



Dispute Resolution Commission Meeting Minutes

**Commission Meeting
Friday, September 30, 2022
10:00 am – 12:50 pm**

Remote Meeting Held Via WebEx due to Hurricane Ian

Commission Members present: Judge Gorham, Charlot Wood, David Niblock, LeAnn Nease Brown, Judge King, Dolph Sumner, David Wijewickrama, Barbara Morgenstern, Frank Laney, Judge Tyson, Zach Bolen, Ketan Soni, Judge Hamilton (joined at 10:16 am) and Ben David (left meeting at 12:13),

With regrets: Justina Tate, Lisa Johnson-Tonkins, and Judge Southern.

Ex Officio: DeShield Greene and Jim Cooley.

Ex Officio with regrets: Diann Seigle, Tammy Nance, and Tina Estle

Staff present: Maureen Robinson, Mary Brooks, and Tara Kozlowski.

The Honorable Judge 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 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
 - a. Welcome to everyone this morning. I appreciate everyone’s ability to move the in-person meeting to remote. As most of you know the weather is picking up and the roads may not be passable at some point today. I really appreciate your patience with this.
 - b. Introduction of reappointed Members of the DRC and new Ex-Officio Members.
 - i. David Wijewickrama has been reappointed by Governor Cooper to serve a second term as a DRC Member, beginning 10/1/22.
 - ii. I have been reappointed by Chief Justice Paul Newby to serve a second term as a DRC Member, beginning 10/1/22 and I have also been asked to serve as Chair of the DRC for two more years, beginning 10/1/22. I am honored.

- iii. Jim Cooley will be serving as the Ex-Officio liaison to the DRC as the chair of the NCBA DR Section.
 - iv. We have just learned the chief justice has named the newly appointed members to the DRC for the 2022 year, and we will introduce the new members once they have cleared the State Ethics Commission. We will not be able to provide service plaques in person to the two individuals who will be rotating off the Commission this year, but they will be delivered through US Mail. I would like to extend our thanks and gratitude to LeAnn Nease Brown and Barbara Morgenstern for their service on the DRC. LeAnn Nease Brown has served this Commission for 6 years and Barbara Morgenstern has served this Commission for the past 3 years. Both have been an incredible asset to the DRC. We do want to thank both of them for their service on the Commission.
 - c. Oaths to Newly Appointed Commissioners
 - i. Unfortunately, we are not able to meet in person and therefore will not be performing oaths for the new members.
 - d. Approval of June 3, 2022, Meeting Minutes.
 - i. Mr. Soni made a motion to approve the June 3, 2022, meeting minutes. Judge Tyson seconded. Discussion: None. Vote - all in favor. None opposed. Motion carried, approved.
 - e. DRC Appeal Hearing.
 - ii. Five Members of the Commission heard a matter on appeal from the Grievance and Disciplinary Committee on August 26, 2022. The Commission was represented by Kathryn Shields, Special Deputy to the Attorney General. The Respondent represented himself. The panel found there was probable cause the mediator was in violation of Standard 3, but that the violation was minor and unintentional. The panel issued the mediator a private letter of warning.
2. Office Report – Ms. Kozlowski
- a. Ms. Kozlowski expressed her disappointment with not being able to meet in person and expressed gratitude for Nease Brown and Morgenstern’s work on the Commission during their tenure.
 - b. Applications/Member Renewal. Renewal has gone very well this year, today is the last day to renew without being hit with a late fee. In about a week, staff will start reaching out to mediators who have not renewed to confirm they wish to lapse. We will have to pull all court appointed lists manually this year due to a glitch in our mediator program.
 - c. Budget. FY 2021-2022 collections for certifications and renewals, plus our legislative carryforward from previous years, totaled \$258,881.00. The accounts have been adjusted and are now interest-bearing accounts.
 - d. Conflict Resolution Day. We are very excited to move forward with Conflict Resolution Day this year on October 20th. We already have a high number of attendees enrolled for the WebEx presentation. Unfortunately, Judge Duryee is not

able to present, but Mark Springfield has graciously offered to take her place as one of our guest panelists.

