



## **Dispute Resolution Commission Meeting Minutes**

**Commission Meeting  
Friday, November 19, 2021  
8:30 am**

### **Remote Meeting Held Via WebEx**

Commission Members present: Judge Gorham, LeAnn Nease Brown, David Wijewickrama, Judge Knight, Zachary Bolen, Charlot Wood, H. Randolph “Dolph” Sumner, Debra Griffiths, Ketan Soni, Judge Tyson (8:53am-9:45am), and Lisa Johnson-Tonkins (8:53am-9:13am).

With regrets: Barbara Morgenstern, Judge Hamilton, Judge Southern, Benjamin David, Judge King.

Resigned Commission Member with regrets: Jayne Zanglein.

Ex Officio present: Tina Estle and Frank Laney.

With regrets: Justina Tate, John Schaffer, DeShield Greene, and Sarah Kromer.

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

Guests: Ms. Terri Masiello.

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

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

1. **Welcome and Announcements – Judge Gorham.** Welcome. Thank you all for joining us today. I hope everyone has had time to review the meeting packet in preparation for today’s meeting.
  - a. We have a few new Commission Members.
    - i. Please help me welcome the following new Members: Mr. Randolph “Dolph” Sumner, a lawyer and mediator appointed by the Speaker of the House of Representatives, the Honorable Tim Moore. Mr. Sumner replaces Laura Isley, with a term expiring September 30, 2024. Would you please introduce yourself to the Commission?

1. Dolph Sumner: My real name is Harold Sumner, but everyone calls me Dolph. I am a lawyer in Gastonia NC, and am with Mullen Holland & Cooper, and have been practicing for 40 years. My wife is also an attorney but has been retired for 10 years. I practice workers' comp defense law and mediate, and probably do both jobs full time. I love what I do and have mediated for a few people on the call today. I look forward to working with you all, thank you.
    - ii. Judge Toni King, Chief District Court Judge for District 12 Cumberland County, appointed by the Chief Justice of the Supreme Court, Paul Newby. Judge King replaces Judge Farris, with a term expiring September 30, 2024. Judge King was not able to join us today.
    - iii. Judge William Southern, III, Chief District Court Judge for District 17B Surry County, appointed by the Chief Justice of the Supreme Court, Paul Newby. Judge Southern replaces Judge Hill, with a term expiring September 30, 2024. Judge Southern was not able to join us today.
    - iv. Judge Lori Hamilton, Superior Court Judge for District 22B Davidson County, appointed by the Chief Justice of the Supreme Court, Paul Newby. Judge Hamilton replaces Judge Gottlieb, with a term expiring September 30, 2024. Judge Hamilton was not able to join us today
  - b. Those not able to join us will be introduced at the next meeting.
  - c. Additionally, we have a returning member.
    - i. Debra Griffiths will be serving a second term on the Commission. She has been reappointed to the Commission by the Chief Justice of the Supreme Court, Paul Newby, with a term expiring June 30, 2024.
  - d. Welcome to all of our new members. Jayne Zanglein unfortunately resigned from her seat on the Commission effective November 5, 2021, due to personal reasons. Staff has reached out to the Chief Justice's office to seek a new appointment for the DCC seat.
  - e. Annual Report.
    - i. We have completed, and disseminated, the Dispute Resolution Commission's Annual Report for the FY 20-21. A copy of the Annual Report is contained in your meeting packet on Page 4. If you have not had the opportunity to review the report already. The report is also housed on our website.
  - f. Approval of June 25, 2021, Meeting Minutes.
    - i. Has everyone reviewed the June 25, 2021, meeting minutes beginning on page 28 of your packet?
    - ii. Judge Gorham asked for a motion. David Wijewickrama made a motion to approve the June 25, 2021, meeting minutes. Judge Tyson seconded. No discussion or comments. Vote- all in favor. None opposed. Motion carried, approved.
2. **Committee Reports.**
- a. **Executive Committee Report – Judge Gorham**

- i. Report on court-ordered arbitration program.
  - 1. We have still not received a response from the Chief Justice's office about the status of the Arbitration program, and any desire the Chief may have for the DRC to consider operating this program. We will keep you all updated as this matter unfolds.
- b. **Office Report – Ms. Kozlowski**
  - i. State Ethics Commission Reports on Newly Appointed Commissioners.
    - 1. Mr. Harold Sumner provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflict of interest, the State Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.
    - 2. The Honorable Toni King provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflict of interest, the State Ethics Commission did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.
    - 3. The Honorable William Southern, III, provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflict of interest, the State Ethics Commission did not find an actual conflict of interest or the likelihood for a conflict of interest.
    - 4. The Honorable Lori Hamilton provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflict of interest, the State Ethics Commission did not find an actual conflict of interest or the likelihood for a conflict of interest.
    - 5. We are very excited to have all the new members appointed to the Commission. Unfortunately, by the time they were appointed and completed their SEI, this meeting was already scheduled, and three of the four new appointees were not able to be here today. I have met with the other appointees, and they are very excited to be a part of this Commission.
  - ii. Budget Report.
    - 1. We have not met since June, and our new fiscal year has begun. In the new 21-22 FY, we rolled over the 20-21 FY surplus amount of \$78,000 leaving us \$258,882.00 in our account. For those of you who are new to the Commission, early in 2020 the Commission voted to increase mediator dues by \$25 per certification. However, due to the implementation of Odyssey, the AOC was not able to adjust our program to allow for the increase, unless we processed

every renewal manually. As a stopgap, the AOC offered to cover Ms. Robinson's salary until the new fee structure could be added to our software. The Commission placed a hold on the renewal fee increase until the AOC is able to update our software. This, along with not holding in-person meetings, has allowed us to increase our surplus. In FY 20-21, we collected \$196,597 in fees. This year, we have already surpassed this amount and will continue to collect application fees for the next 8 months. Not only are we on track financially, but we are also increasing our accounts as we move forward.

iii. Applications/Member Renewal.

1. We are still running with around 1400 mediators, even after losing a few during COVID, we have seen an increase in applications over the past 6 months. We have received many calls from potential applicants seeking to move into a mediation practice. Renewal, for the most part, ran smoothly. The one item that we had trouble with was updating the Certificates to show Judge Gorham as the current Chair of the DRC. Staff worked with the AOC tech team, graphics design team, and communications over a few months to resolve the issue. Part of the problem is the dated program that we operate under as well as AOC turn over. However, we are now generating the correct certificates.

iv. Conflict Resolution Day/Upcoming CME presentations.

1. We were able to pull off an amazing celebration for Conflict Resolution Day! We have a video with recorded remarks from Chair Gorham, Chief Justice Newby and the AOC Director, Judge Heath. The video is posted on our website and is about 10 minutes long and is fantastic. We were able to bring in a speaker, Colin Rule, from California. He is the CEO of mediator.com and has a lot of experience in mediation. Mr. Rule expressed how impressed he was with the support our program receives from the officials within our state. It was nice to see that kind of recognition as we do receive a lot of support. Mr. Rule taught an hour and a half presentation on technology. Mr. Rule did not charge the DRC a fee for his presentation, which was fantastic. We also provided a two-hour panel CME/CLE, providing 1 general hour and 1 ethics hour, by M. Ann Anderson, Angela Gray, David Niblock, and Kate Deiter-Maradei. These courses will be posted on our website soon. We sent out a survey and received 66 responses giving the program excellent remarks. Additionally, not only did we get support from the Chief and Director of the AOC, but we also received a proclamation signed by the Governor announcing the third week of October Conflict Resolution Week. We had 208 people in

attendance, 142 received CLE for course 1, and 137 received CLE for course 2. And approximately 188 mediators received CME credit. This was by far our largest production.

v. Upcoming CME

1. Staff has been asked to provide CME/CLE at the NCBA's Professional Series on Friday December 10<sup>th</sup>, at the Workers' Compensation Section's Annual Conference on January 2<sup>nd</sup>, and the NCBA Dispute Resolution Section's Annual Conference next March.

Lisa Johnson-Tonkins joined in on the WebEx meeting.

vi. DRC logo.

1. A brief review – the DRC has been using a clip-art logo for the past 25 years. We have noticed other Commissions housed in the AOC are re-branding and moving to a logo that is similar to the AOC's lady justice. We have started to look at new logos created by the communications team at the AOC. The communications team re-worked the logo's based on the comments received at the June 25<sup>th</sup> meeting. Please see page 45 of your packet for the revised logos. Each logo is displayed in blue or blue and gold, white, and black for trademark purposes. Staff is hoping that you all would be interested in using the blue or blue and gold logo from the logo selected. To provide more options, staff worked with a graphic designer outside of the AOC, please see page 56 of your packet. We thought this would provide a different look from what has been provided by the AOC.
2. As a reminder, at the March 5<sup>th</sup> meeting, the DRC voted to allow for up to \$7500 to be applied toward the cost of securing a trademark on the logo and completing any necessary assignment of rights for the DRC.
3. We have been through these a few times, at a couple of different meetings. We started this project with the idea that we could find something everyone liked. However, we won't be offended if you all want to scrap this project and keep the current logo.
4. Discussion: There was a lot of discussion over the various proposed logos presented to the DRC Members. A few Members like the hands, but not like the flame, column, or laurel. A few felt the hands looked harsh, and the suite implied male gender mediators. All agree the writing should not be upside down. A few requested to see the hands, without the skeleton-looking lines in the hands and without cuffs. A few wanted to see softer hands and right-side-up text around another logo. It was recommended and agreed the original clip-art logo should remain in contention. None of them say what the Commission is. Staff will make the few requested changes,

and then bring the three most popular and the original logo back to the Members for an email vote. All agreed, no more discussion – just a deadline and vote – Majority to win.

vii. Rule submission to the Supreme Court.

1. Rules were handed up to Supreme Court on March 18, 2021. Rules were signed August 25, 2021 and went into effect October 1, 2021. Please see page 57 for the Cliff's Notes version of the updates. We have been working diligently to update all materials in the office and on the website. If you find something we missed, please let us know! The MSC and FFS 16-hour/40-hour training guidelines that were updated in March of 2021 to match the Rules that are now in effect. Note: Proposed Amendment to create Standard 9 has not been approved yet but is still under review as the NC State Bar is also making similar recommendations for similar new language in their preamble and their rules. If the Supreme Court is going to move forward with adopting anti-discrimination language, I am sure they will want to be consistent across the board.

viii. Committee Assignments.

1. With the new Members moving onto the DRC, all committees have been re-set, with Judge Gorham's approval. Please let staff know if the new assignments meet your needs and wishes. Please note, the committees are a little smaller this year to allow for easy scheduling of meetings, and to disperse the workload evenly across the Commission.

ix. Call with AOC Director, Judge Heath.

1. AOC Director, Judge Heath, reached out to our office to inquire about how to infuse our courts with mediation to aid in the current backlog of cases. He was looking for immediate, as well as long term, solutions. We discussed the DRC's research and findings on ODR programs through the long range and planning committee, as well as the criminal subcommittee's research into revising the DCC program to make it statewide. I explained the need for the DRC to have enabling legislation for any program we would oversee.

c. **Grievance and Disciplinary Committee – Debra Griffiths**

i. Update on complaint activity.

1. Complaint filed against Mediator A. Ms. Griffiths: Staff received notice of an incident alleging a mediation was not held by the mediation deadline in a Superior Court MSC matter. Staff is currently investigating the matter and will bring all information to the committee for consideration.

ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).

