad hoc committee to include two non-Commission members, one of whom is an attorney and non-certified family mediator. I have not received the push back I have years ago when the Commission discussed making this change, there is not the same level of opposition.
 1. Kozlowski - I haven't received much push back, lots of questions but few comments. It seems people are ready to move forward with this and have accepted it.
 - vii. Discussion continued regarding the number of mediator's available in each district. Staff created and passed around a spreadsheet that showed the number of court apt., party-select, and # of mediators local in each district. There are a few districts with no local mediators on the court-appointment list, but all districts have mediators available.
 - viii. I asked the District Court Judges if they had received any comments. Judge Hill stated he has not heard much and deferred to Judge Knight. Just Knight indicated she hasn't heard push back, most people are just looking to be certified. Judge Farris stated if any mediator is going to be regulated, it should be family financial –there is more money involved in district court cases than most superior court cases.
 - ix. All Members took a moment to review the comments.
 - x. Questions: a question was raised if this will affect the ACR practitioner application who has 250 mediated hours. Only two people hold this title in the state.
 - xi. I responded that the proposed change does not affect the ACR applicant. However, it has come to staff's attention that the ACR currently has 4 areas of practice where a person can apply for Advanced Practitioner statues. We may need to look at modifying the rules to indicate just the family program will qualify for the DRC FFS program.
 1. Laney commented the ACR provision was a way to grandfather mediators who have national status into our program.
 - xii. Ponton made a motion to approve the rule changes in FFS Rule 2 and Rule 8. Seigle seconded. Vote - All in favor. Adopted.
 - xiii. The FFS rule changes will go to the Supreme Court next year for their approval.
- c. eCourt Committee – Kinsley Craig

- i. Staff provided the work-flows created by the Commission to the AOC team. The AOC team was very impressed at our hard work and detailed work-flows created for each DRC program.
 - ii. The contract has been signed for ICMS with Tyler Technologies. Kinsley stated she has attended a conference and Tyler is a very impressive system.
 - iii. The AOC is providing a kickoff training session that Commission Staff will attend over the next few months.
 - d. Clerk Pilot Program Committee – Ms. Cole
 - i. The Clerk Pilot Program has been in effect since March of 2018. It is a 2-year program, set to expire in March of 2020. Two of the 4 pilot counties did not report their statistics. The pilot program does not appear to have motivated the participating counties to move matters into mediation. We will continue to monitor the progress of the program.
 - ii. It does not appear the pilot counties are motivated, but we will continue to work to motivate them to use the program. Two of the pilot counties did not report. However, we are getting some more cases into mediation. Additionally, we have a 71% settlement rate, versus 21% last year.
 - e. Legal Advice Committee – Judge Knight
 - i. This committee has been tasked with researching the benefits/downfalls to providing guidance to DRC mediators on the definition of legal advice. This committee has been very active this past quarter. We have discovered the basic following information:
 - 1. NC DRC does not currently give any guidance on how to define legal advice. Nor does the State Bar. You can extrapolate what the bar means when they define practicing law, but it doesn't work well. Kevin Marcilliat did a wonderful national search and found that most states do not provide any guidance on this issue. However, Virginia's court system, in conjunction with the VA State Bar, The Supreme Court of Virginia, and several Dispute Resolution programs and centers, published a 44-page guide to assist Virginia mediators in avoiding the unauthorized practice of law when providing mediation services. This guide is very easy to follow and provides clear examples throughout. This guide shows the amount of work this project would require should the Commission determined to move toward providing guidelines on legal advice to our mediators. Virginia spent 5 months defining legal advice. They brought in many other agencies.
 - 2. We have also discovered, after a CME was recently conducted on the issue of legal advice by Judge Cash, that mediators are often split on whether something is legal advice or not. There is no bright line that mediators follow. The discussions at the CME were lively, and often had no clear answer. Knight attended the CME and reports the

decisions were always split 40-60. It is clear, that the mediators are split on what is legal advice.

3. The AOC provides a training for court staff on what constitutes giving legal advice. However, the AOC has very strict rules that could potentially frustrate parties who attend a mediation.
 4. The question of whether the NC Bar should be involved with this potential project as they are the arbitrator of what defines the practice of law.
 5. Finally, staff reports they rarely receive complaints surrounding this issue.
- ii. The Committee's position is while there seems to be a need to address issue, the question becomes the larger problem of how to address the issue and answer the question.
- f. Discussion. To do this it would be a lengthy process, AOC, State Bar, NCBA, attorney mediators, and non-attorney mediators, AG's office. It would require a large amount of folks to define legal advice, as the courts need to use the same standard across the board – especially if a matter is in court on appeal from DRC sanction.
 - g. Mediators who guide folks are in demand. Attorneys want mediators to give opinion and advice – the room was 50-50 – I won't say anything, I will share.
 - h. It is a tough discussion. The AOC training is shocking as to what you can't do. The question is 'what do mediators want'? Do they want guidance? It will place limit on them but if we don't set limits are we setting them up for complaints?
 - i. People always ask for advice. It is a tight line that we walk every day. The DRC didn't used to have the piece about an opinion in the standards. It was inserted specifically because mediators were being hired for their expertise. And the judges and experts were violating the rules all the time. The DRC determined the clients are self-determining in asking for help from their mediator.
 - j. Mediation is different from clerks' offices and court houses - I hired that particular mediator – mediators should have more flexibility. Not saying there needs to be legal advice to others, but mediators need more room.
 - k. Susan – it would take everyone to get this to work.
 - l. The mediator is qualified to render an opinion, is that legal advice? If the opinion is based on your legal knowledge? Can a mediator give an opinion on suitability of a proposal and say, 'my knowledge of xyz judge is that they always rule this way'? That would go too far. So how to you find the line?
 - m. I reiterated that we don't have complaints on this.
 - n. it is an issue, but it is not ripe yet –I think we need to keep it on radar. The Commission in general agrees that the issue should be monitored, but not addressed at this time.

11. **Ex Officio Reports –**

- a. Mediation Network – Ms. Estle
 - i. We have not had a recent network meeting. However, we are looking to provide unified training through the network. Potentially looking at creating hubs, maybe 4 training-hubs that would provide training across the state.
 - ii. The AOC 2-year contract ran out June 30. We have not heard anything on this issue. Seigle, have you heard anything? Seigle declined to comment.
 - iii. On a personal note, Estle’s center is venturing into hoke and Roberson county to conduct DCC mediations.
- b. Court Staff – Ms. Cole
 - i. The FY 18-19 statistics.
 - 1. MSC - 3646 total cases reported attending mediation, 2195 reported settled. Providing a settlement rate of 60.2%. If we include cases settled prior to, or during, ADR the number of settled cases rises to 4342. Providing a settlement rate of 66.6%.
 - 2. FFS - 1158 total cases reported attending mediation, 831 reported as being resolved in whole or part. Providing a settlement rate of 71.8%. If we include cases settled prior to, or during, ADR the number of settled cases rises to 1243. Providing a settlement rate of 73.7%.
 - 3. Clerk Mediation Program - state wide reports show 21 cases were mediated, and of those 16 cases, or 76.2% of these cases were resolved in whole or in part at the mediated settlement conference. In contrast, for the 2017-2018 year, the Clerk Mediation Program, state wide reports show 25 cases were mediated, and of those 11 cases, or 44% of these cases were resolved in whole or in part at the mediated settlement conference.
 - ii. The AOC creates a sheet on ADR and we report different statistics. The numbers we report are from the same data but are not quite the same.
 - 1. The Alternative Dispute Resolution reports 2,280 family financial cases completed, and 5,551 mediated settlement cases completed for the FY 18-19.
- c. NC Court Managers Conference – Ms. Craig
 - i. Next week, we have a training for new court managers at superior court. The program will discuss the general things court managers will encounter. It is a pilot, if the program is a success, we will move forward with a program for district court as well.
- d. NCBA Dispute Resolution Section – Ms. Weyher – no update
- e. Industrial Commission – Mr. Schafer – no update
- f. Court of Appeals – Judge Tyson –
 - i. The Court of Appeals has fully implemented mediation program. Judge Zachery mediated her first case Monday. We run about 15 mediation

cases a year, or 1 per year. Everyone carries an equal load on the Court. We only get 12 cases per panel, so that will take a panel and a 1/3 off.

- g. Federal Courts – Mr. Laney - no update
 - i. Would like to say on the bar association, their annual meeting will be held on March 12th in Pinehurst. Section meeting will have a CME portion.
- h. Legislation – Mr. Laney
 - i. HB226. This bill is still holding at the GA.

Vice Chair called for a break.

Amanda Leazer said a few words on behalf of Judge Tom Jerrell who recently passed away, unexpectedly.

12. **Guest speaker** – Frank Laney

- a. Brief presentation of work abroad. In 2014 in Belarus, parties could not mediate, they needed to have it in their rules so they could legitimize the process. A number of mediators came to NC to train here and returned to their county to train. They invited Laney to travel abroad to teach mediation courses. Laney's first trip was 2015 and he has made a trip every spring since. In 2016, they started an international mediation festival. Laney has also been to the Ukraine three times this year as well, to participate in conferences. The Ukraine needs to simply pass legislation that has been pending for three years to legitimize the practice of mediation in that country. Laney provided insight into his trips abroad and told stories about the people he met and programs he visited.

13. **Committee Reports** –

Move Grievance Committee up – need to finish by 5.