- i. Question: Who gets the notices for conflict resolution day, and is it only limited to our mediators?
 1. Ms. Kozlowski: We send the invitations out to all certified mediators, the custody mediation group, and our Commission members, but the public is welcome to join.
 2. Ms. Robinson: We also put the invitation on our website, and on our social media sites.
- ii. Discussion: It would be great to include more attorneys who are not mediators, so they understand the process better, and maybe become interested in certifying as a mediator. You just need to click on the invitation link to register, and there is no fee except for the \$3.50 fee collected by the State Bar for CLE credit.
- e. Resetting committees. As we have a number of people rotating off and on to the Commission, I will be resetting the committees.

Judge Lori Hamilton joined the meeting.

3. Committee Reports –

- a. Executive Committee Report – Judge Gorham
 - i. Nothing to Report.
- b. Grievance and Disciplinary Committee – Ms. Nease Brown
 - i. Update on complaint activity. Mediator D, staff complaint for failing to report a pending bar grievance on renewal application. Staff initiated a complaint based on mediator’s alleged failure to accurately report State Bar grievance activity on the DRC’s renewal application. This committee found probable cause that Mediator D failed to accurately report her pending State Bar grievance matter on her certification renewal application for the fiscal years 17-18, 19-20, 20-21, and 21-22. Mediator D did not file an appeal, and a public sanction was issued and has been posted on the DRC website. All appropriate persons have been notified under the DRC Rules.
 - ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff). These are character concerns that have been called to the committee due to what staff has seen on their end. Staff received notice that two mediators, Mediator E and F, allegedly failed to report a pending grievance on their renewal applications for the FY 22-23. Staff has contacted both mediators requesting a response to the allegations. Once the respective responses are received, each matter will be reviewed by the committee.
 - iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff). Staff received an application for certification (Applicant G) in the Family Financial Court Program that fell outside the parameters of the DRC’s policy on good moral conduct. Staff contacted the applicant and requested a response from the applicant

regarding the items of concern. This matter will be reviewed by the committee.

1. Discussion: Question about the need to keep names confidential. Once the committee finds probable cause, and the matter has reached its final resolution, the matter is no longer confidential if the sanction is a public reprimand or higher. It is standard practice for the committee to use letters to avoid accidentally breaching confidentiality. The public sanctions are posted on the DRC website.

c. Mediator Certification and Training Committee – Judge Tyson

- i. Welcome to those joining the Commission and congratulations to our chair for her reappointment.
- ii. CME offerings approved since the Commission's June 2022 meeting. We have approved a number of new CME training courses. Please see the list of approved courses in your agenda, just since June. We carefully look at the proposals for CME, the staff makes a recommendation and the full committee votes. We are happy to provide opportunities to obtain training.
- iii. Previous Matters
 1. Rule 8, making the 12-hour family law basics course a pre-requisite for the 40 and 16-hour training courses, and DRC Compliance Policy.
 - a. Our committee has worked very hard on the rules. At the February 25th meeting, this committee made several recommendations to amend the language in FFS Rule 8. We have been looking at this matter since February. We received several recommendations. All recommendations were approved by the Commission and posted for comment for 30 days. No comments were received. At the June 3rd meeting, the Commission paused on moving forward on 2 of the 5 issues. Those two issues are:
 - b. Upon second review by this committee, we recommend the Commission adopt the amendments to Rule 8(a)(1) to require the 12-hour family law course be a pre-requisite to the 40-hour training course. We also recommend the DRC Policy on FFS clarifying Rule 8 be adopted. The committee made a few amendments to the DRC Policy. We consolidated paragraph 3 and 5 and reduced the number of CLE in paragraph 4 from 12.75 hours to 12 hours. The committee does not feel these policy changes are substantive, and therefore do not need to be posted for comment again.