1. Letters of warning. Ms. Griffiths: During this past renewal period, staff sent three letters of warning to mediators who self-reported a past pending grievance, that has since been dismissed. Staff advised the mediators to fully report in a timely manner in the future.
    - a. Discussion: Ms. Griffiths: I think they failed to report the incident, but they reported the dismissal. We have a reporting requirement for the mediator to report when a grievance is filed as well as reporting the ultimate resolution of it. Ms. Kozlowski: these matters were correctly reported on their renewal application, even though they failed to report the initial incident, that it would be sufficient to issue a warning letter. Ms. Griffiths: I know staff has been working on educating mediators on their reporting requirements, and we have systems in place to catch these matters sooner than later. And the number of warning letters issued are down from last year.
  2. State Bar Subpoena. *In the Matter of the NC State Bar vs. Nicolle Phair*. Staff has received and complied with a subpoena requesting all documents from Ms. Phair's 2018 grievance file with the DRC, staff received a release from Ms. Phair requesting the DRC to produce all renewal applications to the State Bar. Tara Kozlowski was subsequently issued a subpoena; and did appear and testify in the hearing at the State Bar on November 9, 2021.
- iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
1. Denial of DCC application. On June 25<sup>th</sup>, at the last DRC meeting, I reported on the denial of a DCC application. The applicant was notified of the denial, and failed to file an appeal, therefore, the matter is settled. Staff has received no contact from the applicant since the date of the denial letter.
  2. Matter Under Investigation. Staff received an application for certification in the Superior Court Program listing numerous open/unpaid judgements and liens. The matter is currently under investigation by staff and will be brought before the full committee for review when all material is available.
- d. **New Media Committee – Mr. Soni**
- i. Updates to website. The website has been updated by staff and the AOC to remove the majority of the COVID warning blocks, leaving a few notices that the rules still require remote attendance unless otherwise agreed to. Staff has been working to update the Commission Members page as we have a few new Members to add. Finally, all saved and dated material has been archived under the News and Articles link. We are continually

updating our website including the Covid-19 Things to Know page as we receive new information.

- ii. Social Media Presence. Ms. Robinson continues to maintain the DRC Twitter and LinkedIn accounts. She reviews updates from the AOC and local court postings daily and forwards all relevant information to our accounts so our followers can easily access the information.

Lisa Johnson-Tonkins no longer on call – quorum maintained.

**e. Standards and Advisory Opinions Committee Report – Judge Knight**

i. Previous Matters

- 1. None.

ii. New Matters

- 1. Request for AO. We had one issue, staff received an anonymous request for an AO, regarding Standard 7, which deals with Conflicts of Interest. The short-hand version is the mediator asked if they could serve as a Parenting Coordinator (PC) after conducting a mediation for the same parties on the same cause of action or mediate for parties they formerly represented on the same cause of action, if the parties/attorneys consent and waive the conflict. Those conflicts that the mediator described by the mediator are not waivable under the Standards. Standard 7 does not provide for exceptions nor does it allow for a conflict to be waived by consent by the parties/attorneys. AO 40 speaks directly to the mediator's inability to serve as PC after conducting a mediation for the parties, even if all parties/attorneys request the mediator serve as PC. Therefore, staff recommended this matter did not warrant a formal opinion, and I agreed. Therefore, staff was asked to provide the mediator informal advice. That is the only issue that was addressed.
- 2. Discussion: I do some CMEs in charlotte, some in zoom and some in-person. This PC and mediation thing comes up a lot. I think people are struggling with seeing someone who arbitrates after a mediation versus someone who is a PC after a mediation. It seems to be a more frequently occurring issue from a training side. I am not sure if others are seeing the same thing. Ms. Kozlowski: Are you volunteering to do a CME on the topic? I suppose there is no need to comment on the request as we have the AO in place, and this is taught in CME courses already. Ms. Kozlowski: When I receive a formal request for an AO, I send it up to the committee chair, per the DRC Rules, to determine if it needs to go to the committee level. Because this question had just been answered in an AO, providing the mediator with a copy of the AO and letting them know the issue had just been addressed is the proper path. We may want to include more about this topic in our training, just to make people aware of the difference between a parenting coordinator and arbitrator.

\*\*\*The following discussion, regarding the request for AO on the PC issue, was discussed after the Civil Sub Committee Report, before the Criminal Sub Committee Report.



- a. An arbitrator rules once on one issue, my understanding of a PC is they work overtime with the parties making many decisions. This is a distinction I would see. Is this something to discuss?
- b. Ms. Kozlowski: If this needs to be re-visited, and you think the AO is not clear as it is written this should go back to the committee level. Or, if you think it's a matter of education, we can certainly work on educating the people on the AO that has already been issued.
- c. Without getting into it, it's not a matter of clarity, it is a matter of understanding the reasons. I agree there is no need to say anything except to provide a copy of the AO to the mediator.

**f. Civil Sub Committee – Ms. Wood**

i. Previous Matters.

1. Forms still pending with AOC civil forms subcommittee:

- a. Revisions to Petition and Order for Relief from Obligation to Pay Mediator's Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306. There are forms we have requested to be revised, they are with the AOC and will be there for some time. From what I understand, because of the backlog they are dealing with in terms of e-courts, they are probably going to sit there for quite some time. By way of reminder, the revisions we are seeking expanded information on income and expenses, etc. Because the forms were so broad, they didn't really ask for any specifics. Judge Farris was the one who kind of initiated this inquiry because he felt that petitioners that came before him didn't have enough information and that our petition should be more consistent with what people are required to provide when they are requesting an appointment of council based on indigency. Those forms have been set up and we are waiting for a revision on them.

ii. New Matters.

- 1. The MSC/FFS Application and forms are in the process of being updated to reflect the newly adopted Rule 8, which was touched on a few minutes ago when talking about reporting a grievance. Now mediators have 30 days after receiving notice, or if a response is permitted by the regulatory body, the individual has 30 days after the response is due to the regulatory body to report those grievances or complaints. Those are in the process of being updated.

\*\*\* See Notes Above.

**g. Criminal Sub Committee – Tara Kozlowski on behalf of DA David.**

i. Previous Matters

1. Review of the District Criminal Court program. The Criminal Subcommittee began discussions about potential changes to the District Criminal Court Mediation (DCC) Program (funding, training, statewide rules, statistical data etc.). We are trying to revamp the program as it is in dire straits. We were notified by a center the other day that they would be putting their DCC program on hold. The courts are seriously backlogged due to COVID and the program needs to be revived via funding. We have spoken with a number of stakeholders, and were on hold, waiting for a state budget - which I think went into place as of yesterday. Hopefully, we will have more information for you at the next Commission meeting.
- ii. New Matters
  1. None.
- h. **Ad Hoc Attendance Review Committee – Mr. Soni**
  - i. Previous Matters
    1. None.
  - ii. New Matters
    1. Proposed Training Guidelines 40-hour MSC. Page 59. Proposed Training Guidelines 40-hour FFS. Page 65. Proposed Training Guidelines 16-hour MSC. Page 71. Proposed Training Guidelines 16-hour FFS. Page 73.
    2. As a refresher as of October 1, 2021, the Supreme Court amended MSC and FFS Rule 9, requiring technology training. Staff immediately implemented the DRC’s previously adopted amendments to the MSC and FFS Training that match the new Rules. The committee is working on three things, one of which is done. What is the default attendance rule for the parties and counsel to mediations in the future? Temporarily, mediations are through remote technology unless everybody agrees otherwise. This has been in place for 2 years, but the question still comes up. We are trying to answer the long-term question of what the default is, in-person or remote. The second thing we are trying to address is remote training for mediator certification programs and what the parameters should be around those trainings. There is a pilot in place from last April that allowed certified trainers to do remote training, with limited class sizes. The pilot is in place until sometime next year. But the question we are trying to answer is what are the parameters around remote trainings in the future? Then the third question is after someone’s training is completed, what is the availability to do remote observations? Can they do some of the observations remotely, and some in-person?

3. We have gathered a lot of data and are reviewing the results of surveys. We met in July and discussed leaving the format to the trainers, providing limits for the trainers – for example, they have to be able to see all participants at all times. The proposed guidelines for MSC and FFS training, and proposed amendments for 16-hour training.
4. Discussion: we have four participants that cannot be seen on this meeting. Many times, the State Bar will allow CLE by phone where you can't see the participants either. I am concerned we are imposing a standard on folks that is stricter than the State Bar. The other issue, when we are talking about doing mediations in-person, rather than the current default, this was to be addressed later this year or in 2022. Our court rooms are open, and they are packed. Our federal courts are open. The vaccines are available, whether people chose to take advantage of them or not.
5. Ms. Kozlowski: Participants on the screen. One of the biggest concerns of allowing for remote training is participants would not give the trainers their full attention, but rather they may assume they already know how mediation works and would focus on other tasks. It is very important to keep a connection between the attendee and the trainers. We have a number of people who attend the courses that are not attorneys and may not have the background with mediation. By requiring a view of each participant at all times ensures that participants are paying attention and absorbing the material.
6. Ms. Kozlowski: Remote v. In-Person. When we flipped the attendance presumption to remote, we did so at the request of former Chief Justice Beasley so that the DRC would not be covered in the Emergency Orders being issued monthly. At that time, we agreed to flip the rule with the intent the Rule would revert when it was safe to do so. We all hoped it would be safe to flip back after 6 months, which was not the case. No date or deadline was put into place to flip the rule to in-person. Judge Gorham has created the ad hoc attendance review committee to address this concern, and to determine how best to move forward.
7. Chair: This is a highly debated topic about in-person vs. remote mediation. We ran a survey and 338 people responded who are mediators and we are going through that right now. The responses are widespread, all across the board. Everyone has strong opinions and we have not decided what to do – this is what our committee is working on. We need to give people a default. If everyone agrees, you can deviate from the default. On the training issue, we had an attendee who took a course that did not pay attention and was not

certified. An hour or two CME/CLE is different. The quality of the mediators who come out of the classes, we need them to pay attention because it does matter – it is not shuttle negotiation, it is a very difficult job. Until you do mediation as a mediator, I don't think attorneys realize how difficult the job is. Seeing a face on a screen provides a lot of value.

8. Discussion: What do you feel about having a different policy than the Chief Justice? Our courts are open. We complied with the former Chief Justice's direction. I think we are imposing a stricter standard than we have now. The issue is in doing remote mediations, we are not following the rest of the court system. The rest of the court system has opened up and all judges will agree with me they are hearing in-person motions and go to court at 8 and leave at 6. If all the judges are having open court, we should be having in-person mediations.
9. Ms. Kozlowski: I had a great conversation with the Chief Justice about a month ago about his fondness for remote technology in the courts. While there are a lot of courts open, he is, from my perspective and from the conversation I had with him, pushing for technology to be available in certain situations. We did not discuss mediations specifically, but the impression I got was if things could be done remotely, they should be done remotely. I cannot say if he prefers remote, but I can say our conversation was interrupted by a someone who was thanking the Chief for setting up remote capability for hearings held at the jail. I don't disagree that the courts are open, but we are trying to figure out what will fit the needs of our mediators as a whole. We are researching this in detail and do not want to make a snap decision.
10. Discussion: When are we going to vote on going back to in-person?
11. Chair: That is the topic we are discussing. I think in-person should be the default, and that is my personal opinion. It is a highly debated topic, and we are working through the issues at a committee level. Remote mediations are just as effective, but I think the default should be in-person with a tier system that allows for remote.
12. Discussion: I want to follow up and say that I mediate 8-9 times a week, remote is just as effective. Statistics show that remote is working just as well, if not an increase in the settlement rate. This can be attributed to folks feeling uncertain about the future and are more willing to settle. Participants are usually okay with doing remote mediations.
13. Chair: We all practice in different areas, and again is why this is such a highly debated topic. In family law we have a rule that if you live more than 50 miles away you don't have to mediate. So remote

mediation is a way to stop people from avoiding mediation due to their location. Everyone has a different perspective, and we are trying to gather everything and make sure we're making good decisions.