- a. **Executive Committee Report** – Hicks
 - i. Hicks deferred to the Grievance and Disciplinary Committee to provide an update on the Nicolle Phair Sanction.
- b. **Grievance and Disciplinary Committee** - Judge Evans
 - i. Update on Nicolle Phair.
 - 1. Thank you to those who sat at the hearing on mediator Phair. You all upheld a decision made by the Grievance and Disciplinary Committee. Mediator Phair was issued a public written admonishment by this Committee. The sanction was appealed to the full Commission, a hearing was held on 5/16/19. The Commission upheld the decision by this Committee and issued a public, written admonishment. Mediator Phair failed to disclose a

grievance that had been filed against her, failed to report the grievance on her renewal application, and failed to report the disciplinary action taken by the State Bar. The written admonishment is posted on our website.

- ii. Update on complaint activity.
 - 1. Staff received a complaint against DCC mediator X. Mediator X responded timely to the complaint. Staff conducted an investigation and spoke to the complainant, the respondent as well as the third party to the mediation. Staff made a recommendation to the Chair of the Grievance Committee to dismiss the matter with a letter of caution to the mediator pursuant to DRC Rule IX.C(3)(a). The Chair agreed with staff's recommendation, and recommended the matter be dismissed with a letter of caution to the respondent.
 - 2. Staff received a complaint against FFS mediator Y. The complaint was based on a mediation that concluded in February of 2017. The Chair dismissed the matter pursuant to Rule IX.C(2)(e), "[a]ny complaint made pursuant to Rule IX.C above regarding the conduct of a certified mediator during a mediation...not filed within one (1) year of the conclusion of such mediation shall be deemed untimely and shall be subject to summary dismissal".
- iii. Update on conduct, fitness update on applicant issues (character concerns raised by staff);
 - 1. Application received where applicant W failed to fully disclose past conduct. Applicant was denied certification by GDC committee and applicant has appealed the decision. The hearing before the full Commission will be held Friday, August 16th at the AOC. Please let us know if you can attend as we will need a minimum of 3 Commission Members for the hearing. Currently we have 4 members that have confirmed attendance.
 - 2. Application received where applicant Z received a public reprimand from 2015. The committee reviewed the application, a letter from the applicant addressed to the committee and staff's recommendation. The Committee determined to certify the applicant as this was a sole incident in a prestigious career, and applicant was forthcoming and remorseful for the incident.
- iv. Update on McDaniel matter.
 - 1. McDaniel has been fully reinstatement and all courts have been placed on notice.
- v. MSC Rule 8.E and FFS Rule 8.F
 - 1. The committee has reviewed the current requirement for a 30-day notice to DRC staff of a pending grievance. The committee unanimously voted to propose a modified rule allowing for the

recipient of a grievance to have 30 days from the due date of the response to the grievance to provide notice to the DRC. Staff will move the proposed change through to the proper committee.

- c. **Mediator Certification and Training Committee** – Judge Tyson – see notes
 - i. CME offerings approved this quarter.
 - 1. The committee approved a 2-hour CME offered by RSR Mediation Training in Charlotte. This course “The Many Roles of a Mediator” had previously been approved – the trainer originally requested approval for their spring presentation but not any future live presentations.
 - 2. The committee approved “Two lawyers and a Mediator Walk into a Bar; Now What? A Discussion of Practice and Ethics in Mediation”. This is a 2-hour CME offered by the NC Advocates for Justice in Raleigh. The course will be taught by Jackie and Tom Clare at the Industrial Commission’s September annual meeting.
 - 3. The committee approved a 2-hour CME course submitted by the Wake County Bar. The course is entitled “Know Your Mediation Rules and Your Mediation Tools”. The course will be conducted by Justice Bob Edmunds and Mark Finkelstein, both MSC Certified Mediators.
 - ii. Applications for certification.
 - 1. Staff received an FFS application, from applicant Z. Staff denied the application based on the applicant’s inability to meet the threshold requirements under Rule 8. Applicant Z appealed staff’s decision to the Mediator Certification and Training Committee. This Committee reviewed applicant Z’s application, staff’s denial letter, and the letter of appeal. This Committee unanimously denied applicant Z’s application to be an FFS mediator. Applicant Z has appealed this decision to the full Commission. A date has not yet to be set for the hearing. Staff has notified the AG’s office of the hearing.
 - iii. Reviewed the Lapsed Policy/Dated Training Policy to ensure consistency.
 - 1. At the May meeting, the Commission adopted the policies to be consistent.
 - 2. After discovering there was inconsistent language in these two policies, the committee voted to align the policies so lapsed persons and persons with dated training had the same requirements to become certified/recertified.
 - 3. The proposed language allows for the following:

- a. Lapsed/dated training from 0-3 years requires verification the applicant has studied and read the current legislation, rules, standards, AO's and has two hours of CME.
 - b. Lapsed/dated training from 3-10 requires the 16-hour flip course.
 - c. Lapsed/dated training from 10+ years requires the full 40-hour course.
 4. The Commission voted to approve the proposed policy changes, and they were posted on the Commission's website for more than 30 days. Staff did not receive any comments on these proposed policy changes.
 5. Discussion - It does harmonize the way we were treating in-state and out-of-state and lapsed and inactive mediations.
 6. Tyson made a motion to adopt the proposed Lapsed and Dated Training policy changes that were approved at the May 17, 2019 meeting. Seigle seconded. Vote – all in favor. Approved.
- iv. Provisional Pre-Approval Training Policy and Application
1. The committee voted to look at re-drafting the provisional pre-approval training policy to allow for staff to put the application in front of the committee chair for review, not just for clarification. The chair would then be able to make a recommendation or refer the matter to the full committee for a recommendation. This would allow staff to pre-approve someone who does not fit squarely into the guidelines but would likely to be approved by the committee during the application process.
 2. Please review the red-lined proposed changes to the following documents:
 - a. DRC Guidelines for Issuing Provisional Pre-Training Approvals;
 - b. Provisional Pre-Training Approval Packet for the MSC Program; and
 - c. Provisional Pre-Training Approval Packet for the FFS Program.
 3. Discussion – Kozlowski explained that staff's hands are tied on certain provisional pre-training approval applications where staff under the current policy, must deny applications that may be approved by the Committee. Therefore, the proposed changes allow for staff to seek a position on a provisional pre-training approval application.
 4. Evans made a motion to approve the proposed changes to the Provisional pre-training approval documents. Seigle seconded. Vote – all in favor. Approved.
 5. Staff to post documents on website for comment.

- v. Tyson deferred to Kozlowski to cover the items the MCTC will be looking at for the next quarter.
 - 1. The Committee will be looking into the feasibility of possibly creating podcasts to educate our mediators, and how to develop the appropriate policies to effectuate this method of education.
 - 2. With our new self-reporting CME application, we are going to look at creating a policy to remove unwatched and dated CME from our catalogue. Our new application allows us to track how many mediators watch each CME.
 - 3. Finally, it has been suggested the Training requirements for the 40-hour course move with the trends and incorporate a technology requirement. Staff will be conducting research to determine if other states are moving in this direction, and what the technology piece would look like within our training.
 - a. Seigle commented that she has just received approval from the State Bar to provide attendees substance abuse CLE for her FFS training course.

- d. **New Media Committee** – Mr. Clare
 - i. AOC’s annual review and audit of the website. In late June, we celebrated the one-year anniversary of the new website, NCCourts.gov. Since launching the site, NCCourts.gov has gotten 3.93M visitors with 30.8M pageviews (top visited pages: court dates, services, and forms), and 52.7% mobile vs 47.3% desktop users. The majority of users are coming directly to a page from a search engine, view 1-3 pages (mostly just one) and exiting – average 2.76 pages / session, 2.5 minutes / session.
 - ii. The AOC Communication team asked the DRC to review our site for accuracy. The AOC team noted, that “You’ve been really great about updates constantly when needed so hopefully this is quick and easy.”
 - iii. This past quarter, the New Media committee performed a review of the website and forwarded any necessary corrections to staff.

- e. **Civil Sub Committee** – Judge Farris
 - i. Revisions to Petition and Order for Relief from Obligation to Pay Mediator’s Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306.
 - ii. This committee presented a proposal to modify the Petition for Relief forms to pay mediator for MSC, FFS and Clerk matters. The Commission approved the form changes at the May 17, 2019 meeting. The forms have been enclosed in your packet for review. The forms are currently pending approval from the AOC civil forms subcommittee, once approved will go live. The forms have more information than judges got before, and less information than the petition for indigency forms.

- iii. Discussion. No forms are being moved through the approval process due to eCourts. Within a span of 5 years everyone will be on line with the new ICMS. All form change requests are frozen.
- iv. DRC has the ability to create our own form – that may be a solution. Two forms, one AOC and one DRC but this could cause confusion, we should just wait on the AOC.

f. **Standards and Advisory Opinions Committee Report** – Ms. Seigle

i. Standard III. Confidentiality Issue with staff, Standard III.

- 1. Seigle deferred to Kozlowski for description of issue. There has been some discussion on the Bar’s Dispute Resolution Section Listserv asking if staff are included under the confidentiality Standard, Standard III, which states “[a] mediator shall not disclose, directly or indirectly, to any non-participant, any information...” A strict reading of the Standard indicates staff are not able to handle notes from a mediation or be aware of any information from the mediation itself. The listserv responses were varied but contained a lot of fast responses assuming the DRC held the same standards as the NC Bar, i.e. to allow staff to be within the cone of confidentiality.
- 2. Please see your packets for a proposed re-write of Standard III, that provides for staff to fit within the cone of mediator confidentiality.
 - a. Please see the red-lined text Standard III.E, and Comments to Paragraph E, within your packet.
- 3. Discussion – does this language mirror the State Bar’s language? Yes, it was crafted to be similar to the State Bar’s position on the same issue.
- 4. Clare made a motion to approve the changes to Standard III. Evans seconded. Vote – all in favor. Approved.
- 5. Staff to post on the website for comments.