- c. Ms. Kozlowski: These votes are up for adoption, if the Rule changes are adopted by the Commission today, they will move to the Supreme Court for consideration.
 - d. Judge Tyson asks for further discussion: none. Judge Tyson made a motion to adopt the changes. Ms. Morgenstern seconded. Discussion: None. Vote- all in favor. None opposed. Motion carried, approved.
2. Rule 9, removing family law training from 40-hour mediation training.
- a. There is a proposal to remove the required family law training from the 40-hour course. We began to look at this in September of last year. The proposal came by FFS/MSC trainer, Frank Laney. Judge Tyson called on Frank Laney to explain the proposed rule amendment.
 - b. Mr. Laney: when this came into existence, some family law training was required. It made sense then, as family law requires a base of knowledge. Since then, we have just required 12hours as a pre-requisite before taking the 40-hour training should provide sufficient training in family law. The three hours then becomes redundant. There are two different type of course attendees, either the attendee is a family law lawyer or specialist and those who do not know family law at all. The issue becomes do we pitch it to the specialist, or to the non-family law programs. In all other programs we don't teach substantive law in the 40-hour training. Going through the agenda, I could use that time talking about mediation skills or use the time for role-plays. The family law role plays take more than two hours, so we wrap up quickly and that doesn't happen in real life. I would encourage you to remove this, we can use the time in other places.
 - i. Question: Could a trainer require three hours of family law and teach a separate course? The trainer could financially benefit if they have additional training courses available.
 - ii. Mr. Laney: We could but we require the 12 hours, but yes, we certainly could.
 - iii. Judge Tyson: I want to ask Ketan Soni as he is on the committee and had some concerns, are you satisfied?
 - iv. Mr. Soni: there is no good answer, and this approach is fine. It requires 12 hours in advance, it gives people some idea of what they may encounter. There

are some pitfalls I may turn into a class, but as far as this goes, it works. All concerns have been vetted out and I am content with where we are.

- v. Judge Tyson: the committee met last month, and this recommendation is coming to the full Commission unanimously. Judge Tyson made a motion to move we approve. Ms. Morgenstern seconded. Discussion: None. Vote- all in favor. None opposed. Motion carried, approved.

iv. New Matters

1. Recommendation to amend MSC Rule 8(a)(2)(b) to allow applicants with advanced ADR degree, and five years of experience to qualify for certification. Judge Tyson – Tara, can you please move through the history of this request.
 - a. Ms. Kozlowski: Our society continues to develop, and ADR has become more useful or utilized. We are seeing several universities and colleges offering advanced degrees in ADR programs. We have inquiries from people who obtain an advanced degree in an ADR program, and then discover they need to meet the 10 years of professional work requirement to certify – they are frustrated. Years ago, this committee had discussed the option of allowing an applicant with an advanced degree in conflict resolution to bypass the threshold requirements of the 10 years professional work experience. A similar proposal went before the MCTC in 2017 and was discussed at the May and September DRC meetings that same year. However, the committee declined to move forward on the issue, and it was never presented as a formal vote to the DRC. However, advanced degrees in ADR are becoming more prevalent each year, staff requests this matter be reconsidered. This committee recommends moving forward with the MSC program only at this time.
 - b. The sample proposed language provides the applicant could qualify for MSC certification with a master’s degree or doctorate in Conflict Resolution upon completing the 6-hour legal term course, the 40-hour training, 5 years of professional management experience of an executive nature (in lieu of 10 years), and all other threshold requirements that apply to non-attorney applicants. Only two facilities in NC offer advanced ADR degrees. The Rule would allow a master’s degree or doctorate from any accredited institution.
 - c. If approved by the Commission today, the proposed language will be posted for comment for 30 days and re-

evaluated by the committee before coming back before the Commission for consideration.

d. Judge Tyson moves for the approval of the proposed language to put this matter on the floor for discussion.

Morgenstern seconded. Discussion:

- i. Judge Tyson: this generated a fair amount of discuss with the committee members. One thing we discussed, even with an advanced degree there may not be much legal knowledge. An advanced degree can carry a lot of variation of curriculum and the training that went into that degree. We may get significant comments on this.
- ii. Ms. Kozlowski: we have a 6-hour legal hour course that we require non-attorney applicants to complete. We have kept that requirement in this request, as we are not sure what type of legal knowledge these degrees provide. Maureen did a quick study to determine the programs that are available in NC, there were only three programs currently operating.
- iii. Are there concerns about this delimiter of a closely related field as approved by staff? Does this open a back door- do they have a requisite legal background, the most concern is whether to open a closely related field as approved by Commission staff. I am concerned about whether somebody who has this degree has this requisite legal background, even with the legal term class. Should we delete the language that closely related to field is approved by the Commission staff? Let's see how this works for a period of time, and then revisit whether that would make sense at a later date.
- iv. Clear lines that take interpretation off staff will make things easier.
- v. If we take out the middle section, I recommend we take out the capitals as it denotes a specific degree, which may not exist. Right now, we allow non-lawyers with no legal background to mediate under the Rules. Having a doctorate or master's degree is simply replacing 5 years. 2 or 3 years of active course study is simply replacing 5 years of work. Do we expect someone who works for 5 more years to accumulate legal knowledge? I see this as apples and

oranges as we already have a methodology to incorporate non-attorneys as mediation.