14. Discussion: I mediation in Cumberland, Johnston, Roberson and Wilmington and I prefer to mediate in-person. I will ask the client what they would rather do, and 95% of the time they want Zoom. I've been doing this for 33 years and I love Zoom.
  15. Ms. Kozlowski: The concerns being expressed today are valid. When everything changed it was a huge upheaval. We all really had to pivot to keep working through the pandemic. We are working on it, and we are trying to find a solution.
  16. Discussion: It is devastating to plaintiffs when they are in a multimillion-dollar case and the adjuster who is attending remotely is called away into another meeting. The insurance adjusters are taking advantage of the situation. If you say you are going to be there, you need to be there for the whole time. I try to represent my region, and what is happening in my area. I am presenting this as I was given a lot of questions as to when I was going to hear something.
  17. Ms. Kozlowski: I take all emails, regarding in-person v. remote, received by staff to the committee for consideration. I encourage you all to send in your comments on the matter.
  18. Discussion: There are sanctions that may be available to the party that is made to wait by the opposing party/adjuster. It may not be a great solution, but it may prevent the opposing party/adjuster from disappearing from a mediation in the future.
  19. Chair: We have 28 pages of comments from the 338 people who responded to the survey, I am happy to share with anyone who asks for a copy.
- iii. Judge Gorham asked for a motion to approve the new training guidelines. Ms. Kozlowski: To refresh your memory, the committee proposes to leave the training forum to trainer's choice. Please see the proposed Guidelines for the 40-hour MSC and FFS training, beginning on pages 59 and 65, respectively. Also, please see proposed amendments to the 16-hour MSC and FFS training, beginning on pages 71 and 73. Ms. Griffiths made a motion to adopt the proposed training guidelines. Mr. Sumner seconded. Discussion: Ms. Robinson: The proposed amendments do provide new language about technology. Vote – all in favor. None opposed. Motion carried, approved.

Judge Tyson no longer on call - quorum maintained.

- i. **Mediator Certification and Training Committee – Judge Tyson – covered by Ms. Kozlowski**

- i. CME offerings approved since the Commissions June 2021 meeting.
  1. Please see the list of courses approved for CME by this committee since June 25, 2021, on page 75 of your packet. We have a lot of new courses being offered for CME credit.
- ii. Applications for certification that came before the Committee.
  1. None.
- iii. Previous Matters
  1. Nothing to report.
- iv. New Matters
  1. The committee met several times since our last meeting to review the training guidelines to bring all of them in line with the recent MSC and FFS updates. The committee met to review the Clerk Guidelines, the 6-hour course and the DCC Guidelines. If you look at page 76, you will find the proposed language for the Clerk Guidelines. The modifications were made to mirror the updates recently made to the MSC training guidelines. We have included a clean copy with all proposed changes accepted for easy review on page 84. The Clerk training can be taught by video, we have had that provision in place for years.
    - a. Any questions? None.
  2. The next topic is the DCC Guidelines. The DCC Guidelines were updated and revised, taking into consideration recommendations made by the Mediation Network's Director, their Board, and Terri Masiello. Terri Masiello is a Director of a Community Mediation Center and is a certified DCC trainer, and a guest on the call today. We also have ex-officio member Tina Estle, Executive Director of the Cumberland County Mediation Center on our call. The committee took into consideration that all Community Centers operate independently of each other having different procedures and daily operations. Therefore, the committee determined applicants would benefit from an apprenticeship program with the center as well as training in a classroom setting. The goal is to prepare the new mediators on how their center will operate and understand the centers local procedures. The Rules require 24 hours of training where the proposed DCC Guidelines provide 16 hours of classroom training and an 8-hour apprenticeship for each applicant. The guidelines provide for 15 of the 16 hours of required topics for the DCC classroom training. Please see Page 90 in your packet. We have included a clean copy with all proposed changes accepted for easy review on page 96.
    - a. Ms. Masiello: Thank you for the opportunity to work with you all to revise the Guidelines.
    - b. Any questions? None.

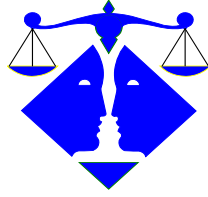
3. We discussed the need for Training Guidelines for the 6-hour legal terminology course. We have not had a guideline in the past for this course, but felt it was time to consider having something in place. Additionally, the committee proposes that the DRC allow applicants to view this training as a recording. The course is now required as a pre-requisite for the MSC course for non-applicants. We have two current certified trainers teaching this course. After consulting with the trainers, staff presented the idea of providing this training by video. The trainers do not have enough interest to offer the course frequently, the applicants must take this course as a prerequisite, and the materials do not require student-teacher interaction. If the applicant has questions on the material, they may ask their questions during the subsequent 40-hour training. Please see the new proposed language for guidelines for the 6-hour course on page 101 of your packet. I did speak with Andy Little, a DRC Trainer, and he is in favor of allowing this class via video. \*\*\*Ms. Robinson caught language about role-plays, this needs to be removed from paragraph 3. Also, we need to include FFS applicants in paragraph 4. \*\*\* These changes will be made.
    - a. Discussion: Should the 6-hour be for MSC/FFS or should it be for all programs.
    - b. It is just the MSC/FFS as the Clerk and Farm program require certification in MSC or FFS, and the DCC program provides legal terminology training in their 24-hour course.
  4. When we vote on Guidelines, they will become effective immediately.
  5. Finally, the committee proposes a minor change to FFS Rule 8, by clearly defining an applicant who is seeking certification based on their status as an Advanced Practitioner. The committee felt that the applicant must have received the designation as a Family Mediator Advanced Practitioner to qualify. The Association for Conflict Resolution expanded the areas of practice for achieving Advanced Practitioner status. Only two or three people have certified under this path, but we want to make sure an AP who is certified in Workers Comp does not qualify for FFS. They must be an AP in Family Mediation. Please see page 105 of your packet.
    - v. Judge Gorham asked for a motion to adopt the Clerk, DCC, 6-hour Training Guidelines and the FFS Rules, Rule 8. Mr. Soni made a motion. Ms. Griffiths seconded. Discussion? None. Vote – all in favor. None opposed. Motion carried, approved.
3. **Ad Hoc Committee Reports –**
- a. **Committee on Long Range Planning –LeAnn Nease Brown**
    - i. Online Dispute Resolution. Page 48.

1. The committee on the Long-Range Planning Report relates to looking again or continuing to look at online dispute resolution or ODR. Our staff has continued to work with the AOC IT team to determine the feasibility of operating an online program within the technology that we're using. Funding to have a program like this would be about \$150k per year. That is not something the DRC could fund annually so that funding would have to come from the AOC. Ms. Kozlowski met with Ryan Helms, IT analyst, and Brad Fowler, the AOC's Chief Business Officer at the end of September to talk further about the ODR programs. She shared with them the long-range planning committee's position that our contribution to the program that we could consider would be drafting program rules, training, certifying mediators and regulating the mediators who would mediate within the program, as we do with the MSC and FFS programs. The financial aspect of it would be something that had to be addressed outside of our purview. Mr. Fowler indicated we really needed a state budget in place to determine how much funding the AOC could consider providing to such a program. Mr. Fowler stated he would bring this concept to Kesha Howell, the AOC's Chief Operations Officer, for consideration. And we could circle back with that group and continue to look at whether a program like this is feasible financially for the AOC. And if it is, then we would be coming back with recommendations as to our role as the regulatory authority, and the authority for guidance.
  2. Discussion: I think the budget has been approved and they are sending it to the governor right now.
    - a. Yes, once approved then that has to trickle through, and the AOC will have to think about priorities and what that will look like. What starting a program that's going to have a year over year financial component would look like. If there is funding, we will have to have a serious discussion about what this will look like in this world.
- b. **eCourt Committee – Ms. Greene – covered by Kozlowski**
- i. Ms. Greene and I have been working with Emily Westover, she is in charge of a portion of programming for e-courts. We have had the opportunity to play around in Odyssey and see a little of what it will look like once fully implemented. We are trying to ensure all the triggers and timing standards are put into place. It is a bit over my head, but I am very pleased with the way the DRC has been included in the process of reviewing the material to make sure it is where it needs to be.
- c. **Video Observation Committee – David Wijewickrama.**
- i. FFS Observational Video. Page 106.



1. What I say is my personal opinion, but in looking at Ketan Soni and his folks did is extraordinary, the quality is incredible. I am not a fan of remote observations on anything. This is a hell of a program; you all need to look at this. This is the real deal and that's my opinion.
  2. The Video Observation Committee brings you an FFS Observation Video for your review and consideration. A link to the 4-hour video was emailed out on November 11, 2021. The video was created by a group of family law mediators that includes Ketan Soni, Todd Owens, Lynn Krueger-Andes, Heidi Risser, and Deb Dilman. The creators of the video have offered to donate the video to the DRC to assist applicants in meeting the DRC's minimum threshold requirements for certification. The committee has approved the final product, and the supplementary documents for the video begin on page 106 of your packet.
    - ii. Judge Gorham asked for a motion to adopt the FFS video created by Mr. Soni and Company, to be used for FFS observations. Mr. Wijewickrama made a motion. Ms. Griffiths seconded. Discussion: There is a huge appetite for applicants to have this video, thank you to all who created the video and worked on this. Vote – all in favor. None opposed. Motion carried, approved. It is a wonderful video and I thank you all for producing the video.
4. **Ex Officio Reports –**
- a. **Mediation Network – Ms. Estle**
    - i. Ms. Estle: Terri Masiello has been working very hard to get a unified training curriculum set up for all the centers. The Robeson county center that has been closed for between 10-15 years, has now reopened and is back in criminal district court. Some counties are able to pick up the work, even though a few centers are closing down.
  - b. **Court Staff – Ms. Greene**
    - i. Stats for MSC and FFS. Page 111. Not present.
  - c. **NC Court Managers Conference – Ms. Tate**
    - i. Not present.
  - d. **NCBA Dispute Resolution Section – Ms. Kromer**
    - i. Not present.
  - e. **Industrial Commission – Mr. Schafer – covered by Kozlowski**
    - i. Mr. Schafer is out of town, but he has indicated their settlement rate has increased.
  - f. **Court of Appeals – Judge Tyson**
    - i. Not present.
  - g. **Federal Courts – Mr. Laney**
    - i. None.
  - h. **Legislation – Mr. Laney**

- i. None.
- 5. **Update on next meeting** – Maureen Robinson. The plan is to hold the next meeting by WebEx, in the early 2022.
- 6. **Adjournment** – Judge Gorham requested a motion to adjourn. Mr. Soni made the motion. Ms. Griffiths seconded. All approved. Motion carried.



## **Dispute Resolution Commission**

### **Meeting Minutes**

**Commission Meeting**  
**Friday, June 25, 2021**  
**8:30 am**

#### **Remote Meeting Held Via WebEx**

Commission Members present: Judge Gorham, Judge Tyson, Barbara Morgenstern, David Wijewickrama, Ketan Soni, Debbie Griffiths, Judge Hill, Judge Knight, Laura Isley, Benjamin David, Zack Bolen, Judge Farris, Jayne Zanglein and Lisa Johnson-Tonkins.