14. Vice Chair Hicks recessed the meeting until tomorrow morning at 8:30. Hicks reminded all that the S&AO Committee would meet to review the pending issue of Standard VII.

**Saturday, August 10, 2019
8:30 am**

Susan Hicks, Vice Chair, called the meeting to Order.

Commission Members present: Farris, Hill, Griffiths, Seigle, Tyson.

Ex-Officio Members present: Laney, Cole, Craig, Estle, and Leazer.

Staff present: Robinson, and Kozlowski.

With regrets, Commission Members not present: Webb, Gottlieb, Nadolski, Isley, Clare, Nease Brown, Wood, Knight, Ponton, Evans and Marcilliat.

A quorum was not present on Saturday August 10, 2019.

15. Hicks opened the meeting. Thank you to Maureen, this is lovely location for the retreat.
 - a. **Standards and Advisory Opinions Committee Report – Continued.** Seigle
 - i. The S&AO committee has met, again, over the issue of Standard VII. The Committee has determined that the Standard is incredibly well written as is. The Committee has decided to pull the re-write, therefore there is nothing to vote on this morning. Standard VII will remain un-modified at this time. We are going to do an Advisory Opinion on the PC matter.
 - ii. Laney added that since the very first Standards of Conduct issued by the Commission, the Commission has said “you cannot do this”. A commissioner in the past asked about changing part of the rule to accommodate for small towns. The Commission still said no, you can’t do this. We tried to re-write the rule and clarify, a lot of effort went into this project over the past months, but we only caused more confusion and frustration. The re-writes caused more and more problems. Therefore, we are leaving well enough alone.
 - iii. Tyson –I agree, if you have limited contact with a party, that would not be prohibited. If you have not engaged with a prospective client would not be precluded. The professionals need to determine if there is a conflict based on each individual case.
 - iv. Seigle - Thank you to judge Tyson who just joined the committee. Hicks - I want to thank the committee, they have worked on this so hard. The committee kept trying and trying to find a workable solution. I applaud the committee for all of their hard work.
 - v. New Matters
 1. Request for AO on Standard VII Conflict issue.
16. **Update on next meeting** – Maureen Robinson
 - a. Please note the full Commission has a hearing scheduled for the 23rd and we will have another hearing coming up in the next few months.
 - b. Our next meeting will be held on November 8th at the AOC building, followed by a meeting on February 21. We will look to set a meeting in May, please watch for an email from staff in the next few weeks.
 - c. I have had a lot of requests to hold next year’s retreat here, I am already looking into dates and will let you know.
 - d. Kozlowski – thank you all for coming, I hope you enjoyed the retreat. Thank you, Maureen, for putting this wonderful event together.
17. **Adjournment** – Vice-Chair Hicks.



Dispute Resolution Commission

**Quarterly Meeting
Friday, May 17, 2019
10:00 AM**

**NC Judicial Center
Raleigh, NC**

Diann Seigle, acting Chair, called the meeting to Order

Commission Members present: Wood, Evans, Isley, Clare, Griffiths, Seigle, Nease Brown, Marcilliat, Farris, and Hill.

Ex-Officio Members present: Norelli, Schaffer, Estle, Leazer, and Craig.

Staff present: Robinson and Kozlowski.

Guests present: Andy Little, Richard Igou, Frances Henderson, and Scott Goulet.

With regrets, Commission Members not present: Webb, Hicks, Tyson, Gottlieb, Knight, Nadolski, and Ponton.

A quorum was present at all times during the meeting.

18. **Welcome and Announcements** – Diann Seigle
 - a. No announcements.
 - b. Approval of March Minutes – Diann Seigle
 - i. Corrections made to the March 1, 2019 minutes.
 - ii. Evans made a motion to approve the amended March 1, 2019 meeting minutes. Marcilliat seconded. Vote - all in favor. Approved.

19. **Office Report** – Ms. Kozlowski
 - a. Update regarding rule changes from the Supreme Court.
 - i. I spoke with Grant Buckner with the Supreme Court on April 3rd. There has been a slight delay with the changing of the guards, but our rules are currently under review. The rules, once adopted, will be posted and available on the NC Supreme Court Website. Additionally, they are moving toward formatting the DRC rules in the same manner as other rules in order to show consistency across the state. I am very excited this task is going to be done for us, as the current formatting is troublesome.

- b. DRC Staff presentations.
 - i. Kozlowski spoke at the NCBA DR Section’s annual meeting in March. She also had the opportunity to teach the Rules for 2 hours at an MSC training class.
- c. AOC’s position on enhancements to new applications – renewal period.
 - i. All program enhancements have been frozen at the AOC with the anticipation of the eCourts project. I requested, and was granted, 10 minutes in front of the eCourts Steering Committee and they agreed to allow our project to move forward as it will not be impacted by eCourts. We are set to go live July 1 – the new application will allow mediators to self-report their CME when they renew.
 - ii. Ms. Robinson has been working closely with the AOC IT team to get this application rolled out for the FY19-20 renewal period.
 - iii. The DRC will keep a 5-year CME history for each mediator on their profile page. The DRC still must approve all renewal application; however, this new application allows the renewal applicant to self-report their CME during the renewal process.
- d. DRC Projects.
 - i. Program Brochures.
 - 1. All brochures have been updated and translated into Spanish– they look beautiful, Ms. Robinson has put a lot of work into them!
 - ii. Pro Se Brochures and revised Pro Se Guidelines. With the guidance of Susan Hicks, staff has been working on a few ways to help educate pro se parties regarding mediation and the ability to file a petition for relief of fees.
 - 1. Pro Se Information booklets were put into place several years ago, on Juno, they have been updated and modified. We have created a new brochure for pro se parties that includes the information on how a pro se party can file a petition for relief of payment. We will be adding web links for all brochures, and to the *Find a Mediator* link, as this seems to be the location most pro se litigants review first.
 - iii. MSC/FFS Quick Reference Guides.
 - 1. Court staff MSC/FFS quick reference guides have been posted on Juno, and our DRC Publications website has been updated.
- e. Conflict Resolution Week update.
 - i. Current agenda for Thursday October 17: Mediation Rules from a Mediator’s Point of View – the Do’s and Don’ts, by Michael McDaniel; “When Things Go Wrong!” A panel discussion with the Honorable William Freeman (State Ethics Commissioner), Melvin Wright (ED of the CJCP) and myself; a reception will be held from 11-12:30, where Chief Justice Beasley will present a proclamation and say a few words; at 12:30, Ketan Soni will present an hour of CLE on technology, “How Can

Technology Help Me Be A Better Mediator”; and a two-hour Active Shooter Training by US Marshall Stephen Baldwin will begin at 1:30 pm. The NCBA DR Section has allotted a generous amount of funds to assist us with this production. The AOC Custody Mediation program is also working with us, and we are continuing to reach out to various ADR groups to join in the celebration.

- f. Set dates for upcoming meetings.
 - i. We have the Graylyn retreat scheduled for August 9th.
 - ii. Please start to consider dates for upcoming meetings in November of 2019 and February of 2020.

- 20. **Committee Reports:**
 - a. **Executive Committee Report** – Ms. Seigle
 - i. Nothing to report

 - b. **Standards and Advisory Opinions Committee Report** – Ms. Seigle / Mr. Clare
 - i. Matters previously before the Commission:
 - a. Proposed Revisions to the Report of Mediator forms and Proposed Revisions to Petition and Order for Relief from Obligation to Pay Mediator’s Fee. Clare.
 - i. Kozlowski advised - These forms have been submitted to the AOC Civil Forms Subcommittee for final review. The AOC committee has not yet held a meeting to discuss the forms.
 - b. Standard VII. Conflicts of Interest Matter. Clare.
 - i. Discussions surrounding this issue started last year. Current Standard VII is not very clear. The situation this committee is looking to address is where a mediator is being asked to mediate a matter which involves a party/parties for whom the mediator had previously provided professional services to; or has had other types of professional involvement with the party/parties years before; and where the subject matter is substantially the same or is different. The committee did not address the issue of a mediator who then wants to be an attorney/professional for one of the parties. Discussion surrounded this issue may be up to the State Bar or other licensing agency to make that determination.
 - ii. We posted Standard VII for comment on the DRC website and received many comments. The biggest concern was the need to get written waivers every time a mediator mediates a case that involves an insurance company they used to represent. This was not the committee’s intent in

the proposed draft. The current draft version is very long and addresses a lot of hypothetical situations. The committee has met and decided to continue to look at the situation. Therefore, we are not asking for an adoption today, but reporting to the Commission that we will be taking more time to review and draft a potential solution.

- iii. Ms. Seigle thanked Ms. Nease Brown and Mr. Little for their assistance on the various drafts and provided input.
 - 1. We would appreciate any feedback. Every time we re-post we get a lot of comments from mediators.
 - iv. Discussion. The comments received provide good, useful information. The committee is trying to balance the input of good information with providing a workable Standard. It would be easier to write if we just had one profession, but we are working with many. The committee will continue to work on the Standard VII issue.
- 2. Confidentiality Issue with staff, Standard III. Clare.
 - a. The committee is looking at Standard III to put the mediator's staff in the same position of the mediator in regard to confidentiality. The Committee is looking at a current draft, but do not have a draft proposal for the Commission at this time. We hope to have a draft for the Commission to review at the August meeting.