- vi. I agree 100%. I have listened to the discussion to try and understand. We exist to certify mediators. From a general standpoint, the public assumes the mediator is certified and qualified. If I get into a car accident, I go to the hospital I expect to see a doctor who has been medically trained. We expect in superior court, we expect those mediators to be knowledgeable of the law. We need to come up with a process that teaches more than vocabulary. If we are going to certify these people as mediators, they need to understand the complex cases that go into superior court. They need to have the knowledge and experience to get there. If you are going to be an aviator, you have to know how to fly the plane. When we certify, we need to make sure they are capable and able. I want the general public to be confident when we give someone a certification for mediation.
- vii. Judge Tyson – I agree to remove the language suggested by LeAnn and not capitalize. We may need to look at requirements to certify at a later date. Do we want to put this out there for comment?
- viii. Yes, but I think mediators need to have a law degree.
- ix. If you look at the conversation we just had, we are going to remove the family law education from the training. The legal training should not matter if we take a step back and look at just facilitating the conversation. The natural requirements are what they are. I want to send this out to the public.
- x. I respectfully disagree. I don't think it is purely communication. Conflict resolution is helping people solve a problem. This is mandatory. The general public relies on mediators, and the court system relies on mediators – it is their day in court. The mediator is there to untangle the knot and find a resolution. I think we need to have the expertise in both MSC and FFS. I think the mediators should have some experience. Having a good understanding civil procedure definitely helps reduce the learning curve and deal with the issues at hand. From a fairness perspective, the general public looks to us to

provide capable and able mediators. Are the requirements we put forward giving the public capable and able mediators?

- xi. I have to go back to one of the above points. We have always had to certify non-attorney mediators. I am willing to give this a try, with the two changes, let's see how this compares with other mediators who are non-attorneys who have become certified different ways. This ship sailed long before I was on this Commission. I won't pick a mediator who is a non-attorney for one of my cases, but we already allow for non-attorney mediators in our rules. I am not advocating for this position. I am just saying where we are on this.
- xii. It would be problematic to limit non-attorneys from being able to become mediators. I agree to remove discretion given to staff and to remove capitals. I can't fundamentally agree to require mediators be a lawyer, it would be seen as hoarding this industry.
- xiii. I would invite you to join me in a contempt hearing where people are fighting over documents that are unenforceable.
- xiv. Ms. Kozlowski: Please be mindful mediators are not allowed to provide legal advice. They are there to facilitate a conversation between the parties and find a solution to the issue(s) at hand. Yes, problems arise, but we have few non-attorney mediators.
- xv. Let the market work itself out.
- xvi. Judge Tyson – two recommendations have been made, take away staff discretion and remove the capital letter from ADR programs. I support both amendments. I would accept both changes as friendly amendments.
- xvii. Judge Tyson made a motion with both amendments. Mr. Laney seconded. All in favor- Judge Gorham, Wood, Niblock, Nease Brown, Judge King, Sumner, Morgenstern, Laney, Judge Tyson, Bolen, Soni, Judge Hamilton and Ben David.
 - 1. David Wijewickrama opposes.
 - 2. Motion carries, approved.

d. 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.
 2. The forms are still on hold with the AOC.
- ii. New Matters
 1. Staff received an inquiry from Wade Harrison about amending Rule 53 of the Rules of Civil Procedure. Staff's initial concern was that the first draft of proposed language included at the end of the paragraph a sentence that said issues related to child custody shall not be referred until the parties have completed the mandatory child custody and visitation mediation as required by the statute. Staff was concerned that it didn't address family financial mediation, and this could be interpreted as supplanting or replacing other requirements with regard to mediation. After a lot of discussion and proposals between myself, Tara, and Ketan, we settled on the language here. We think this covers the issue and makes clear any obligations to mediate remain in place.
 - a. Ms. Kozlowski: I will leave it to you all to determine if you want to support this or take a vote. Mr. Harrison is seeking approval from various stakeholder groups and is allowing all groups to weigh in on the proposal.
 - b. I realize from time to time we do things with legislation, but that only deals with things we are implementing. If we do anything, in the event that this bill goes forward, this language would be the most appropriate. I don't want to go down the slippery slope unless it directly affects our legislation.
 - c. I think that is consistent with what we are suggesting to Mr. Harrison, that the proposed language helps to preserve the mediation process.
 - d. If we want to support this legislation, does it need to go to the DR council? To make sure what we are pushing is consistent. This is a procedural question. But I agree we should not go out there and push.
 - e. We should affirm that we did a courtesy review of the language, this language will help protect the integrity of family law.
 - f. This came up a year ago, and there were concerns expressed as to how this would interplay with the custody and FFS program. Mr. Harrison was clear this was a secondary option for parties. Mr. Harrison presented this language at the Family Court meeting last month, but there is no