With regrets: Charlot Wood, Judge Gottlieb, and LeAnn Nease Brown.

Ex Officio present: Frank Laney, DeShield Greene, Kate Deiter-Maradei, Jamie Richardson, and Tina Estle.

With regrets: Justina Tate, and John Schaffer

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

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

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

7. **Welcome and Announcements** – Judge Gorham. Welcome to the June Commission meeting of 2021. Thank you all for joining us today. I hope that you have had the opportunity to review the meeting packet.
  - a. First thing is to welcome our new Member, Ben David, District Attorney in New Hanover, and Pender Counties. He was appointed by Chief Justice Newby to fill Patrick Nadolski's seat, who I was able to meet at our conference last week.
    - i. Ben David: for the past 16 years I have served as the DA for New Hanover and Pender Counties. I graduated from Wake Forest Law School in 1995 and worked at Kilpatrick Stockton for three years. I have been a prosecutor

ever since and Judge Gorham and I actually served as prosecutors together when I first arrived. I am very honored that the Chief Justice has asked me to be a part of this Commission. Having run a district court for several years, I can tell you that the mediators in my district play an indispensable role resolving the self-initiated warrants. I want to do what I can, using the experience we have had here to advance that effort statewide. I look forward to getting to work.

- ii. Comment: Your area has been cutting edge and forward thinking for a long time. Back in the 1990s when the mediated settlement conference was being introduced, we had a pilot program. District 5 was not included in the pilot, and the TCA said let's cut off continuance unless the parties mediate. It was a way to introduce mediation into the courts without being involved in the pilot program.
- iii. Ms. Kozlowski: The Honorable Benjamin R. David provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflict of interest, the State Ethics Commission did not find an actual conflict of interest or the likelihood for a conflict of interest. We are very pleased that Mr. David is with us, he will be a great benefit to the DRC.

b. We have a few guests to introduce today.

- i. Jamie Richardson is here representing court management as Kinsley Craig and Justina Tate are on vacation this week.
- ii. Sarah Kromer is joining us as she will soon be transitioning into the role as ex-officio member as the new Chair of the NCBA Dispute Resolution Section.

c. Approval of March 5, 2020 Meeting Minutes.

- i. Has everyone reviewed the March 5, 2021 meeting minutes beginning on Page 6 of your packet?
- ii. Judge Gorham asked for a motion. Judge Farris made a motion to approve the March 5, 2020 meeting minutes. David Wijewickrama seconded. No discussion or comments. Vote- all in favor. None opposed. Motion carried, approved.

8. **Office Report** – Ms. Kozlowski

a. COVID-19 updates.

- i. As the mask mandates lifted, there was no change to the attendance rules. The rules provide that in-person mediations, conducted by consent of all parties, follow local, state, and federal guidelines. We drafted the rules to follow the safety guidelines in place at the time of the mediation settlement conference. We will hear from the Chair of the Attendance Review Committee, Ketan Soni, later with an update on in-person v. remote attendance.

b. Applications/Member Renewal.

- i. We continue to receive a large number of applications each week. We have seen a bigger influx of applications this year than we have in the past 15 years. It is possible people are moving toward mediation more as the courts are backed up due to COVID. On the flip side, we have lost a lot of mediators who are not willing to conduct remote mediations. We are maintaining our number of certified mediators across the state at approximately 1400. However, we have only received 10 FFS grandfather applications. The grandfather clause expired on June 10, 2021.
- c. Budget Report.
- i. Our budget as of May 30, 2021 shows a positive balance of \$267,000.00. We operate at around of \$10,000.00 per month so I anticipate we will end the fiscal year with a carry forward of \$257,000. This is a great number to be at and I am very pleased we have been able to build up our reserve. This will provide us with a \$70,000.00 gain just from this year.
  - ii. We are gearing up to host Conflict Resolution Day in October of 2021 and hope to work with the AOC Custody Mediation Program, the NCBA DR Section, and other ADR programs around the state. Maureen has already reserved every meeting space at the AOC, we would also like to provide the option to attend remotely. The current idea is to focus on individual group training in the morning, have a few keynote speakers over the lunch hour and provide a speaker for all ADR programs in the afternoon. We have a request in for the Chief Justice and the Governor to speak at the event and are waiting to hear if they can attend. I would like to request a budget cap of \$5,000 to invite speakers to present at Conflict Resolution Day. We are looking to bring in a big name to speak on the topic of in-person v. remote mediations.
    1. At this point, Colin Rule, President and CEO of Medite.com has agreed to speak remotely. Mr. Rule founded onlineresolution.com in 2000, he became the first director of ODR for eBay and PayPal in 2003, and he co-founded Modria.com the ODR platform acquired by Tyler Technologies in 2017.
  - iii. I am pre-mature in my request, as I do not know if Colin Rule will charge a fee for his presentation, but I do not know if we will meet before October 25<sup>th</sup> and would like to be prepared. Please note, you all have approved a trademark expense of up to \$7,500 which will be realized in the FY21 -22, assuming we can agree on a logo.
  - iv. Questions/Comments?
    1. I have seen Colin Rule speak, he is the man, he is the guy. He invented a lot of dispute resolution or distance resolution programs and has worked in it for years, if not decades by now. I have never seen him speak where he was paid, so I would push for asking him to speak for fee.

- v. Judge Gorham asked for a motion to approve spending up to \$5,000 on a speaker for Conflict Resolution Day. Ms. Griffiths made a motion to approve spending up to \$5,000.00. Ms. Morgenstern seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.
- d. Re-Print of Lawyer's Weekly Article. The memo in your packet provides you all with information on an article published by Lawyer's Weekly, that was re-published by staff in our Spring Newsletter. Staff was very excited about the article showing how effective mediation can be in large cases. We received a few comments from mediators, some good and some bad. A few mediators requested an audience with the Commission, the comments are included in your packet for your review. I received negative comments from 4 mediators, who had well thought out, valid, points that the staff did not consider when reprinting the information. However, I do not see this matter as an issue and recommend we simply pull the article from the website and not re-print in the future.
  - i. Comments: It is a great idea to pull the information and will alleviate some concerns.
- e. Trademark DRC logo.
  - i. The AOC communications team re-worked the logo's and have provided a final copy of 6 logos. Each logo is displayed in blue or blue and gold, white, and black for trademark purposes. The DRC will use the blue or blue and gold logo from the logo selected. As a reminder, at the March 5th meeting, the DRC voted to allow for up to \$7500 to be applied toward the cost of securing a trademark on the logo and gave me the authority to sign any necessary contracts on behalf of the Commission.
    - 1. Comments/Concerns: votes for #5. Votes for #4 the hand looks rough in #5. Likes readability of #5. Hands look like clip art. Fixing the hands would be good, something less boxy. Vote for #1.
  - ii. We are going to go back to the graphic artist, and see if we can recolor #1, change the edge. And fix the hands on #5, something not so sharp.
- f. Rule submission to the Supreme Court.
  - i. Rules were handed up to Supreme court on March 18, 2021. Grant Buckner originally advised the rules would go before the Court in June; however, they have been pushed back to the August session. If approved, they will likely go into effect on September 1, 2021. When the rules are signed, the MSC and FFS 16-hour/40-hour training guidelines will go into effect. Revised FFS Application for Certification.
- g. Remote Observation Guidelines. As a reminder, the full Commission held a vote via email on April 7, 2021 to extend the ability for applicants to participate in remote observations, backdated to February of 2021, until such time the Commission votes to amend the provision. The ad hoc attendance review committee will provide a report later in the meeting regarding the specifics of the remote observation guidelines moving forward.

9. Committee Reports –
  - a. Executive Committee Report – Judge Gorham
    - i. The Dispute Resolution Commission has been requested by Grant Buckner, on behalf of Chief Justice Newby, to consider absorbing the district court arbitration program provided for under N.C.G.S. § 7A-37.1. Statewide court-ordered, nonbinding arbitration in certain civil actions.
    - ii. Under this statute, the Supreme Court of North Carolina has authority to adopt rules governing this program and the AOC is tasked with supervising and implementing the program. The Arbitration rules provide for the chief district court judge to receive and approve applications for arbitrators and training is provided by video that has been prescribed by the AOC. However, there are no uniform procedures in place for modifying the rules or the program. Additionally, the arbitrators are not uniformly certified. Mr. Buckner was clear that they are looking for a solution, but do not want to create an imposition for the DRC. At this time, he has asked for discretion as they are reviewing options on how to proceed. Mr. Buckner asked if the DRC would be interested in absorbing arbitration, and if so, what that would look like - certification, payment of dues, regulate the training, etc.
    - iii. The Dispute Resolution Commission’s executive committee held a meeting on May 21, of this year, to discuss the idea of absorbing the program. The committee unanimously agreed the Commission would be willing to consider managing the court-ordered arbitration program with the understanding that the Commission is a self-sustaining agency, and the collection of fees would be necessary. The committee has requested additional information from Mr. Buckner, to learn the opinions of the Chief District Court Judges and Arbitrators regarding this matter. We have not received a response at this time, but we will keep you all updated as this matter unfolds.
    - iv. Ms. Kozlowski – I spoke to Mr. Buckner this morning, and he has not had the opportunity to present the information to the Chief Justice. He indicated he is receiving more inquiries about the arbitration rules and how to modify them. While the Supreme Court is looking for a solution, we are just one option. I am not sure which way they are going to move on this, if at all. Ms. Greene runs the arbitration program for the AOC, Ms. Greene do you have anything to add?
    - v. Ms. Greene – anytime we need an update it is complicated as we don’t have a formal process. The rules were last reviewed in 2012.
  - b. Grievance and Disciplinary Committee – Ms. Griffiths
    - i. Update on complaint activity.
      1. We have received one complaint since we were last together, against Mediator A2021, a DRC certified mediator. Complainant alleged coercion and duress due to mediator stating, “opposing party said

that she was taking too long in the mediation”. However, the complainant did not enter into a settlement agreement until a month after the mediation date and mediator worked with both parties, including the complainant’s attorney to assist with the settlement after the day of mediation. The matter was reviewed by our committee, including the complaint, response from the mediator, and a letter from complainant’s attorney responding to staff’s questions. The committee found no probable cause of a violation of a rule, standard, or guidelines issued by the DRC. Therefore, the matter was dismissed, and all interested parties were notified.

ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).

1. We have taken a position on letters of warning. As we enter into renewal season, many mediators will likely report past pending grievance matters with the State Bar. In the event a mediator self-reports a past pending grievance, that has since been dismissed, staff will issue a letter of warning advising the mediator to fully report in a timely manner in the future.

2. Tara also received a subpoena for documents relating to the DRC disciplinary hearing, In the Matter of Nicolle Phair. The subpoena was reviewed by staff, me, Judge Gorham and AOC legal. After determining staff could not respond to a request for confidential documents, the AG’s office sent an Objection to the State Bar. The matter is still pending with the State Bar.

iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).

1. The committee voted to deny a DCC application for mediation certification. Applicant listed incorrect (mis-spelled) name on application and when asked about the spelling applicant indicated they were a victim of identity theft and are in the process of changing their name. Court shows no record of name change. Applicant provided two different birthdates, neither matched her background check. Applicant verified she had no criminal convictions on application but had 4 misdemeanor convictions and a felony conviction. She had 9 open lien/judgments. She provided false driver’s license number on application and has a history of failure to appear and providing false information to law enforcement.

a. Applicant was notified and we are in the 30-day appeal period for her to appeal that decision.

iv. Any comments or questions? None. Moving on.

c. New Media Committee – Judge Hill

i. Updates to website.