- c. **Mediator Certification and Training Committee** –Wood for Judge Tyson.
 - i. This committee has been busy this past quarter, we met a few times by conference calls and in-person at the March meeting.
 - ii. CME offerings approved this quarter.
 - 1. The committee approved a 2-hour CME offered by the Mediation Center in Ashville – “Drilling Down: Mediators’ Dilemmas”. This CME was approved for a live presentation this past April, and again for this coming September.
 - iii. Applications for certification.
 - 1. The committee has not received any applications for review that have fallen outside of the application guidelines this quarter.
 - iv. Reviewed the Lapsed Policy/Dated Training Policy to ensure consistency.
 - 1. After discovering these two policies were inconsistent in their time periods, the committee revised the policies to make sure they were consistent and cut down on the subjectivity of the applicant’s qualifications.
 - 2. The proposed language allows for the following:

- a. Lapsed/dated training from 0-3 years requires verification the applicant has studied and read the current legislation, rules, standards, AOs and has two hours of CME.
 - b. Lapsed/dated training from 3-10 requires the 16-hour short course.
 - c. Lapsed/dated training from 10+ years requires the full 40-hour course.
- 3. Commissioners were asked to review the proposed draft language in their packets. One draft had a tracked version of each policy showing the proposed changes, and a clean version of the proposed language for easy reading.
- 4. Discussion - One main reason the committee addressed these policies was to streamline them. To cut down on the subjectivity given to staff as to who qualified for what class.
 - a. A question was asked about the relationship between lapsed and inactive, and if both need to have a 16 or 40-hour course to become active. If a mediator lapses, they are no longer kept abreast of any rule, standard or AO changes; if a certified mediator elects to go inactive, they still receive all the updated information from the DRC. It was clarified that the policy changes being discussed address lapsed and dated training, not the inactive status. Inactive mediators may be reactivated after they have completed a 2-hour CME course.
 - b. A question was raised as to what the DRC is doing to educate those who are considering inactive v. lapsed status. Staff explains the difference and the benefit to all those who inquire. It is discussed and covered in the training courses, and the information is listed in the policy with the DRC's preference on going inactive verses lapsing. Staff noted with three staff members in the DRC office, we have started to call all lapsed people to make sure their decision to lapse was intentional, and if not, we help to bring them back into active status. Ms. Robinson is very diligent in sending out renewal emails, but professionals can be bombarded with correspondence, so we are trying to personally follow up. Staff keeps notes in the file on who and when they contact regarding certification status.
- 5. Nease Brown made a motion to approve the policy revisions for lapsed and dated training. Clare seconded. Vote - all in favor. Approved.
 - a. Kozlowski - they will be posted for comment for 30 days.
- v. Provisional Pre-Approval Training

1. The committee pre-approved the applicant discussed at the March 1, 2019, meeting who had 18+ years as a LCSW in FL. After comparing the requirements between NC and FL, and reviewing a letter from the applicant, she was provided an exception to the requirement to practice in NC for five years prior to submitting an application.
- vi. Provisional Pre-Training Application Policy. Discussion on revising to ensure consistency.
 1. The committee has begun talks about looking at the policy for provisional pre-training applicants. After a review, this policy could use some tweaking and streamlining as well, the committee will look the policy over the next quarter.

d. **Special Report from the NCBA DR Section.** Clare.

- i. Seigle - I would like to recognize Tom Clare and allow him to address the Commission.
- ii. Clare – as you are aware, the NCBA DR Section has been working on a video of a settlement conference. We are hopeful it will be used by the DRC to help applicants fulfill their observation requirements. If the DRC approves the video to be viewed by applicants as an observation, the Commission will need to look at revising the rules.
- iii. The video is near completion, and the DR section has been great and provided all the funding thus far.
- iv. Norelli – we are in the final editing stage and it is critical to the value of the video this step be completed correctly. The remaining cost has been estimated at between 2k-4k. The DR Section has about 2k, and is looking for assistance with the remaining balance.
- v. Discussion - For eight years Commissioners have asked the DRC to do a video, the fact that the DR section took up this challenge means the world. This would be a great to support the DR Section. The video would benefit the community tremendously. It would be great if the Commission could contribute.
 1. Norelli – there is just one video for MSC program, but phase two and three would potentially include FFS observation videos.
- vi. Discussion continued - The DRC has said in the past, that after viewing the video we would possibly make the one video count as an observation, and if it works – then possibly expand. The quality control is much higher in a video as a live observation may only last 10 minutes. It would be fabulous if we could help bring this to a close. Both former Commission members, Ann Anderson and Jackie Clare, have put a ton of work into this project and they need to be recognized.
 1. Norelli – This video has required a large amount of volunteer time. There will be commentary throughout the video.

- vii. Discussion continued - How will we know if people watch the video? It depends on where the video is posted, could it run on the DRC website? Would it belong to the NCBA, but allowed to be viewed on the DRC website?
 - 1. Norelli - We will work with the section and DRC, to ensure there will be a way to verify the video is watched.
- viii. Discussion Continued - We can work on this as we develop our rules. Where it will be housed, and who will take responsibility, we can figure this all out – nothing is insurmountable. We need to take a look at the rule making process. The initial question was if the Commission could help with funding.
 - 1. Kozlowski – The Commission is currently running in the positive, however, I will need to review the budget over lunch to confirm there are funds available.
- e. **New Media Committee** – Mr. Clare
 - i. Nothing to report.
 - 1. Ms. Nease Brown – there is a nice social media presence for the DRC, thank you to Ms. Robinson
- f. **Grievance and Disciplinary Committee** - Judge Evans
 - i. Ms. Seigle - we will hold off on this committee report until the end of the meeting.
- g. **Civil Sub Committee** – Judge Farris
 - i. Petition for Relief to Pay Mediator – MSC, FFS and Clerk matters. The forms were included in the packet for your review, you have 6 forms total. A petition for relief for the MSC, FFS, and Clerk program with an original un-marked version for comparison.
 - ii. Farris – if someone submits a form for relief of payment, there are three lines to fill out and a judge rightly complains they cannot do much with this. The committee voted to modify the forms. We looked at the indigent forms which had 28 lines to fill out and thought that was too much. Therefore, we created the forms in front of you. Please review all the forms.
 - iii. Discussion was held regarding filling out the affidavit of indigency, a lot of people don't fill it out and you won't get the information you are looking for, but it's a good start. A person can have a lot of debt and a ton of income. The proposed forms are better than the complicated forms, some counties use a form that is similar to this – that has just enough information. A question was raised about whether a court could consider the spouse's income if they are not a party to the action. A statement was made that this form is less intrusive than assistance programs that look for

income of any person in your house. There was an argument that a domestic judge sees all income as the family income, and it should be included.

- iv. Question was asked if the form is filed at the beginning or before the mediation or after, as the 'current spouse' could be the opposing party if not divorced yet. Suggestion was made to ask about household income instead of spouse's income. Where we could combine monthly income with current spouse and the total value of assets including any settlement. A question was raised to see if there is a way to deny the request if the form is not submitted accurately, would there be an option to deny it if it was not submitted with all required information? Response was that if an application is not accurate it is given back to the party and they are asked to resubmit it. Concerns were raised that the judge won't be present when it is filed as some judges travel and are inaccessible to consult with if the form is incorrectly filled out.
- v. Recommendation to fix the forms.
 - 1. Ask for total monthly household income from all sources (including amount of award herein).
- vi. Discussion continued - You can make this more granular or as simple as you want. If their intent is to deceive, they will deceive. If they want to be true, this form is accurate. Best we can get is a general concept.
- vii. Marcilliat made a motion to approve the amended Petition for Relief forms. Nease Brown seconded. Vote - all in favor. Approved.

21. **Ad Hoc Committee Reports –**

a. **Committee on Long Range Planning –** LeAnn Nease Brown

- i. Nothing to report.

b. **FFS Certification –** Judge Norelli and Robert Ponton

- i. Norelli – After receiving negative input from the Family Law Bar, we believe we have cured the problem - with Judge Webb's help. Webb appointed two non-commission members to the ad-hoc committee, Caldwell Barefoot and Marshall Karro. Both new appointees have looked at proposed changes to FFS Rules. The committee voted unanimously to present the changes to the full Commission.
- ii. Plans include if this passes today – Kozlowski and Judge Farris will present the proposed FFS Rule changes at the District Court Judges Conference in June. They will also present at NCBA Annual Meeting and do a blog. We have received some feedback that some mediators did not want to complete the additional training, however Andy Little pointed out that the DRC faced the same challenges with the Superior Court changes. We are not born to mediate.

- iii. Discussion – Mr. Little mentioned that before the MSC rule change requiring all MSC mediators be certified, he heard many complaints about the requirement. However, after they took training he heard many positive remarks made by folks, he mentioned one retired judge who mentioned to him, “I didn’t know until I knew.” You can know all the law you know but may not be a good mediator.
 - 1. Nease Brown -it would be helpful to speak to the NCBA and the Family Law Section. I will get us on the agenda.
- iv. Nease Brown made a motion to approve the proposed FFS Rule 2 and Rule 8 changes. Marcilliat seconded. Vote - all in favor. Approved.
 - 1. Kozlowski to post for comment.

Break for Lunch –

3.d. Special Report from the NCBA DR Section. Clare. Continued.