opposition. He is necessarily looking for support but just doing due diligence.

g. All agreed to confirm the language will help protect the integrity of family law and the mediation process.

2. Updating forms to allow for email service under Rules of Civil Procedure, Rule 5. We have received a request to include service by email on our forms, under the Rules of Civil Procedure, Rule 5. Staff contacted the AOC's forms committee and was informed they were trying to eliminate personal identifying information on all forms and was directed to AOC legal. AOC legal confirmed the information could, and should, be available on the form if they are served by email. However, the Chair of the AOC's Civil Forms Group is hesitant to include email information as the forms will become cumbersome. Staff placed this matter on hold after completing an eCourts training on efilings, where the registered user can click a button to have the forms served via email. Staff reached out to an AOC systems analyst working on the implementation of Odyssey to see if this would satisfy Rule 5. If eCourts will be serving documents via email, there may not be a need to update the forms.

e. Standards and Advisory Opinions Committee Report – Ms. Morgenstern

i. Previous Matters

1. At the June 3rd Commission meeting, this Commission approved the proposed AO, A-22. Found on page 34 of your packet. The proposed AO covers the prohibition of recording the mediation, which includes a prohibition on retrieving metadata if the mediation was held via remote technology. The AO was posted for comment for 30 days, closing on July 11, 2022. We received a few comments on the AO, including additional comments by staff relating to the second comment received. The committee reviewed all comments and makes a recommendation to the Commission to adopt the revised AO, A-22 on page 38 of your packet. The committee does not feel the revisions were substantive and therefore do not warrant the AO to be re-posted. If adopted, AO, A-22 would become DRC AO 43(2022).

a. Ms. Morgenstern made a motion to adopt AO-22 with amendments. Mr. Sumner seconded. Discussion: Comment about moving this matter through the State Bar as they are also dealing with this issue. Vote- all in favor. None opposed. Motion carried, approved.

2. Ability to Draft Certain Provisions of an Agreement to Mediate.

a. The committee also discussed a matter that has been brought to staff's attention. What items may a mediator include in

their Agreement to Mediate? Can the Agreement include a clause prohibiting the mediator's ability to testify in court, or a confidentiality clause between the parties, without violating the NC State Bar 2012 Formal Ethics Opinion 2? AO 29 provides the mediator is under a duty to define and describe confidentiality and inadmissibility, but they may not provide a legal interpretation of these concepts. The parties are encouraged to enter into a confidentiality agreement between themselves as Standard 3 only applies to the mediator. AO 30 reminds the mediator the protections provided to the mediator regarding testimony or producing evidence under NCGS 7A-38.1(l) do not apply to voluntary mediations. AO 30 encourages the parties to request a court to order the mediation or enter into an agreement that the mediation will be governed by that statute and the MSC Rules if they want those protections to apply. We have learned there are several mediators who are questioning what language they can or cannot insert into their Agreement to Mediate for pro se parties. Sarah Kromer, past chair for the NCBA DR Section reached out to the State Bar and received an informal opinion stating the mediator may include the language in the Agreement to Mediate as the terms agreed upon control the mediation. After multiple calls between Ms. Kromer, DRC staff and attorneys with the State Bar, the following items have been clarified.

- i. You don't have to be a lawyer to offer service under basic conditions, therefore it is permissible for a mediator to offer a basic service contract to the parties.
- ii. The mediator may not create contract rights between the two parties. This is considered practicing law and would have to be done independent to the mediator. Creating a right of action between the parties is more than offering them a service agreement.
- iii. The question became if sample language can be made available, and if so on what platform?
- iv. Can sample forms be made that would provide for this language, similar to real estate forms? The parties have a unified goal of contracting what rules will govern the mediation. The mediator may always suggest the mediation may be conducted under the MSC or FFS Rules and provide this language in the Agreement to Mediate.