1. New categories were added to the keyword search function on the Find a Mediator page, Remote Mediations and Complex Family Financial Matters. We are continually updating our website including the Covid-19 Things to Know page as we receive new information. If you have any recommendations, or catch any typos, please let staff know.
- ii. Social Media Presence.
  1. As we enter the three-month renewal period, Maureen will send out multiple emails to mediators encouraging them to complete the 2-hour CME requirement and annual renewal application.
  2. Maureen continues to maintain the DRC Twitter and LinkedIn accounts.
  3. She reviews updates from the AOC and local court postings daily and forwards all relevant information to our accounts so our followers can easily access the information. For example, court closings, retirements, and awards presented.
- d. Standards and Advisory Opinions Committee Report – Judge Knight
  - i. New Matters
    1. First, we had a request for an advisory opinion. Staff brought the request to my attention. A mediator requested an advisory opinion on a conflicts of interest issue. The mediator was asked to mediate a case that involved the same party and the same issues where an associate in the mediator’s law practice had represented one of the parties in the matter four years earlier. The staff’s opinion was that there was a clear conflict of interest to mediate a matter when an attorney in the same office had previously represented one of the parties on the same issue four years earlier. I agreed with staff’s opinion and requested staff to provide the mediator with informational advice, which I understand was done.
  - ii. Previous Matters
    1. Proposed AO, B-2020 regarding signing authority.
      - a. This was approved by the full Commission on March 5<sup>th</sup> of this year and provides guidance for mediators on the best practice regarding the issue of signing authority if a party is not able to, or does not, attend a mediation – Based on the decision in the Mitchell Case. Staff posted the material for comment for 30 days and received two comments. Please see the comments made in your packet.
        - i. In the first response, the mediator did not take a position about the AO but forwarded a case out of Colorado for our consideration. The committee determined that the case - it restated the importance of confidentiality, but there was nothing in the case

that caused any reason to modify or review our proposed language in the AO.

ii. In the second response, the mediator was concerned that the term ‘parties’ was defined narrowly for purposes of settlement agreements and they wanted the DRC to give a better definition of party. The mediator did not have any comments or concerns or issues relating to signing authority.

iii. Staff advised this is the first time anyone raised an issue, a complaint or concern or comment on how the DRC defined “party”. Staff recommended the committee not make any changes on the definition of “parties”.

b. Judge Gorham asked for a Motion to approve the AO on signing authority. Ms. Zanglein made a motion to approve proposed AO, B-2020. Judge Farris seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.

e. Civil Sub Committee – Judge Farris

i. Previous Matters

1. Proposed legislative and rule changes to the MSC Program and Clerk Program prompted by the *Mitchell* case.

a. As you will recall and Judge Knight pointed out, the *Mitchell* case dealt with enforcing agreements when a party wasn’t physically present to sign the agreement. Therefore, the full Commission met on March 5, and approved the amendments to the MSC Rules 4, 10, & 15, and Clerk Rule 4. These were posted for comment for 30 days, pursuant to the DRC’s Comment Policy. No comments were received when they were posted. Therefore, the committee recommends moving forward with the original proposed language for adoption.

i. If you approve the request to amend the MSC and Clerk Program Rules they will be presented to the Supreme Court after the legislation is amended to allow a designee to sign on behalf of a party.

b. Judge Gorham asked for a motion to adopt the proposed amendments to MSC Rules 4, 10 & 15 and Clerk Rule 4. Mr. Wijewickrama made a motion to adopt proposed amendments to MSC Rules 4, 10 & 15 and Clerk Rule 4. Mr. David seconded. Discussion? None. Vote – all in favor. None opposed. Motion carried, approved.

2. Forms still pending with AOC civil forms subcommittee:

- a. Revisions to Petition and Order for Relief from Obligation to Pay Mediator's Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306.
          - i. You know we have had some forms pending for a while, but because of the implementation of eCourts we are on hold there.
      - ii. New Matters
        - 1. No new matters to discuss.
- f. Criminal Sub Committee – Judge Farris
  - i. New Matters
    - 1. Review of the District Criminal Court program.
      - a. The District Court Criminal program tries to resolve lots of things, mostly neighborhood disputes. They get a \$60 mediation fee under NCGS § 7A-38.3D(m). 7A-38.3D refers to NCGS § 7A-38.7. NCGS § 7A-38.7 provides if there is no agreement on how the fees are to be paid, the responsibility shall fall to the defendant.
      - b. We have included a graph showing the number of cases mediated each year and the amount of funds collected really fluctuates. But what we are being told is the fees are not being paid. A couple of years ago in December of 2019, a group of DCC stakeholders met to discuss the programs ability to sustain under the current fee protocol. The DRC sent out a survey to all centers, and received feedback indicating the program was suffering and needed to change. COVID put this project on hold for a bit. In May, DRC staff reached out to the centers for updated responses to the survey questions. Ultimately, the centers who are supposed to collect the fee prior to the mediation are struggling. The Criminal Subcommittee met May 27<sup>th</sup> and began discussions about potential changes to the District Criminal Court Mediation Program - changes regarding funding, training, statewide rules, data etc. The courts are seriously backlogged due to COVID and the program needs to be revived with reliable funding. We have the support of the Mediation Network, who provided statistics over the past 10 years of the program's success. We have a representative from IDS who will be participating in future meetings.
      - c. Tara spoke to Peg Dorer, Director of the Conference of the DA's, Ms. Dorer will be floating the idea at their Executive Committee.

2. This matter is on the table for discussion. Any comments/questions?
  - a. Comment: as a former prosecutor and having worked in District Courts, this program is vital, and I do know the struggles with funding, so I hope they are able to find the support.
  - b. Comment: I require mediation for self-initiated case types. We provide a letter to all victims to say that we may dismiss your case if you don't mediate first. We have found that a very large percentage end up getting resolved that way or are no shows. I would like to echo that we need this and our district courts to really focus on the domestic violence cases and other cases. If we don't have support from the General Assembly, we are never going to get it from the participants. It cannot be self-sustaining to put this on the backs of the defendants and victims. We need outside funding or it just won't work. We have tried everything through the last several years in rural and metro areas, as our district is both, and it simply will not work. There needs to be funding from the legislature, and under the justice reinvestment, where we have saved .5 billion dollars in the cost of incarceration to reinvest into things that matters out of our court system and people out of custody. That this should be a request for us to fund this program.
3. Judge Farris: It seems we have a consensus to join with the district attorneys and present a united front on behalf of this program.
4. Kozlowski: I had a great conversation with Peg Dorer and was very open to the idea of moving this program forward. The district attorneys are having the same issues with the current program and they are overwhelmed with cases, most of which can be resolved without going to trial. There are a few mediation centers that are no longer offering DCC mediation as it is not sustainable. The beautiful thing is we are finding support not only from the district attorneys, but from the Network, and community centers that are not involved with the Network or the DRC. If we can all stand together, I think we have a good argument to make this work.
- g. Mediator Certification and Training Committee – Judge Tyson
  - i. Tyson: Since I am calling in today, I have asked Tara to help me with the report to make sure all items are covered. We have received a number of seminar applications since our last meeting, Tara can you run through these real quick?
  - ii. CME offerings approved since the Commissions March 2021 meeting.

1. Kozlowski: The Committee Approved a CME course (webinar) through The Mediation Center in Asheville. The course was first conducted in April and will be conducted in August and September. “Staking the Common Ground: CME/CLE for DRC Certified Mediators”. It is a great program; I get to say that because I am part of it.
  2. The Committee has also approved a two-hour CME Course through RSR Mediation (Ketan Soni and Heidi Risser) in Charlotte. The course “Ethics: Back to Mediator Basics” was conducted on June 4<sup>th</sup>, 2021. That will also be a spectacular program.
- iii. Tyson – we did receive an application for approval of an out of state course for credit. Tara, can you cover? Kozlowski: we have an out of state training guideline to allow for an out of state course to be deemed substantially compliant with NC training. If the course is substantially compliant, and taken within the past 10 years, the applicant may simply take the 16-hour course instead of the 40-hour course.
- iv. Applications for certification that came before the Committee.
1. The Committee received a request for exception to Rule 8(a)(2)(1)(ii) that provides an FFS applicant may certify under the grandfather provision if they have mediated 10 matters within the last 5 years. The applicant has mediated over 10+ matters, but only 7 have been within the past 5 years as the rules require, the three others required for certification were completed within the past 7 years. The committee allowed the exception and allowed staff to certify applicant.
    - a. Factors considered: Applicant has been a member of the bar since 2003, been a certified family law specialist since 2008, completed a 40-hour training in 2009, completed the 16-hour training in 2021, and has no history of discipline.
  2. Kozlowski: Subsequently, this committee just had a meeting a few days ago after receiving a request from a mediator who wanted to bypass the observations. Staff presented the request to the committee and after Kozlowski had a great discussion with Frank Laney, realized that the question should not have gone to the committee. DRC Rule 10 provides when a matter goes up to the committee. Without an application on staff’s desk, the matter cannot be taken up to the committee. It was also reaffirmed that staff, nor committee, has the ability to create waivers or exceptions for the Supreme Court rules. The rules need to be followed as written. Staff withdrew the question from the committee and let the potential applicant know the process for applying.
- v. Previous Matters

1. Minutes from the March meeting reflect all changes to Rule 9, so please reference the March minutes with any questions.
- vi. New Matters
  1. There are no new matters to report.
10. Ad Hoc Committee Reports –
  - a. Committee on Long Range Planning – Kozlowski on behalf of LeAnn Nease Brown
    - i. Online Dispute Resolution.
      1. As you may recall from the March meeting, Staff has been working with the AOC IT team to interview other jurisdictions operating an online dispute resolution program. Specifically, they are looking to how other programs operate, what platform they use, the level of court staff involvement, cost of the program, how funded, etc. We created and sent out a survey that many jurisdictions completed to give us a good idea of ORD in other jurisdictions.
      2. Staff has completed several interviews over the last few months. DRC staff, along with AOC staff began by interviewing Paul Embley, with the [National Center for State Courts](#), who has worked with many different jurisdictions to help them implement an ODR program. Additionally, they interviewed ODR programs that operate in Utah, Texas, Iowa, New Mexico, Arizona, and Ohio. The interview notes are included in your packet.
      3. The long-range planning committee met on May 19, for a conversation about the DRC’s potential level of involvement, if any, in such a program. To fund the technology portion of the project, it would cost roughly \$150k per year. The DRC does not have the funds to invest annually in such a program and would need financial assistance from the AOC. The AOC’s interest level has not been determined yet. This would be an interesting program to run, if we find interest from the AOC. The program would run in lower civil courts where parties would utilize a third-party neutral in asynchronous negotiations with the opposing party. The jurisdictions we interviewed had very successful programs and it was encouraging to look at the numbers/stats. This a great project but is a huge investment. Tyler Tech is implementing NC eCourts over the next 5 years and they have a program called Modria that we will investigate, along with other programs available. We are waiting right now to determine the AOC’s interest level.
  - b. eCourt Committee – Ms. Greene
    - i. I do not have much to provide. eCourts was originally to be deployed and implemented and go live on July 26<sup>th</sup> in the pilot counties. That has been delayed and has been pushed back to August 23<sup>rd</sup>. There have been delays due to NCAware, this is the database used by magistrates and law

enforcements to issue warrants. So that is being replaced with a new system that has to be developed by Tyler. There have been some developmental delays resulting in pushing back the go-live date for the overall system.