- i. Ms. Kozlowski reported on the DRC budget at the end of Quarter three. Ms. Kozlowski reviewed the history over the past four years and stressed the need to have a surplus at the end of each fiscal year. At current projections, the DRC should have an approximate surplus of \$18k at the end of the year, providing an approximate rollover of \$120k into FY 19-20.
- ii. Mr. Clare moved to approve up to \$2,000.00 to the NCBA DR Section to assist with the completion of the settlement conference observation video. Mr. Marcilliat seconded. Ms. Nease Brown abstained in the event of a conflict of interest. Vote - all in favor. Approved.

4. Ad Hoc Committee Reports – Cont.

c. eCourt Committee – Kinsley Craig

- i. Our committee had two conference calls this past quarter to discuss what AOC considers priority for the eCourt project. The committee has worked hard on this project and have worked well together.
- ii. The work-flows were created by the committee to provide basic guidance to the eCourts team who will be creating the new platform. A copy of the workflow has been included in your packet, please take a moment to review. Please let the committee know if you have any recommended modifications to the workflow draft.
- iii. Moving forward - Staff has met with Emily Metha with the AOC and will be meeting with the AOC team again in June to ensure we are on the right path.
- iv. Discussion – noted that the work-flow does not cover AOC Hearings.

a. Clerk Pilot Program Committee – Kozlowski for Ms. Nesbitt

- i. Ms. Nesbit was not present. Ms. Kozlowski reported the pilot program is set to end in 2019. Staff is preparing to contact all four counties

participating in the pilot program to determine if the program was of any benefit to the participating district.

- b. **Award Committee** – LeAnn Nease Brown
 - i. Committee met on May 15, 2019, to discuss and review NC State Bar Distinguished Member Award for comparison. After a thorough discussion, the committee voted against the DRC presenting an award. The committee wished to remain only as a regulatory body and to dissolve the committee.
 - 1. Ms. Nease Brown moved to accept the committee’s findings and dissolve the committee. Clare seconded. Vote – all in favor. Approved.
 - c. **Legal Advice Committee** – Marcilliat for Judge Knight
 - i. At a prior meeting Judge Webb appointed us to look into legal advice and what is legal advice in the context of mediation. This is a Pandora’s box fraught with peril. The committee will need to look into this further. Mr. Marcilliat will be doing more research. There are other states that provide a lot of guidance, however NC does not provide any.
 - ii. We are very open to ideas and comments. Judge Knight recently attended a CME by Judge Cash and witnessed a heated debate on this issue. It is a hot topic, and we are continuing to work on it.
5. **Ex Officio Reports** –
- a. **Mediation Network** – Ms. Estle
 - i. The MNNC had a mediation network meeting this past quarter. She also invited Kozlowski down to Fayetteville to view the mediation process from our perspective. Terri Masiello is working on a unified training manual for all network mediators.
 - b. **Court Staff** – Ms. Kozlowski for Ms. Nesbitt
 - i. Statistics for MSC, FFS, and Arbitration Programs
 - 1. FFS – out of 749 total cases being reported, 478 of the cases resolved and 54 cases were partially resolved, or 532 cases resolved. 217 of the cases ended in impasse. Seven districts did not report. Providing a 71% settlement rate, 29% impasse rate.
 - 2. MSC – out of 2710 total cases being reported. 1642 cases resolved, and 1068 cases ended in impasse. All districts reporting. Providing a 61% settlement rate, 39% impasse rate.
 - ii. Question asked about the 30% of cases that don’t resolve in mediation but settle before trial. Can we track this? Ms. Kozlowski advised that we are not able to track these statistics at this time, but we should be able to track when eCourts is implemented.

- c. **NC Court Managers Conference** – Ms. Craig/Ms. Leazer
 - i. Craig – at the March 1, 2019, meeting, I was asked to provide an update with the survey results from the Court Managers Conference at this meeting. I have received comments from the presentation by Ms. Kozlowski, some are good, and some are very concerning. I am concerned that some of the TCA may go rogue and not report their stats.
 - ii. Ms. Craig – I want to make sure you all know that the TCAs are at the discretion of their judges and chiefs. If they want their staff to veer away from the rules, that is something a TCA would have to deal with. Our next conference is in December, so we have time to work on a solution. DRC rules are often viewed as guidelines.
 - iii. Ms. Kozlowski –I wanted to make sure everyone knew the rules. I did not mean to offend, and I was not trying to upset anyone. I do think it is important to receive the perspective of those in attendance at the conference.
 - iv. Discussion. The purpose of this is to build a relationship with court staff, and it may take more meetings to get a better understanding on how the DRC and the TCAs work. These are rules not suggestions. We need to help the judges understand this. TCAs respond to their judges more than to the Commission. To follow-up, the rules for the programs are not guidelines, these are rules approved by the NC Supreme Court.
 - v. A discussion was held as to why there isn't someone from court managers on the Commission. It was noted we do have multiple judges on the Commission. A suggestion was made to reach out to the AOC to request that some training about the DRC program rules be added to the new judges training course.
 - vi. Ms. Kozlowski will follow up with Judge Webb about the discussion to add a seat to the Commission for the court managers and to look into offering more training for judges.

- d. **NCBA Dispute Resolution Section** – Judge Norelli
 - i. Norelli – we have a new paralegal division –they are looking for volunteers to help Ms. Kozlowski with conflict resolution week. The NCBA DR Section held its annual meeting in Charlotte toward the end of March, Ms. Kozlowski gave a very well received presentation on the rules. The section hopes Ms. Kozlowski will be able to attend annually to provide an update and review of the rules. Additionally, we would like to invite Ms. Robinson to the meeting next year as she is an integral part of the DRC. We have contributed \$500.00 to conflict of resolution week. We are currently making arrangements to introduce Ms. Kozlowski to the board of governors with the NCBA.

- ii. Barbara (Bonnie) Weyher is the incoming chair for the NCBA DR Section. She will introduce Ms. Kozlowski at the next state bar meeting.
- iii. Thank you for allowing me to be an ex-officio member to this commission – I have really enjoyed that. This is my last meeting, so I have some suggestions.
 - 1. Someone should attend the State Bar Ethics Committee meetings – to understand what they are grappling with. It is an open meeting, and the DRC should reach out to the committee that has formed between State Bar and NCBA. Chaired by Roberta King. A project has sprung out for access to all courtrooms in the state.

e. **Industrial Commission** – Mr. Schafer

- i. Things are rolling along nicely at the Industrial Commission. The current settlement rate at mediation conferences is on track to exceed 72.5% for the fifth straight fiscal year. Prior to the 2014-15 fiscal year the annual settlement rate at mediation conferences had exceeded 72.5% only once during the initial twenty years of the program. The overall settlement rate which includes cases that settle prior to scheduled mediation conferences is over 76%.
- ii. Great settlement rates based on great mediators; Judge Walker is one.
- iii. The IC Educational Conference will be held October 2-4, 2019, at the Raleigh Convention Center with two hours of mediation training and one hour of CME credit anticipated on Oct 3rd. More information is available on the IC website.

f. **Court of Appeals** – Judge Tyson – not present, no report.

g. **Legislation Liaison** – Kozlowski for Mr. Laney

- i. HB 226. – approved in the house Judiciary committee, finance committee and rules/calendar and operations committee. Passed the house 109-0. It this has been referred to the Committee on Rules and Operations in the Senate.
- ii. HB 611. This bill didn't make cross over, so it's done. There is no action to take.

6. **Update on next meeting** – Ms. Robinson – next meeting is at the Graylyn. Email will be sent out requesting dates for the Fall and Winter meetings.

Continue from Committee Reports –

a. **Grievance and Disciplinary Committee** - Judge Evans

- i. New Policy regarding failure to response to a complaint, that was approved at November 2018, meeting is now in effect.

- ii. Update on complaint activity.
 - 1. Mediator W was issued a public written admonishment, Mediator Appealed. Hearing was held yesterday on May 16, 2019. Outcome to be determined.
- iii. Update on conduct, fitness update on applicant issues (character concerns raised by staff);
 - 1. Application received where applicant X failed to fully disclose past conduct. Applicant was denied certification by GDC committee and applicant has appealed the decision. Staff has reached out to Kathryn Shields with the AG's office, who will be representing the Commission at the hearing. The hearing date has yet to be set. Staff will send out information on the hearing as soon as it is available. Please respond to staff as we will need a minimum of three Commission Members for the hearing.
 - 2. Staff received an application from a lapsed mediator, applicant Y, this past quarter. Applicant Y was originally certified in 2009 and lapsed in FY 2017-18. Applicant Y fully and accurately disclosed a past bar grievance on his current application. The grievance was filed with the State Bar against Applicant Y in 2015 and was dismissed a few months later. Applicant Y accurately renewed his certification in 2016 by stating there was no *pending* grievance filed against him at that time. However, applicant Y failed to notify Commission staff within 30 days of receiving notice that a grievance was filed against him mid-year. The full committee reviewed the matter and determined to approve his application, but to include a letter of notice of the prior rule violation.
 - a. Judge Evans – this issue has come up before, people are forgetting to provide notice to staff. This committee needs to look at whether the rule needs to be modified. It was suggested we modify the DRC rules to move the notice to 30 days from the date the Bar response was due.
- iv. Rule IX.E(13) modification update.
 - 1. It was brought to this committee's attention the current version of Rule IX.E(13) called for a two-year waiting period before a disciplined mediator could seek reinstatement, unless otherwise agreed upon by this committee. The committee decided to look at this rule to remove the language requiring the grace period for disciplined mediators.
 - 2. Upon investigation, it was discovered the Commission had previously made this modification at some point in the past five years, as they have already been incorporated the change into the rules that are now before the Supreme Court for approval.
- v. Provisional Pre-Approval Application.