The State Bar ethics attorneys will be presenting this issue to the subcommittee meeting on October 20th to request a formal ethics opinion on the matter.

- b. Discussion. Ms. Kozlowski - historically the Commission has taken a strong position on the mediator's inability to draft a confidentiality provision between the parties prior to the mediation. Working with the State Bar, we are trying to provide access to justice for those individuals who may not have the resources to hire an attorney to draft a contract so the parties can enter mediation. One workaround is boiler plate language, but the question becomes where to house the language. A second idea that was proposed was to create forms that include the language similar to real estate forms. Parties in a real estate transaction have a unified goal and are not necessarily adversarial. Parties that are mediating are adversarial about the cause of action being mediated but are unified in the terms they would be mediating under.
- c. Comment: The Workers' Compensation website has a form on their website that we use. The form is used for every mediation. We amend the form at times. Sometimes the firms make amendments to the form. Kozlowski - Does the form provide for confidentiality? No, there is some rule that if you include confidentiality then the funds become taxable. Most do a separate release to the MSA for the confidentiality.
- d. I was going to encourage the committee, once the State Bar gets its head around this issue, it would be helpful to have a standard saying here is what you can do and here is what you can't do.
- e. I want to clarify, the Industrial Commission and the use of forms. The mediator may help the parties fill out forms, but it was a draft that is sent to the attorneys on both sides for the attorneys to review. Mediators do end up drafting the Industrial Commission's form. We check the boxes and write in positions on how fees will be paid. The mediator does draft provisions, then sends it off to parties to make sure it is accurately discussed. All drafts are approved by lawyers.

ii. New Matters

- 1. Request to modify Standard 7. Conflicts of Interest of the Standards of Conduct for Professional Mediators. Staff received a request from a mediator to modify Standard 7 to allow attorney mediators to represent one of the parties after the mediation for the limited

purpose of drafting the final agreement. The State Bar will allow an attorney to mediate a case and subsequently represent one of the parties if all parties consent. However, the Standards of Conduct prohibit a mediator from acting as an attorney for one of the parties after a mediation if the matter is out of the same cause of action. Staff raised a lot of good questions and concerns about this issue. The committee discussed this matter, and unanimously voted to deny the mediator's request. However, the committee felt the request was noteworthy and wanted to bring the issue to the full Commission for discussion. The floor is open for discussion.

- a. Discussion: Originally, I agreed this sounded great. I sat and talked with staff about the nuances and the problems this would create. The details would make this difficult. We had trouble defining the question, when does the mediation end. Does the mediator negotiate for that party? The mediation is over? If the process worked perfectly, this would be great. If anything went wrong – it would be a hot mess.
- b. Ms. Kozlowski- This just makes me nervous as how we would even regulate the issues.
- c. Is there any requirement for the mediator to carry malpractice insurance? No. The Mediated Settlement Agreement (MSA) that we fill out when we settle the case isn't enforceable. The lawyers go back and draft a more formal document. The judge does not see the MSA. Nothing we do will be more than a \$100 fee.
- d. Even if a mediator is sued, they are not able to testify about what happened in a mediation. Mediators are a scrivener on those forms. There is a difference, you were just writing down the amount and not drafting the agreement.
- e. All agree to decline the request to modify the standard.
- f. Ms. Kozlowski- I will reach out to the mediator who requested the info, let her know the committee declined, the full Commission also declined to take on this request after a hearty discussion.
- g. The request made to modify this Standard includes a comment that they believe the family law section will be in favor of this change. I will take this through the family law section to see if I can get their input on this matter. They may feel differently as they work with pro se parties frequently.
- h. There is always a fine line between filling in blanks and drafting documents. There is a lot of pressure to provide access to justice. It is a fine line. Mediators are reporting a conclusion on the report of mediator form. I am not in favor

of changing the Rule, but there is a lot of interest in making legal services more available. There is a lot of tension.