- ii. I had a few questions after my last report, and I believe I answered all the questions sufficiently via email, but if not, please let me know. I can go back to the team for better responses.
  - iii. We continue to get one off requests from the group that is configuration for this but nothing that would require the committee to meet at this point.
- c. Video Observation Committee – David Wijewickrama.
- i. FFS Observational Video.
    - 1. The Video Observation Committee has been working with Ketan Soni regarding the FFS Observation Video he created with his colleagues. The committee is currently reviewing certain sections of the video as some changes have been made, provided by Ketan. We hope to provide a final product to the DRC in the future.
- d. Attendance Review Committee – Ketan Soni
- i. New Matters
    - 1. I am going to start with the end – we are going to ask to extend the training pilot program till July 2022. This committee was created in April of this year, and the reasons were threefold. 1. To talk about remote attendance to mediations, 2. To talk about remote training for mediation certification and 3. The observation requirement being done all remotely. The question is whether remote is here to stay in some degree or completely.
    - 2. We chose to tackle the training requirements first. We don't have a consensus as a committee, we are still reviewing. We do agree that remote training is a viable option. We are struggling if any proponent of remote training does require a physical presence. For example, there are 5 role-plays that need to happen, should those be in person so the trainer can observe that portion of the training? There are also communication sections of training and should those be in person to allow for a better report with the trainer. Then we looked at how will this apply to the 16-hour training. We are not trying to cram in solutions to today's meeting. Therefore, we are just proposing to extend the remote training policy to July of 2022.
    - 3. Regarding attendance – we sent out the survey to all mediators in NC and asked how the following categories go in remote mediations: how did the technology go; how did the caucusing go; how did the payment go; how was the attention of parties; do you want to continue with remote mediations? Should the default be in-person or remote? Was there a cost benefit or detriment? And what do mediators want as the default? We received 300 plus

responses from folks across the state. I am not here to tell you the results, except to generally let you know remote mediation is favorable and not a horrible thing. This will be the next topic to tackle in this committee.

4. Questions? None.
  5. Tara is going to fix me if I misstep, we have Supreme Court amendments going into place this year, is that right?
    - a. Kozlowski: hopefully, the rules have been pending before the Supreme Court since March, and they are now scheduled to go before the court in August with an effective date in September, so we will see.
  6. The goal for our committee is to have some proposed language for the remote training guidelines. Kozlowski: I want to jump in real quick and touch on that the committee discussed the observation requirement that you all voted on in April. It was determined by the committee unanimously that we need to leave it as an option until the rules are modified. Right now, the default is mediations are to be done remotely, so we need to leave the option for observations to be done remotely as well. Until such time as the rules may or may not change based on the Commission's future movement on the subject.
  7. Kozlowski: I also wanted to touch on the pilot remote training guidelines, not only are we asking for the extension of time, but to include the district criminal court program in the pilot program. We did not anticipate COVID lasting for years, we thought the pilot would only need to cover a couple of months and staff has now received requests from DCC trainers to provide remote training.
  8. There are a few other things, apparently the DCC does not always require certified mediators. It is similar to the old FFS rules, so maybe we need to bring the DCC rules in line with the other rule sets. The importance of this committee is highlighted by the fact that there is so many new applicants for certification. Which means there will probable be a greater number of people seeking to become trainers. Frank and Diann have done a ton of these training remotely already over the last year, very successfully. The remote thing is not going away, it is a matter of can we tackle it and get our hands around it to put it in the proper guidelines.
- ii. Judge Gorham asked for a motion to extend the pilot remote training guidelines to July of 2022 and include the DCC program. Ms. Morgenstern made a motion to extend the pilot remote training guidelines to July of 2022 and include the DCC program. Mr. Soni seconded.



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

11. Ex Officio Reports –

a. Mediation Network – Ms. Estle

- i. I am on the subcommittee for the DCC to look at training and funding, and I have to tell you the network is very excited about that. It is great to be appreciated and acknowledged for what we have been doing. I had a meeting with all executive director's to let them know the proposed changes, covering the 100 counties, and all are in favor. Looking at the training manual, but so far everything is looking great to join with the DRC.
- ii. Medicaid appeals are changing on July 1<sup>st</sup>, as far as the Network handling those cases, we have all been trained and am looking forward to the new cases.

b. Court Staff – Ms. Greene

i. Stats for MSC and FFS.

1. To piggyback on DCC – I will just add that I was part of that subcommittee and I did share the conversation with the deputy director of the AOC. I provided information from the meeting and we will need to share any budget request with Judge Heath. We may have a strategy planning session to get this started after the legislative session is over.
2. Based on the stats from the third quarter, July 1 through March 31 of 2020:
  - a. MSC - 2,514 cases entered mediation, of the 2,514 cases mediated, 1410 cases settled, 56%. If you include the cases that settled prior to or during ADR, the total cases are 2,926 – where 1,822 settled or 62%.
  - b. FFS – 36 districts reporting – 716 cases entered mediation, of the 716 cases mediated 488 completely or partially settled, 68%. If you include the cases that reported settled prior to or during ADR recess, the total cases are 960- where 712 settled or 74%.
3. Just for good measure, I also want to include the arbitration statistics. We use a different format, we look at the number of cases actually arbitrated (1515) and the number of appeals filed (322)...this gives you an appeal rate of 21% of cases in the third quarter. We had an 18% appeal rate in the last quarter, and a 15% appeal rate in the first quarter. I also look at settlement rate for cases that settle without a hearing or before arbitration (where the parties settle or are dismissed after notice but before arbitration actually occurs). There is a case management principle that if there is something blooming, or will be taking place, the case is more likely

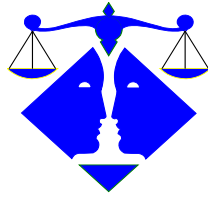
to settle. Looking at this number 46% settle before hearing even needs to take place.

- ii. Lori Cole and I are working on a superior court managers guide, we are also working on a comparable guide for district court. It will also include info on FFS and ARB.
- c. NC Court Managers Conference – Ms. Richardson
  - i. Ms. Richardson’s computer audio was not working, and she typed her report into the comments. While she was typing, we had a comment.
  - ii. Comment: If I could say something, when we are looking at remote mediations, I have never had one meeting where something did not go wrong. I am only one voice, but I have been a part of remote mediations where there have been technical difficulties, but the parties will break down due to technical difficulties. It may be due to the extreme nature of the emotionally charged event, and technology is improving every day, but we need to get back to in person mediation. This is a bottle neck situation that is not easily going to resolve itself. We as mediators, lawyers and judges are used to the technical difficulties we experience, but for people that are dealing with the greatest challenges of their life, it is devastating to have their emptions put on hold because of the internet. Whether its WebEx, Zoom, Microsoft Teams, or Google Meets, every one of them has their own set of problems.
    - 1. Kozlowski: the attendance committee is taking all of that into consideration. We have a great group on the committee, access to technology and access to justice, the reliability of technology being used are all concerns that the committee is dealing with.
  - iii. Judge Gorham: Tara can you read Ms. Richardson’s comments?
    - 1. Kozlowski: Thank you again Jamie for being here with us today. Jamie Richardson’s comments “On behalf of our president Kinsley Craig, she thanks the DRC and their efforts to include us in their meetings and we’re grateful to be a part. Regarding the statistics from court managers, we have been meeting virtually each month over the past year. We have been concerned about the status because as Kinsley had expressed at past meetings, we have taken on additional duties. Such as covid coordinators and delays on ordering cases into mediation and they case management schedules but things are getting back to normal. It is good to know that the statistics are similar to past years. Lastly, if there is anything that the Commission or its members, myself, or Kinsley can take back to our members please let us know.
- d. Industrial Commission – Mr. Schafer
  - i. Kozlowski: Mr. Schafer is not able to be with us today but reports there is no report today from the IC.
- e. Court of Appeals – Judge Tyson



13. Adjournment – Judge Gorham

- a. Judge Gorham asked for a Motion. Mr. David made a motion to adjourn the meeting. Mr. Soni seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.



## **Dispute Resolution Commission**

### **Meeting Minutes**

**Commission Meeting**  
**Friday, March 5, 2021**  
**8:30 am**

#### **Remote Meeting Held Via WebEx**

Commission Members present: Judge Gorham, Judge Tyson, Barbara Morgenstern, David Wijewickrama, Ketan Soni, Debbie Griffiths, Judge Hill, Judge Knight, Laura Isley, Patrick Nadolski, Zack Bolen, Judge Gottlieb, LeAnn Nease Brown, Judge Farris, Jayne Zanglein.

With regrets: Charlot Wood and Lisa Johnson-tonkins.

Ex Officio present: Frank Laney, DeShield Greene, Kate Deiter-Maradei, John Schaffer, Justina Tate, and Tina Estle.

With regrets: Kinsley Craig

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

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

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

14. **Welcome and Announcements** – Judge Gorham. Welcome to the first Commission meeting of 2021. Thank you all for joining us today. I hope everyone has had time to review the meeting packet in preparation for today’s meeting.
  - a. Approval of December 2, 2020 Meeting Minutes.
    - i. Judge Gorham made a request for comments:
      1. Concerns were expressed about too much detail in the minutes and use of the word “I” when the person should be identified.

2. It was noted that the meetings themselves are open meetings, and the public may attend, so no need to list names of speakers in the minutes. However, the details of the discussion may bring clarity in the future when the minutes are being reviewed.
  3. Correction recommended on page 11.3.a – “instead of a response limited to”
  4. Correction recommended on page 15 under 2a “has the section been invited”
- ii. Ms. Morgenstern made a motion to approve the December 2, 2020 meeting minutes with correction on page 11.3.a and page 15.2.a. Ms. Griffiths seconded. No further discussion, no further changes. Vote- all in favor. None opposed. Motion carried, approved.
- b. Judge Gorham: we are going to skip around a bit and hear from Kate Deiter-Maradei to provide her report as the NCBA DR Section Chair.
    - i. Ms. Deiter-Maradei: The Bar Association DR Section has a CLE next week, on March 11th and 12th. The event will fill half of each day, as everyone has busy schedules and we want to keep that in mind. We have David Hoffman from Harvard and he is teaching a 2-hour course. I will put in the chat some data about David Hoffman, he is quite an impressive individual. Congratulations, to LeAnn Nease Brown as the award recipient of the Brent McKnight Renaissance Lawyer Award, she is also a former NCBA President and DR Section Chair.
15. **Office Report** – Ms. Kozlowski
- a. COVID-19 updates.
    - i. The Chief Justice allowed Emergency Directive 1 to expire, stating each district should enact any rules necessary for court proceedings to protect their courts, staff and programs. This allows the DRC Rules to guide mediators, as local rules may not be inconsistent with the DRC rules. I confirmed with AOC legal, DRC Rules prevail over local rules regarding mediation. A party to a case may file a motion for the court to order the mediation in-person. However, these orders are case by case determinations, not a blanket order. If a mediator is ordered to mediate in person, they may withdraw.
  - b. Applications/Member Renewal.
    - i. We have seen an uptick of applications over the past few months. Mary has also been able to track down quite a few mediators who unintentionally lapsed and was able to get them re-certified.
  - c. Upcoming CME presentations by DRC staff.
    - i. Staff is honored to have been asked to speak at the following programs: NCBA DR Section annual program on March 12<sup>th</sup>; The Mediation Center on April 23, August 20, Sept 24; and for the All Things Judicial AOC Podcast (no CME credit for this podcast).