1. Staff received a provisional pre-approval application from an attorney, provisional applicant Z, who is licensed and practiced in California for many years. The applicant is 74 years old and has had numerous tax liens filed against him between the years 1990-2014, nine of which remain outstanding. Applicant Z was forthcoming about the liens and acknowledged he had lived above his means while in California. Applicant Z states he has no assets, therefore the IRS has deemed him as an “uncollectable party”. Applicant Z acknowledges he has no means to repay the liens and has moved to NC for a better cost of living and to be closer to family. Staff recommended the pre-approval of applicant Z and sought guidance from the Chair pursuant to the Commission’s Provisional Guidelines. The Chair agreed with staff’s recommendation.
- vi. Update on McDaniel matter. Judge Evans requested this to go into executive session and asked for comments prior to closing the room.
 1. Ms. Leazer – I am all for it – he is ready to come back, he has done more for the DRC than for the State Bar. TCAs are ready to have him back.
 2. Discussion held in executive session.
 3. Judge Evans made a motion to reinstate Mr. McDaniel. Ms. Nease Brown seconded. Vote – all in favor. Approved.

7. **Adjournment** - Ms. Seigle



Dispute Resolution Commission

**Quarterly Meeting
Friday, March 1, 2019
10:00 AM**

**Washington Duke Inn
Durham, NC**

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

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

Ex-officio members present: Estle, Norelli, Craig (after lunch), Leazer, Schafer, and Laney.

Staff present: Robinson, Brooks and Kozlowski.

Guests present: Richard Igou, Ketan Soni and Dr. Michael DeValve.

With regrets, Commission Members not present: Nease Brown, and Ponton.

A quorum was present at the meeting.

22. Welcome and Announcements – Judge Webb
 - a. Introduction of new commission member, Judge Richard Gottlieb
 - i. Administration of Oath – Judge Tyson.
 - ii. Webb asked Judge Gottlieb to provide a brief introduction of himself to the rest of the Commission.
 - b. Introduction of new Staff Member, Mary Brooks
 - i. Webb asked Mary Brooks to introduce herself to the rest of the Commission.
 - ii. Webb discussed conversation with Leslie Ratliff at her exit interview, where Ms. Ratliff pointed out that staff needed a third person. Kozlowski showed the Commission could afford this financially.
 - c. Held 6-month review with Kozlowski, Webb recommended a salary increase and will review her position again in 6 months
 - d. Approval of November Minutes – Judge Webb
 - i. Marcilliat made a motion to approve November 2018 meeting minutes. Hicks seconded. Vote - all members in favor. Approved.

23. Office Report – Ms. Kozlowski

- a. Staff new hire, Mary Brooks. In December of 2018, the DRC posted an open Secretary I position on the AOC employment site. The advertisement ran for 5 days, we received 79 applications. Maureen and I spent a few days reviewing the applications and selected 7 applicants to interview. I am happy to report, Ms. Mary Brooks accepted our offer for employment for a part-time position working 20 hours a week. She will be in the office on M, T, R, and F.
- b. The Annual Report for 2017-2018 FY went live and is posted on our website.
- c. Redistricting. As of January 1, 2019, the NC Superior Court and District Court districts have been reassigned. We have encouraged all mediators to update their profile information and reminded court staff to pull new court appointment lists reflecting the updated information. Please see the maps in your packet.
- d. Civilian Response to Active Shooter Event training. At the last meeting, Ms. Nesbit recalled an excellent training course from the court staff conference, taught by US Marshall, Stephen Baldwin. I have reached out to Mr. Baldwin and he is willing to provide the training. There is a trainer for each district, middle/western/eastern. Mr. Baldwin is the trainer for the Western District but is willing to assist and help coordinate training for us. The training is free and typically lasts 3 hours. To warrant this training, I thought it would be best to coordinate with other organizations.
 - i. Conflict Resolution Week is coming around again in October. I reached out to Stephanie Smith with the Custody Mediation Program to talk about coordinating a multi-training course event for this event. We are working on developing a two-day training event that will meet the individual needs of our organizations (two hours of CME) along with break out training sessions that will be of interest to those involved in dispute resolution, including the active shooter training. We intend to invite other dispute resolution programs into the mix as well.
 - ii. I have been working with Seigle on an idea for a CME on ‘what could go wrong’ in mediation. Mike McDaniel, mediator, has also offered to teach a one-hour CME on the rules. If anyone is interested in presenting a course, or any ideas for topics, please let me know.
 - iii. Maureen has reserved all the conference rooms and board rooms for Thurs and Friday, October 17 & 18, and sent out invitations to the governor and chief justice.
- e. Rule changes have been submitted to the Supreme Court. All rules and the standards changes have been submitted to the SC and will be done so on an annual basis moving forward. Thank you all for your patience. Once approved, all publications will need to be updated.
- f. Presentations by DRC Staff. I had the opportunity to be a guest speaker for Mr. Laney’s Mediation Advocacy course at Campbell Law while he was himself teaching mediation in the Ukraine. I was also able to speak at the Court Staff

Conference this past Wednesday where reviewed the FFS and MSC Rules. I presented court staff with a 15-page Quick Reference guide in both the FFS and MSC programs.

- g. Spanish Brochure. A few Spanish brochures were on display as they have been translated and distributed to the Mediation Centers. We are in the process of translating the other program brochures as well. In addition, Robinson has been working on updating all of the brochures to match the judicial branch's look.
- h. Discussion of Mediator Awards. I spoke to Jonathan Harris, AOC legal counsel, regarding the DRC's ability to present this award, and a Mediator of the Year award. He found no issue, but recommend we set a policy into place that provides for a committee to select the recipient that will automatically be recused from any future disciplinary complaint that may be brought against a recipient. Discussed plan for handling future discipline of award recipient, determined best practice would be to create a group/committee to present award that is separate from Grievance Committee.
 - i. Discussion - Webb is agnostic about this. Would like to appoint a committee. At the November 2018 meeting Webb indicated if this passed legal, then Nease Brown would chair a committee to consider if the Commission wants to present awards. Question was asked as to what criteria was to be considered when presenting an award. Recommendation was made to have each judicial district presenting an award in their own district. Kozlowski advised that AOC Legal commented this would be fine but could create a lot of work. Webb stated we can craft this anyway we want, or not do it at all. The discussion moved around this being equivalent to the attorney of the year award, again not sure what criteria we could use. State bar also does young attorney award. Webb pointed out that we are not as prestigious as the Bar and will not rival the Bar. It was pointed out that staff is seen as the DRC, there is no difference, so coming from staff or from the DRC would provide the same result. Webb requests if Commission determines to move forward with an award that it come from the body rather than staff. Suggestion was made to look at criteria for the peace award that takes its vote from the full board.
 - ii. Webb – appoints Clare, Norelli and Griffiths to committee to be chaired by Nease Brown.
- i. Housekeeping: forms adjusted to reflect new website address. Please note a few forms have been updated by the Civil Forms Subcommittee to reflect the DRC's new web address. The forms are listed on the email within your packet from Paul Lachance.
 - i. Regarding forms, staff received a call from court staff requesting to modify the Petition for Relief form. A petitioner filed a motion seeking relief, and all parties appeared in court. However, the petitioner did not bring any financial information with him to court and the judge was quite frustrated with the whole process as there was nothing but testimony to rule on. The

DRC looked at ‘beefing up’ this form when the S&AO committee was reviewing the Indigency rule but has since been dropped.

- ii. Webb – this should be sent through to the proper committee to review and discuss.
 - iii. Kozlowski – I will send out to Judge Farris and the civil subcommittee for consideration.
- j. Staff has received a few inquiries about creating an open forum for discussions of the posted items for comment. The idea being to hold a conversation rather than sending a comment by email. An open forum would provide the ability to see other’s statements and their point of view, then discuss. The re-draft of Standard VII after posting could have benefited from a conversation from those who practice mediation on a regular basis. However, providing a listserv for comment could be opening a can of worms by inviting discussions on issues we are not staffed to regulate.
- i. Discussion - Webb: we have adequate standards set in place, not sure an interactive form is the best way, and I would be opposed to it. Comments from Members were provided as to listserv’s having a lot of problems. For example, the Family Law Listserv goes into many branches, and become overburdensome. Additional comments regarding violation of confidentiality. Consensus was against modifying current policy on comments.
 - ii. Webb – If someone wants to present a proposal, they are welcome to come before the Commission.
- k. Budget - While reviewing the budget over the past few months to determine if the DRC could afford a third staff member, I discovered an error in the retirement contribution line – money has been erroneously pulled from our account for the past 8 months. Bud Jennings, CPA with the AOC is now aware of the issue and working on replacing the funds to our account.

24. Committee Reports:

- a. Executive Committee Report – Judge Webb
 - i. There is nothing to report this quarter.
- b. Standards and Advisory Opinions Committee Report – Seigle
 - i. Rule 7, Indigency form modifications to review instruction for mediator to file the Petition for Relief for a party. During the November meeting we voted to leave Rule 7 alone regarding indigency, however we determined there was no need to obligate the mediator to file the Petition for Relief on behalf of a party, and by doing so may raise issues of bias and impartiality. Therefore, we voted to remove the language to attach the Petition to Relief from each of the Report of Mediator forms and removed the instruction from the Petition for Relief form.
 - 1. Proposed Revisions to Report of Mediator for MSC, FFS and Clerk mediations: AOC-CV-813; AOC-CV-827; and AOC-G-303.