f. Criminal Sub Committee – Benjamin David/Tina Estle

i. Mr. David - Update on progress to revive the District Criminal Court program. Thank you, madam chair, and everyone. The Committee has created an agreed upon draft of Proposed Pilot Rules and legislation for the DCC program. You can review the proposed documents on pages 44 and 58, respectively, of your packet. I can tell you someone who has been a prosecutor for the past 23 years, and a DA for the past 18 I can tell you mediators are indispensable in our district. We are eager to participate in this as a pilot. I have prevailed upon my colleagues in the state to participate in the pilot. We want to be geographically and politically diverse. I will be meeting with all of my colleagues in two weeks at our annual conference and hope to gain further interest in the pilot program. Staff is meeting with the Mediation Network of NC's centers on October 4th and has also provided a copy to Justina Tate and Jamie Richardson, court managers, to obtain their perspective on implementation of the program at a court level. Once the Rules have been properly vetted with the stakeholders, we'll be meeting with the AOC for next steps.

1. Discussion: Ms. Kozlowski- we have also been working with Jody Minor, Director of the Mediation Network. We have sent the draft documents to all community mediation centers in NC, and the Director of the DA's Conference. DRC staff met with Ryan Boyce and two of the AOC's legislative liaisons yesterday to discuss this project. Everyone appears to be fond of the program. Mr. Boyce let us know we need to provide a funding request to the AOC before November 10th to consider being included in the AOC's general funding request.
2. Question: I have a question about language moving from "may" to "shall". These are independent centers who will be operating in the different districts. If they participate, then what they do would be mandatory. We are looking for DA's that want to retain discretion in concert with their chief regarding the types of cases that go into mediation. One of the things we are really going for is the requirement for certification.
3. Ms. Kozlowski – currently we have an opt in program, and we wanted to move it to opt out. The pilot is a specific to the participating centers. The DA's have the ability to select the cases that enter mediation, and the center will have the ability to remove the case from mediation as well.
4. My concern is Rule 2, which states that under the statute a community mediation center shall assist the judicial district in administrating and operating its mediation program for criminal

matters in district court. I don't think our Rules can require a private entity must participate. It is the "shall" in that one sentence that I have a concern about.

5. Ms. Kozlowski- we are not requiring all 22 centers to participate in this program. We can take a look at that sentence and move it back to "may". The goal is to allow the centers to participate at their discretion.
 6. This is a pilot, only for participating centers and districts. The center is opting into to the pilot to provide services. This pilot changes the funding from \$60 paid by one party to the state paying \$100 for each case. The centers will send a bill to the state.
 7. How about changing the sentence to "a center who has agreed to participate in this pilot program shall assist ..."? Perfect! It was literally that one sentence – this modification works perfectly.
 8. Kozlowski- we will make that change.
- ii. New Matters
 1. None.
- g. New Media Committee – Mr. Soni
 - i. Updates to website.
 - ii. Social Media Presence. Staff continues to update the website and post on Twitter and Linked In. They have provided information on Conflict Resolution Day, links to other programs that use DRC certified mediators, and have created a podcast for the *All Things Judicial* Podcast. The Podcast will air in the beginning of October to celebrate Conflict Resolution Week and features an interview with Judge Tyson.
4. Ad Hoc Committee Reports –
 - a. Ad Hoc Attendance Review Committee – Mr. Soni
Judge Tyson, Ben David – not in attendance.
 - i. Proposed Amendments to the Attendance Rules. At the June 3rd DRC meeting, we agreed the attendance committee would send out our final draft of the proposed attendance Rule language via email for a vote to approve the draft. Our committee met on June 21 and finalized the proposed language. To boil it down. Mediators and parties can always mutually agree to attend the conference, in person or remote, by agreement of everybody. If the parties don't agree with the mediator, whatever the mediator has elected on the DRC site is the default method. We now have on the website, a way for the mediator to designate if they will only accept remote cases, if they will only do in person cases, or both. Then whatever the mediator has elected will be the default, and if the mediator will do both methods in person will be the default. There are provisions in the Rule saying we are all going to apply to the safety guidelines. We also have comments about the recommendation to appearing by video and making sure staff sent the draft language via email to the full Commission for a vote.