1. The AOC's podcast runs every 2 weeks highlighting a different branch or commission to provide information to the public. We are scheduled to release a podcast on October 20th, during Conflict Resolution Week – if anyone is interested in being interviewed for this project, please let me know.
    - ii. While creating the presentation for the NCBA DR Section program, covering the work completed by the DRC over the past year, it was amazing to see how many projects this Commission has completed! Thank you all!
- d. Budget Report.
  - i. As of December 31, 2020, we had a positive balance of \$312,394.00. The increase in funds is partly due to the lack of travel expenses for DRC meetings, and an increase in applications and trainings during the pandemic. We are operating at an expense of approximately \$10,000/month, with an increase balance from any applications fees received.
- e. Trademark DRC logo, request for funds.
  - i. With a nice healthy budget, staff is requesting a new logo we can trademark and make our own. The DRC was established over 25 years ago and we have used clip art as our logo. The clip art is nice, but staff would like to step it up a bit and match the other AOC Commissions with a more formal logo. The AOC communications team has been working with us over the last year and staff has selected a logo that we are very pleased with. I spoke with former AOC lead council, Tina Krasner, about obtaining a trademark, was referred to the law firm of Coats and Bennett. The details of the estimate to trademark a logo are contained in the packet memo. The estimated cost to trademark the logo will be around \$4,000 to \$5,000. Staff is requesting authorization for funds up to \$7,5000, as we will need an Assignment of Rights Contract with the AOC, so we will own the trademark, and there is the potential for ancillary work. I am also requesting permission for authority to sign the contract with Coates & Bennett.
  - ii. Under NCGS 114-2.3, the DRC needs to seek permission from the Attorney General's office to secure outside counsel for this project. I have spoken to AOC's lead counsel, Trey Allen, and Kathryn Shields with the AG's office, and no one anticipates any issue as there is no conflict, permission is simply a formality.
  - iii. Ms. Nease Brown made a motion to move forward with the trademark process, allowing Ms. Kozlowski to sign the contracts, with a limit of \$7,500. Ms. Morgenstern seconded. Vote- all in favor. None opposed. Motion carried, approved.
  - iv. Request was made to send the logo selected by staff and approved by the Chair to all Members for consideration. Ms. Robinson emailed the logo to all meeting attendees.
- f. Rule submission to the Supreme Court.

- i. Staff expects to provide the SC with the Commission adopted rule/standard amendments on the 15<sup>th</sup>. I planned to review each rule submission, however in the interest of time, please let me know if you would like to review the full list and I will send via email. All submissions to the Supreme Court have been approved, open for comment, and adopted by the DRC.
    - g. Revised FFS Application for Certification.
      - i. Please see page 28 of your packet. Staff discovered the new application allowing grandfathered FFS mediators was not clear. The AOC expanded the language on the application to clarify the applicant's requirements for certification. The two-day family law basic course remains required under the grandfather provision. 3(a) and 4(a) were added on pages 3 and 4, respectfully.
- 16. Committee Reports –
  - a. Executive Committee Report – Judge Gorham
    - i. Nothing to report.
  - b. Grievance and Disciplinary Committee – Debbie Griffiths
    - i. Update on complaint activity.
      - 1. Only report is a complaint filed against Mediator A. We are in the investigation stage. Mediator A is a DRC certified mediator. DRC staff is in the process of gathering information and investigating the complaint.
    - ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
    - iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
      - 1. It has been quiet these past few months - There have been no issues with renewal applications, original applications, or pre-approval matters since our last meeting.
      - 2. The number of complaints received by staff have certainly gone down as well.
  - c. New Media Committee – Judge Hill
    - i. Updates to website.
      - 1. Staff had received several questions about whether or not the Current CME Opportunities posting is current. Therefore, staff added the date the last time the page was updated to the CME page.
      - 2. The Conflict Resolution Day video from the Chief Justice Beasley was replaced with the original DRC video. The Chief's video was well received, and staff will be requesting a short video from Chief Justice Newby to display on our website for Conflict Resolution Week 2021.
      - 3. We are continually updating our website including the Covid-19 Things to Know page as we receive new information. If you have any recommendations, or catch any typos, please let staff know.



- ii. Social Media Presence.
  - 1. Maureen has done a great job maintaining the DRC Twitter and LinkedIn accounts. She reviews updates from the AOC and local court postings daily and forwards all relevant information to our accounts so our followers can easily access the information. For example, she's posting court closings, retirements, and awards presented. Maureen is doing an excellent job.
- iii. Any comments or questions? None. Moving on.
- d. Standards and Advisory Opinions Committee Report – Judge Knight
  - i. New Matters
    - 1. *Greenberg v. Haggerty*. The Eastern District of Pennsylvania recently held PA's newly adopted Rule addressing discrimination, under the Rules of Professional Conduct for Lawyers, unconstitutional. We are bringing this matter to the full Commission for review and consideration. You may recall at the December 2, 2020 meeting, the Commission voted to adopt the anti-discrimination clause, Standard 9. The Standard is slated to be handed up to the Supreme Court for consideration later this month. The committee wanted the Commission to review the *Greenberg* case before the rules are submitted to the Court. The committee reviewed and discussed the case and have determined that the *Greenberg* case does not impact our proposed Standard. The committee proposed we continue to move forward by submitting the adopted Standard 9 to the Supreme Court but wanted to bring it to the full commission for discussion.
    - 2. Ms. Nease Brown seconded the committee's motion to proceed with submitting the adopted Standard 9 to the Supreme Court.
    - 3. Discussion:
      - a. Agreement with the committee's decision.
      - b. Are we trying to prevent conduct? Is this really a problem, or is this us going along with everyone else is doing? I don't see problems of mediators being accused of being discriminatory. To me the rules are dozens of pages long and requiring additional changes on this stuff is confusing. What is the point really if we are solving a problem that doesn't exist?
      - c. I agree 100% with the comments above.
    - 4. Judge Gorham – is there any further discussion? This is not up for a vote today unless a motion is made to make changes as the matter has already been discussed. Any motions? None. We will move on.
  - ii. Previous Matters
    - 1. Proposed AO, A-2020 regarding the mediator's duty to communicate with lienholders.

- a. The Commission approved AO, A-2020, at the December 2, 2020 meeting and the proposed AO was posted for comment for 30 days per DRC Policy. Staff received two comments.
          - i. The committee reviewed and discussed the comments received and voted to adopt the second comment, clarifying the language. The new language clarifies confidential information may be shared with the lienholder once they attend the conference and become part of the mediation. Should the Commission adopt the proposed language, there will be no requirement to re-post the AO as the recommended modification is not substantive.
        - b. Judge Gorham asked for a Motion. Ms. Morgenstern made a motion to adopt proposed AO, A-2020 with committee recommended changes. Ms. Nease Brown seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.
2. Proposed AO, B-2020 signing authority (*Mitchell* case).
  - a. The last item is proposed AO, B-2020 on signing authority. At the recommendation of the Commission at the December 2020 meeting, the S&AO committee met with the civil subcommittee to discuss the *Mitchell* case. The two committees worked together and agreed on language for an Advisory Opinion, as well as Rule and Legislative modifications. I believe Judge Farris will cover that in just a moment. The proposed Advisory Opinion provides guidance on how a mediator should address the issue of signing authority. It supersedes the advice provided in AO 2 and 35, regarding signing authority only.
    - i. If this proposed AO is approved by the full Commission today it will be posted for comment for 30 days per DRC Policy.
  - b. Judge Gorham asked for a Motion. Ms. Morgenstern made a motion to approve proposed AO, B-2020. Ms. Nease Brown seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.
- e. Civil Sub Committee – Judge Farris
  - i. Previous Matters
    - 1. Proposed legislative and rule changes to the MSC Program and Clerk Program prompted by the *Mitchell* case.
      - a. As Judge Knight mentioned, our subcommittees met and discussed the best way to approach signing authority. We propose rule and legislative changes that will allow the agreement to be signed by the parties, of course, or their

designee. It is not a big change it just basically says it can be signed by the party or their designee. And it says that if a party who's otherwise required to be present, doesn't attend, they shall be available through electronic means to sign the agreement. And if they're unable to sign through electronic means the party is responsible for providing written verification that the party's designee has authority to sign on the party's behalf. I think we keep it simple.

- i. If the Commission should approve the proposed rule changes, they will be posted for comment for 30 days per DRC Policy. However, the legislative changes will not be posted for comment but will be provided to the AOC's legislative liaison for inclusion in the AOC's draft agency bill.
    - ii. IF APPROVED - after being posted for 30 days, and brought before the Commission in a future meeting, the goal is to request the Commission adopt the rule changes providing they go into effect after the legislation is amended.
  - b. Judge Gorham asked for a Motion. Mr. Wijewickrama made a motion to approve the changes to the MSC/Clerk Rule 8 and MSC/Clerk Legislation. Ms. Morgenstern seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.
2. Proposal originating out of GDC to allow recipient of notice of grievance to have 30 days from the date of their response to the governing body. MSC/FFS Rule 8, DCC Rule 7.
  - a. This is the proposal that originated out of the grievance and disciplinary committee to allow the party to provide notice to the DRC 30-days after they respond to the governing body. The proposed rule changes to MSC/FFS Rule 8 and DCC Rule 7, approved by the DRC at the December 2, 2020, meeting were posted for comment for 30 days. Staff received two comments.
  - b. The committee reviewed the comments and determined no change to the proposed language was warranted. The committee recommends the DRC adopt the original proposed language.
    - i. If the Commission adopts the proposed language the rules changes will be submitted to the Supreme Court for consideration.
  - c. Judge Gorham asked for a Motion. Ms. Griffith made a motion to adopt the changes to MSC/FFS Rule 8 and DCC

Rule 7. Mr. Nadolski seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.

3. Forms still pending with AOC civil forms subcommittee:
  - a. Revisions to Petition and Order for Relief from Obligation to Pay Mediator's Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306.
  - b. Again, no update on the forms, we are not getting any action on that because things are suspended due to the implementation of eCourts.

ii. New Matters

1. No new matters to discuss.

f. Mediator Certification and Training Committee – Judge Tyson

- i. CME offerings approved since the Commissions August 7, 2020 meeting.
  1. The Committee approved two one-hour CME course from the NCBA Dispute Resolution Section. The course, “Who are you? Pleased to Meet Me” will be a webinar on March 11 – 12 and will be 6- hour program, with Tara teaching the CME portion. This webinar is taking the place of the Section's Annual In-Person Meeting. The committee has recommended approval of two courses, Tara will be one of the speakers. This is not an action item for the Commission.
  2. Ms. Kozlowski- the courses will be available through the NCBA for a fee for CLE/CME credit.
  3. Ms. Robinson – they will also be posted on our website as they will provide CME.

ii. Applications for certification that came before the Committee.