2. Proposed Revisions to Petition and Order for Relief from Obligation to Pay Mediator’s Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306
 3. Webb is prepared to accept a motion to approve. Clare made a motion to approve all forms. Gottlieb seconded.
 - a. Discussion. This matter has been discussed previously at length. A question was posed of how pro se parties will know about this if the mediator does not share it with them. This issue is understood however, the committee is concerned a mediator filing a form on behalf of a party could raise issue of impartially and bias. It was brought to the Members attention, in small claims court there is an instruction sheet on how to fill out the forms. Webb – if the motion is approved, I will have Kozlowski work with Hicks to put together something for pro se parties.
 4. Marcilliat made a motion to adopt the forms, Evans seconded. Vote - all members in favor. Approved.
- ii. Standard VII. At the November meeting, we voted to approve a standard change to Standard VII, Conflicts of Interest, allowing for a knowing and intelligent waiver in certain circumstances. We received many comments, that are in your packet for your review. Based on the number of comments, and quality of comments, the original drafters met and attempted to draft a new version. The proposed draft of the standard change has been approved by the committee. The committee recommends this new version be approved and posted for comment. Please take a moment to review. Seigle referred to Clare for additional comments.
1. Clare reviewed the history of the committee meeting to discuss the comments, issues and draft a new version.
 2. Discussion of need to modify paragraph 3 as “practice” within the paragraph could be read in a broad manner to include any member of the state bar as being conflicted out. The current proposal needs to limit conflicts to a mediator’s firm.
 - a. S&AO committee decided to table the matter and meet over lunch to re-work the proposed draft.
- iii. New Matters - Confidentiality Issue with staff, Standard III. Seigle asked Kozlowski to comment on this issue. Kozlowski - There has been some discussion on the Bar’s Dispute Resolution Section Listserv asking if staff are included under the confidentiality Standard, Standard III, which states “[a] mediator shall not disclose, directly or indirectly, to any non-participant, any information...” A strict reading of the Standard indicates staff are not able to handle notes from a mediation or be aware of any information from the mediation itself. The listserv responses were varied but contained a lot of fast responses assuming the DRC held the same

standards as the NC Bar, i.e. to allow staff to be within the cone of confidentiality. The S&AO committee has met and discussed this issue, and determined we need to expand the rule to allow for staff members to have access to information produced at a mediation. We should have a draft proposal for you at the May meeting.

1. Discussion. Webb clarified this is the act of volition regarding dispensing of the confidential information and not merely having access to a file room. A comment was made that a lot of mediators have staff and need help with maintaining files.
2. Webb- asked the S&AO committee to take a look at this and then send it out to the full Commission for any additional comments. Webb noted, the Commission can deal with this by email if that is the preference. With just a little tweaking we can reaffirm our current position or propose a change.

c. Mediator Certification and Training Committee – Judge Tyson

i. There have been two CME offerings approved this quarter.

1. N.C. Association of Professional Family Mediators – live presentation being recorded by AOC to be posted for future viewing (free). Presented by Andy Little.
2. NCBA – Dispute Resolution Section Annual Meeting – live presentation being recorded by NCBA to be posted for future viewing (fees involved). Presented by Tara Kozlowski

ii. Applications for certification.

1. DRC staff received an application from a LCSW from FL. She is a LCSW in NC as well but does not have the 5 years practice experience in NC. However, she has 18 years of practical experience in her field in FL. Staff researched the matter and provided the committee with verification the requirements for FL and NC licensure mirror each other, and the licensing exam is utilized in both states. The Committee requested letters of recommendations from applicant and a brief summary of her history in mediation. The applicant is in the process of collecting referrals.
 - a. Kozlowski please follow up with applicant to receive the letters of recommendation.
2. Provisional Pre-Training Application was received by former judge who completed the 40-hour training and required observations 13 years ago. The applicant requested a waiver of the 40-hour course, seeking to take the 16-hour course only, as he regularly and consistently mediated Court of Appeals pending cases for a four-year period after completing his training. The applicant was never certified by the DRC but had completed all requirements to obtain certification. The applicant has also served as a District Court Judge, two years with the US Department of Justice to establish Rule of

Law Courts in Iraq and has been actively serving as a Resident Superior Court Judge for the past 10 years until December 2018, when he retired.

- a. The committee met and determined in a split 3-1 vote to require the full 40-hour course. The majority of the committee's position that while the applicant had prior experience in mediation and met all other requirements for certification, it was for only a 4-year period which was more than 8 years ago. As such, the majority of the committee felt this did not rise to the level of substantial involvement to warrant waiving the full 40-hour course.
 3. It was discovered during this review the Dated Training and Lapsed policies do not mirror each other. The committee is going to review this issue as well as the definition of "substantial involvement" in mediation in order to qualify for a waiver of the full 40-hour course.
 - a. Committee will meet today over lunch. We need to define substantial involvement to clarify and further define and refine the amount of activities and involvement someone would need to have under a 16-hour course or whether a 40-hour course is preferred.
 - iii. Waiver of 6-hour legal terminology course for NC certified paralegal applicant. Chair determined waiver of 6-hour legal terminology course was acceptable for a NC certified paralegal applicant with substantial managerial experience.
 - iv. Committee revisited the DCC waiver of required observations (2) and co-mediate 3 mediations if substantial exposure to DCC mediations for 5 years.
 1. Tyson deferred to staff – Robinson explained history of previous chair who allowed applicants who had "at least five years with substantial exposure to DCC cases, including having conducted a significant number of cases" to waive this requirement. The current Committee agreed with the previous chair. The District Criminal Court Rules that were recently submitted to the Supreme Court contain changes allowing folks with substantial mediation experience to waive the observation and co-mediation requirements.
 - v. FFS Basics of Family Law Requirement (Rule 8.A) NCBA has a 2018 version that has posted for applicants to view at a discounted rate of \$99.00 (have two weeks to view). The Policy has been updated to reflect this change.
- d. Grievance and Disciplinary Committee - Judge Evans
- i. At the November meeting, this committee proposed a policy to provide for consequences if a mediator fails to respond to a Complaint. The Commission voted to approve the policy, and the policy was posted for comment. We only received one comment, which is in your packet.

1. Seigle made a motion to approve policy. Nadolski seconded. Vote - all members in favor. Approved.
- ii. Update on complaint activity.
 1. On November 30, 2018, this committee determined to issue Mediator X a public written admonishment and required Mediator X to meet with Commissioner, Debbie Griffiths, or staff, Tara Kozlowski, to review the Program Rules and Standards.
 - a. Mediator X provided staff a written request for an extension to appeal the decision and requested to negotiate the terms of the sanctions pursuant to Rule IX.D.(3)(c). The Committee granted Mediator's request to reconsider sanctions issued, and the 30-day extension for the appeal period to allow for negotiations was granted. After negotiations, the Committee denied Mediator X's request to modify sanctions.
 - b. Mediator X has appealed this decision. The Commission will hold a hearing on the matter on Thursday, May 16th, the day before our next quarterly meeting. Please note, we need a minimum of three Commission Members to hear the matter. Please let staff know if you are able to attend, if you have not already done so.
 - c. At least 30 days prior to the hearing, all Members who are scheduled to attend the hearing will receive a packet of documents that the Grievance committee reviewed in making its determination.
 - d. Please note, this matter is to remain confidential until the hearing, and there is to be no *Ex Parte* Communication allowed among the Commission Members regarding the subject matter of the appeal. Please direct any scheduling concerns to staff.
 - e. Webb - please let Kozlowski know if you are able to attend.
 - f. Kozlowski - I spoke to Kathryn Shields, attorney from AG's office who will be representing the DRC, the hearing will start at 2:00 pm on May 16th.
 2. A complaint was filed this quarter against Mediator Y for providing legal advice to a party. Staff investigated the matter by speaking to the complainant and the complainant's attorney who was present at all times during the mediation. This committee reviewed the complaint, the mediator's response, a statement from the complainant's attorney, an audio recording provided by the complainant of a conversation between herself and her attorney, and staff's recommendation. This committee determined there was no probable cause and dismissed the complaint.

- a. Discussion – The question was posed: what is the definition of legal advice? Clerks are told can cite the statute but not advise on procedure. Other Members agreed with this description. Webb – let’s take a look at this.
 - b. Webb – appoints Judge Knight to head ad hoc committee, with Gottlieb, Marcilliat.
 - i. Update on conduct, fitness update on applicant issues (character concerns raised by staff).
 - a. The committee is meeting over lunch to discuss; therefore, these matters will be held until after lunch.
 - e. New Media Committee –Clare
 - i. Modifications and updates to website. The Mediator’s Toolbox has been updated. We are continuing to work on the website to make improvements. Ms. Robinson has done a great job working with IT at the AOC.
 - ii. AOC’s position on enhancements to new applications – renewal period. Clare deferred to Robinson. Robinson – there has been a lot of activity at the AOC with the Chief Justice and Director at the AOC leaving at the end of February. Additionally, the AOC is looking to implement the eCourts system in the upcoming years and as such have frozen all requests for application enhancements. We are working with IT to bypass the freeze as our request will not have a negative effect on the eCourts system. Our IT person is going to meet with Brad Fowler to request the application enhancement be approved. Webb – I will sit down with new AOC director and talk to them about the request as well.
25. Ad Hoc Committee Reports:
 - a. Committee on Long Range Planning – LeAnn Nease Brown.
 - i. Not present, nothing to report.
 - b. FFS certification – Nancy Norelli and Robert Ponton
 - i. Norelli – this is an interesting assignment. We are not ready to bring a proposal to the full Commission, but we are getting closer. We have had many conversations with the family bar, esp. Ponton’s partner as she is the chair of the Family Bar. The proposal we have been working on is in your packet, please see the lose color version of Rule 8 as we made last minute revisions to the Rule change. The latest version includes a better description of the 16-hour course. The main piece of the certification is that they will have to take a 16-hour course and not a 40-hour course. We want this change to be clear for whoever is reading these rules, so they understand what they need to do. There has been pushback about the cost of being certified. We are considering possibly offering training through the Commission at a reduced rate. The other thing we are looking at closely is how to roll out this program. How do we get the rule right and how to get the buy in of the judiciary? We have asked Judge Farris to join the committee to assist with

introducing this change to the judiciary. The new chief justice is a former district court judge, and we believe this will help our cause. Our goal is to have this nailed down by the judge's conference in June, then present it to the bar. We had a great suggestion on how to market this new concept by reminding all that what goes on in superior court should go on in district court. That the DRC wants to equalize the Superior Court Rules with the District Court Rules. Unfortunately, Ponton and Nease Brown send their regrets as they are not able to attend today.

1. Discussion - Webb – I want to thank you – it is a very sensitive topic, and you have met this task in such a great way to get approval from the bar. It is very difficult to introduce a new regulatory matter to those who believe they are competent at doing what they have done for years. One of the reasons I joined this commission was due to being told I needed to take a 40-hour course. I was disappointed as my experience and history was vast. Kozlowski advised the Commission this has been one of the busiest committee's this quarter and they have worked extremely hard to get this right. They have gone so far as to request a cursory review of the proposed language by Andy Little and Frank Laney, as they were involved in the similar MSC Rule change in 2006. Thank you to all for your hard work.
 - c. NCBA Dispute Resolution Section Report – Judge Norelli
 - i. We have an upcoming meeting, I encourage you to register. Guest speaker Raymond Owens, from Higgins and Owens, is very entertaining.
 - ii. We also have the observation video coming out soon, created by Ann Anderson and Jackie Clare, that is beautifully scripted. They have done a wonderful job. We are very excited about presenting this video to the DRC to use for an observation requirement.
 - iii. Webb – can we get the email link to the Section meeting? Some of the Commission Members may want to go.
 1. Robinson sent the link out to all Members and Ex-officio Members during the meeting.
 - d. eCourt Committee – Kinsley Craig
 - i. No report currently.
 - e. Clerk Pilot Program Committee – Nesbitt
 - i. Not present, nothing to report.
26. Ex Officio Reports:
- a. Mediation Network – Estle.
 - i. We have an upcoming meeting with the Mediation Network on March 26. Dr. Michael DeValve, president of the board is with us today.
 1. Webb – please give Kozlowski the information for the meeting on that date. There are a lot of things we will show up for if we know

about them, there are also things we will not show up for, but we would like to be a part of this group and given the option.

- b. Court Staff – Ms. Nesbitt
 - i. Not present, nothing to report.
- c. Industrial Commission – Schafer
 - i. We have a new chair, Philip Baddour, and a new vice chair, Myra Griffin. This could change as the appointment powers are in litigation and the Supreme Court has not had their final say on the matter. The Industrial Commission’s Educational Conference is coming up. We will have a mediation component. You are all welcome to attend. With the mediation program, we are doing well, keeping busy with a high settlement rate.
- d. Court of Appeals – Judge Tyson
 - i. The Court of Appeals is losing Judge Elmore and Judge Calabria and will lose Judge Hunter as well in the next few months. We are taking the position that all judges will mediate cases. We will have a very small 8-hour training on March 18, for the new judges who are not mediators. The training will be presented by Diann Seigle, Judge Webb, and Frank Laney.
 - ii. Senate and house have voted to restore the 3 seats on the bench, so there will no longer be a reduction from 15 to 12 seats. When Judge Hunter retires in March, his seat will continue. Any new judge coming on will be required to take on new mediations. There have been issues in the past where not all judges mediated cases. Hopefully with all the judges mediating, more issues will be resolved.
- e. Federal Courts – Laney
 - i. Nothing to report for the Federal Courts.
 - ii. Met with Mildred Spearman, AOC legislative liaison.
 - 1. Regarding legislation, Kozlowski and I had a very productive meeting with Mildred Spearman, legislative liaison with the AOC, to introduce a tiny piece of legislation we are hoping to get passed. We submitted a large piece of legislation to allow the commission to sanction a no-show for a hearing. We were vague in the language, so the proposal was denied. The commission has since passed the new proposed language last year, and Mildred Spearman is working on sending this through.
 - iii. On a side note, I travel to eastern Europe and teach in the Ukraine. Basic training in Europe is 90 hours, and if you want to work in a specific program they need additional time.

Break for Lunch

- f. NC Court Managers Conference –Craig
 - i. We had a Court Management this week at the Duke Inn. Kozlowski spoke at the conference; the attendees are filling out surveys and we would like to

refer to the survey. We have enjoyed the Washington Duke Inn, and thank you Judge Webb for talking to us this morning. It was a very successful conference.

27. Committee Reports, conclusion:
 - a. Mediator Certification and Training Committee – Judge Tyson
 - i. Our committee met over lunch to look at the dated training policy and lapsed training policy. The committee has come to an agreement on the terms for training required.
 1. If under three years, demonstrate compliance and be reinstated. 3-10 years, 16-hour refresher. Over 10 years, the 40-hour course will be required. If substantial involvement, then you don't have to complete the observations.
 2. Discussion - Webb – what is substantial involvement? Comment made that Kozlowski created a list to consider if qualify under substantial involvement. Committee decided on a minimum of 4 mediations per year to qualify.
 3. Webb – Are you ready to do a motion?
 4. Tyson – Ms. Robinson asked:
 - a. Are you looking at out-of-state training too, will they need the full 40-hour course? Yes, unless they are fully mediating in another state, then they can do the 16-hour case.
 5. Committee determined they are not ready for a vote at this time but hope to present at the May meeting to the full Commission.
 - b. FFS certification Committee – Kozlowski for Norelli
 - i. Kozlowski – this committee met over lunch, and Norelli sends her regrets as she was not able to stay. The committee would like to move slow and talk to the District Court Judges before presenting this to the Bar. I am going to ask to be added to their agenda for their June Conference.
 - ii. Webb – Norelli has requested to add an attorney, non-certified, family law mediator to the committee. This is a great idea.
 - c. Grievance and Disciplinary Committee - Judge Evans
 - i. This committee met over lunch as we had a few items to discuss.
 - ii. Potential applicant Y has provided staff with a provisional pre-approval application. Upon review Mediator Y has multiple misdemeanor convictions in his distant past, from 1997: one DWI; two No Operator's License convictions; and a Misdemeanor Probation Violation. Staff consulted with the chair of the committee, pursuant to the DRC Guidelines for Issuing Provisional Pre-Training Approvals. The chair considered the potential applicant's provisional pre-approval application, email correspondence between staff and potential applicant Y regarding his criminal history, and staff's recommendation. The potential applicant claimed to have a DWI from one glass of champagne, which is concerning,

however the file is so old staff was not able to obtain a copy of the shuck. Due to the nature of all but one of the convictions arising out of the same issue, and all convictions being so dated, the chair recommended to issue Potential Applicant Y a provisional pre-approval letter.

iii. Applicant Z submitted an application for recertification. Kozlowski and Griffiths are recused and were removed from the meeting during this discussion.

1. The Grievance Committee met with Robinson, as Kozlowski has been recused, to discuss this applicant. The applicant did not fully disclose information on her application regarding tax liens, and bar complaints. As the applicant was not candid, the committee determined not to certify the applicant.

iv. Mr. McDaniel was suspended for one-year due to his inability to comply with the rules and manage his cases. His year suspension is up in April of this year. He has requested to be allowed to submit his application for reinstatement one-year after the date of his suspension pursuant to IX.E.(13) of the DRC Rules. The committee met over lunch to discuss his request and has determined to allow him to seek recertification after one year.

1. The committee would like to consider and exam this rule, as it contradicts the committee's original intention of a one-year suspension.

2. Webb – I think this is a good idea. The Rule allows for the Commission or the committee to make this decision and since the committee has voted, the Commission does not need to take any action.

d. Standards and Advisory Opinions Committee Report – Seigle

i. Clare – the language has been clarified, and Paragraph 3. now reads:

“If the mediator is disqualified under this Section, all members of the mediator’s professional business entity through which the mediator conducts their professional practice are disqualified from serving as the mediator in the dispute.”

1. Discussion - The word professional is used twice. Committee responded with this is the only option to be clear. Additional comment that we are barring other attorneys in the practice, not other mediators. Thanks for making the change.

2. Marcilliat made a motion to adopt proposed changes to Standard VII, Evans seconded. Vote - all members in favor. Approved.

3. Seigle – Kozlowski will post this new version for 30 days.

ii. The Petition for Relief from the Mediators Fee should go through the Civil Subcommittee.

1. Webb – Kozlowski please send to this committee to determine if the forms need to be addressed.
 2. Discussion – please take into consideration the timing, often a person’s financial position can change during a mediation.
28. Update on next meeting – Robinson
- a. We can get the Greylyn in Winston Salem for August 9, 2019, to hold our annual retreat conference.
 - b. Webb- please let Robinson know if this is conflict or if you can attend.
29. Adjournment – Judge Webb