1. Staff received a provisional pre-approval application requesting a waiver of the 5 years' experience in NC. The applicant has been a licensed psychologist in CA for the past 16 years and recently relocated to NC. The applicant maintains her CA license and is now licensed in NC as a psychologist. The committee found the experience gained in CA is equivalent to the DRC's requirement of 5 years' experience in NC and approved the applicants pre-approval request. This is a report item as well and no action is needed.

iii. Previous Matters

1. Based on MSC/FFS Rule 9 adopted amendments. Proposed modifications to DRC 16-hour and 40-hour Training Guidelines under MSC/FFS Rule 9.
  - a. There are pending amendments to Rule 9 with the Supreme Court. On December 2, 2020, the Commission voted to adopt part of the proposed amended language to MSC/FFS Rule 9 to include technical training, the rule amendments are slated to go up to the Supreme Court for consideration later



2. Ms. Kozlowski mentioned we will be looking at the training guidelines in the future as well as how to revert to Rule 4, so expect to review this at the next meeting. We have had a lot of inquiries and interest in the attendance rule over the last few months.
17. Ad Hoc Committee Reports –
    - a. Committee on Long Range Planning – LeAnn Nease Brown
      - i. Online Dispute Resolution.
        1. The next project is to think about online dispute resolution and whether, and how it would fit in, in the long term in North Carolina. We happened to be at a time that our court system is looking at eCourts and we thought it might be a good time for us to try and coordinate. To think about how an online program would fit into the technology that is being created. On December 9<sup>th</sup>, DRC staff and I met with Brad Fowler and Katheryn Hair. Ryan Helms and Andrew Gaudet from the AOC IT group also met with us. We talked about what option would look like to create online programs if that was something the Commission wanted to do, and when and how that might roll out with Tyler and the other providers. The group felt that getting some basic information and doing some research of other programs outside of North Carolina was the first step. This information would provide something meaningful to talk with the Commission about. We prepared a simple survey to send out requesting information on programs from different jurisdictions. We tried to cover survey topics from an IT understanding as well as from a management understanding. Staff has created a master contact list for programs across the country and we're going to be contacting these programs and ask them to complete the survey. Additionally, we are scheduling meetings with the programs that have been successful to understand what they are doing. Once we have gathered all of this information, we will meet with the committee to review and discuss our next steps.
    - b. eCourt Committee – Ms. Greene
      - i. I am continuing to work with the business analysis and process management team, the group configuring Odyssey. We are specifically looking at it relates to mediation programs and how we can assist the court managers to implement the programs to make it a bit easier. This includes all DRC programs and Arbitration. We are trying to incorporate different time standards into the program, to make it easier for the court manager to track these cases. For example, tracking the time in which to issue orders to mediate or court-appoint a mediator. Also, to let court managers know when the deadline to mediate has passed. We're looking at how to ease some of the workload on the court managers from having to manage these cases. You all may find it interesting that, as I understand it, the mediators

will not necessarily have log in access to odyssey, but they will be able to efile their Report of Mediator.

ii. Ms. Kozlowski – I am going to jump in and add some information. Staff has been working with Ryan Helms and Andrew Gaudet with the AOC regarding switching over from our mediator software to Odyssey. It will be an interesting move as much of the Odyssey program is already pre-configured, so we have to squeeze our operations a bit so they will fit into the new software. All 1400 mediators will need to be manually entered into Odyssey. The tricky part for us is that Odyssey Time Standards do not recognize case types, nor differentiate between superior and district court. Therefore, we are working through a few concerns and are hopeful the team will be able to find solutions. We are looking to enter the case into mediation through a triggering Event, rather than trying to do so through Time Standards. We are going to work under our current system this year for renewal period as trying to implement a new system before July 1<sup>st</sup> is not practicable. When we do transfer over to Odyssey, things will look very different. It will be a learning curve, so please let us know if you have any questions.

iii. Discussion:

1. I have a question for Ms. Greene, if I can't login to the system, how will I file the report?

a. Ms. Greene- when I say login, I am referring to access to the behind the scenes system that staff will have be able to access. Mediators will have access just as an attorney to file the reports.

2. Is there going to be any process considered where a mediator will be notified of when they are designated?

a. Ms. Greene– I have not discussed that, but I can certainly bring it up.

3. Ms. Greene- the system itself has different tabs, one of the tabs is called Arbitration. It is a hard-coded tab and would be used to manage both programs. They are looking to see if they can change the title of the tab to ADR. There are 4 options, mediation/mediator/arbitration/arbitrator. I have recommended Mediation as the programs are statewide, and arbitration is not statewide.

4. Once the system is in place, if I am appointed as a mediator will I be able to go into the system to review the court file?

a. Ms. Greene – that has been my understanding that the mediator will be able to access. I will confirm that as things are always changing.

c. Legal Advice Committee – Judge Knight

- i. Nothing to Report. There is no reason to keep this committee active. Judge Knight requested to dissolve the committee.
        - ii. Ms. Kozlowski – when this committee was established, Judge Webb wanted to keep it around just in case something changed. However, there has been no action, so I agree with Judge Knight it should be dissolved. There has been no movement, I don't foresee any movement and we can always re-establish the committee. We just need permission from Chair Gorham to dissolve.
        - iii. Judge Gorham – I give my permission to dissolve the ad hoc Legal Advice Committee.
        - iv. So dissolved.
      - d. Video Observation Committee – David Wijewickrama.
        - i. FFS Observational Video.
          - 1. The Video Observation Committee received an FFS Observation Video created by Ketan Soni and colleagues. The committee reviewed the video and provided feedback to Ketan who is currently working on making edits to ensure compliance with the DRC's observation video requirements. We are hopeful and excited this video will be coming available for our FFS applicants in the near future. We appreciate everything that Ketan and his colleagues have done to donate their time and services to making this production.
          - 2. Comments – I think it is a great video.
          - 3. Ms. Kozlowski- Thank you to Ketan and his whole group for creating the video – and thank you to this committee, it takes a lot of time to review these videos. Mr. Wijewickrama and his team spent a good amount of time watching the video to make the necessary comments, they are doing a great job.
          - 4. Mr. Wijewickrama – I never realized the level of work staff does to prep us, and to cover the feedback. Thank you.
18. Ex Officio Reports –
- a. Mediation Network – Ms. Estle
    - i. The Network had to make some serious changes and had to move to remote to remain safe. It is working well for the centers. My center, we go to Cumberland and Johnston County Courts in person to court to receive cases and then mediate remotely. The Network itself is continuing to work with Medicaid cases and we started a new venture with summary ejection with landlord tenant cases. These are being done by telephone or remotely. We are continuing to move with the times.
  - b. Court Staff – Ms. Greene
    - i. Stats for MSC and FFS.
      - 1. The statistics are in your handout. For the second quarter of the FFS program, from October to December 2020, there was a 68% settlement rate. This is compared to a 63% settlement rate last



quarter and a 71% settlement rate for the second quarter last year. We are getting back up there after the hit from COVID.

2. For the second quarter of the MSC program, there was a 56% settlement rate. This is compared to a 54% settlement rate last quarter and a 60% settlement rate for the second quarter last year. Things are looking up all the way around. The second quarter data, while it is from October to December, it includes any updates that have been added on from July on. We will pull the next quarter in the second week in April and send them to the court managers for review. We are looking to see if the data is consistent with what the court managers were seeing to make sure we are pulling accurate information.
3. Just something I'll mention briefly, it has come to my attention there are a few districts where the FFS program has not been implemented. Just a handful maybe three, I have contacted them to offer my assistance and Tara has offered her assistance as well to implement the program. It is a statewide program, so we are working with those districts.
4. Discussion:
  - a. On the FFS if I look at my district, it says 132 entries, does that mean the number of cases, does that mean 132 cases were ordered into mediation?
    - i. Ms. Greene- yes, it is the number of cases ordered that have also been entered into CaseWise.
  - b. That seems really low, when eCourts happens will that data have to be entered or will the codes be automatic?
    - i. Ms. Greene- our goal is to incorporate all the codes into eCourts and we have been communicating that with the team.
  - c. Ms. Kozlowski- as Ms. Craig described at the last meeting, the numbers are not where they should be as court managers do not have the time to make sure the stats are being entered correctly – they are dealing with how to open up their courts with COVID. When eCourts was first introduced, the DRC provided the AOC with a workflow of all of our programs and a list of data we would like to collect. What I am learning is while they are trying to accommodate our requests, we will not likely be able to pull all the data points we requested. However, we will have access to better stats than we do now.
- c. NC Court Managers Conference – Ms. Craig
  - i. Ms. Kozlwoski- Ms. Craig let me know this morning she was not able to attend, but there was nothing new to report. However, I would like to introduce Justina Tate who will be our new Court Manager Liaison.

- d. Industrial Commission – Mr. Schafer
  - i. Two things to report. First, we have finally completed the process to revise the attendance rule. As many of you know we have a few more hoops to jump through to change a rule and we have finally done that. On February 18<sup>th</sup> we completed the administrative procedure with regard to our attendance rule. We obtained the approval of the Commission and now have a permanent rule that is now in effect. Initially, we had been operating under the emergency rules, then the temporary rules and are now done with the permanent rule making process. Thankfully we are done! The best thing about the new rule is we will not need to go back and recreate the steps when the MSC rule goes back to in person attendance. We crafted our rule in such a way that whenever the DRC and the Supreme Court go back to in-person, the IC will do the same. We are all ready to roll and ready to go back to in person down the line.
  - ii. The other point that I would like to pass on is that we are very fortunate at the IC, most programs have seen a decrease in settlement rates during the pandemic, but we seem to be doing okay. We are over 73 % settlement rate at the settlement conferences and over 77% settlement rate if you include those cases settled prior to mediation conference. I attribute this to our attorneys and our great mediators and the great tools they have access to during this pandemic, like zoom. I am not sure what will happen during the future, but this far settlement rates have remained steady and high.
- e. Court of Appeals – Judge Tyson
  - i. Good morning, most of you know five new judges on the Court of Appeals. Two of them have had previous mediation training. We are continuing the mediation program and trying to get the new judges trained to mediate. We have seen more requests for mediation, both parties have to agree to mediate the case. We have seen a slight increase but again with the shutdown, the number of cases being appealed have been impacted. The program is still available and is doing well. All the judges who mediate do so free of charge. It's an option that is available to try and resolve cases and end the dispute.
- f. Federal Courts – Mr. Laney
  - i. No report.
- g. Legislation – Mr. Laney
  - i. Two older pieces of legislation that we are looking to present to the General Assembly, the court staff seat on the DRC and the immunity clause. They have not been introduced in a bill as of yet but should be soon.
  - ii. Ms. Kozlowski – They have just been introduced in AOC draft agency bill, HB113. We are not noticed when the language goes up, and Maureen found this online by tracking the AOC's movement. We found a typo and have alerted the legislative liaison at the AOC and hopefully it will be corrected.
  - iii. Ms. Robinson – I would like to clarify the additional seat on the DRC is for court management, so a TCA or TCC.

1. Ms. Kozlowski- we left the appointing body for the seat to the discretion of the legislature, and they have determined to make the appointing body the Chief Justice.
    - iv. Two other matters- Ryan Boyce, Deputy Director of the AOC, temporarily stepped into the AOC's legislative liaison. Also, on February 22, Amy Auth joined the AOC team as the new legislative director representing the Judicial Branch. Staff will be working with her as well moving forward.
19. Update on next meeting – Maureen Robinson
  - a. I sent everyone the new logo's, please check your email.
  - b. Also, please make sure you get in your Statement of Economic Interest filed.
  - c. We do not have dates yet for a summer meeting, but we will let you know dates soon.
    - i. I have a copy of the letter from the State Ethics Commission, does it need to be read into the minutes?
      1. Ms. Robinson – no, only the initial letter is read into the minutes, the one you just received was a follow up.
20. Adjournment – Judge Gorham
  - a. Judge Gorham asked for a Motion. Ms. Nease Brown made a motion to adjourn the meeting. Judge Tyson seconded. Discussion? None. Vote- all in favor. None opposed. Motion carried, approved.