1. Ms. Kozlowski- On June 21st, the following DRC Members voted to approve the language: Ms. Johnston-Tonkins, Mr. Sumner, Mr. Bolen, Ms. Morgenstern, Judge Gorham, Ms. Wood, Mr. David, Judge Southern, Judge King, Ms. Tate, Mr. Soni, Judge Tyson, Mr. Laney, Mr. Niblock, Judge Hamilton. Motion Carried. The rules were posted for comment for 30 days, closing on July 25, 2022. We received 7 comments. The committee met on August 4th to consider the proposed Rules and the comments received. The committee voted 8-0 to adopt the proposed Rules with the recommended revisions on page 73 of your packet. The committee recommends the Commission adopt the proposed language beginning on page 74 of your packet. The modifications made to the original proposal are non-substantive and therefore the Rule will not need to be posted for comment.
 2. One of the concerns raised was for pro se parties who receive a court-appointed mediator, and the parties are not tech savvy. The parties may request the mediator to withdraw if the parties do not want to mediate under the mediators chose method.
 3. This is a court proceeding and everyone has the right to attend the proceeding in person. If the party wants to actualize that right, they may do so by selecting a mediator who will conduct in person mediations.
 4. Mr. Soni made a motion to adopt the proposed attendance language. Ms. Morgenstern seconded. No discussion. Vote – all in favor, none opposed. Motion carried. Adopted.
- b. Committee on Long Range Planning – Ms. Nease Brown
- i. I want to thank everyone who I have been privileged to serve with on this Commission. It has been a wonderful time and I have loved the discussions and I have loved the collective brilliance that I think we see from the members on the Commission when we get together and talk about issues. Nothing to Report.
- c. eCourt Committee – Ms. Greene
- i. Nothing to report on the subcommittee. We have not had a need to meet but I can give a brief report on eCourts. The deployment of Odyssey was supposed to go live in the pilot counties in October, but that has been delayed. There are concerns the system cannot do what we need it to do. We do not want to roll it out until we have confidence it will do what we need, and we don't have a future scheduled date at this point. We have had some training that is being offered both virtual training and onsite training. There is a page on the website showing all training, it shows what the public portal will look like, and the page has updates on where we are on eCourts.
- Judge Tyson returned to the meeting.
- d. Video Observation Committee – Mr. Wijewickrama.

- i. Nothing to Report. Happy to be on the Commission for three more years.
- 5. Ex Officio and Other Organization Reports.
 - a. Mediation Network – Ms. Estle
 - i. Kozlowski: Ms. Estle is not on the call today, but I can share that the Network is excited about the pilot dcc program – they are currently vetting and reviewing the draft documents. The Network is meeting with DRC staff on Tuesday to review the documents together.
 - b. Court Staff – Ms. Greene
 - i. Stats for MSC, FFS, and ARB. Page 81, 83, and 85. The fiscal year 21-22 reporting of the settlement conferences and settlement rates. 4th quarter FFS 74%, this is on par with last quarter which was 75%. For MSC we have a settlement rate of 62%, this is pretty standard, it was 61% for the last quarter. Arbitration, for those interested, we had about 4300 cases ordered. This is not a statewide program, only 73 counties have this program. 2200 cases were arbitrated and 865 were dismissed before the hearing. We will pull stats again in October.
 - ii. Prior year stats FY 15-16 through FY 21-22. At the June meeting, David Wijewickrama requested to look at the prior settlement rates. The fun chart in your handout tracks the trends of fiscal years for settlement rates. This shows the trends from 2015-16 to the current year. Over the last few years both programs have seen a slight increase in the settlement rate. We do not have statistics for the Clerk program, it is largely underused. Only 4 counties reported settlement rates for this program.
 - c. NC Court Managers Conference – Ms. Tate
 - i. Ms. Kozlowski - Ms. Tate is not on the call today. Ms. Greene, I can fill in for her as we work closely together. Tara and Maureen will be speaking at the Court Managers Conference in November. They will discuss common pitfalls in mediation. The court managers are excited for this program.
 - d. Industrial Commission – Ms. Nance
 - i. Ms. Kozlowski – Ms. Nance was not able to join us today.
 - e. Court of Appeals – Judge Tyson.
 - i. Normally when this item comes up on the agenda, I try to grab statistics to provide a report. However, we had a court conference last week and I have included the report in today's packet. We have two new judges who have completed their mediation training. We have 7 judges who are providing mediation. We want more judges to mediate cases, a lot of the judges are doing other committee assignments. In 2021, there were 10 cases that were mediated together. They were disposed of in one mediation, this is rare and skews the statistics. We are consistent with the number of cases that go into mediation, 30 last year to 20 this year. The judges mediate for free; they receive a \$400 per diem per day. This is a service we offer to the public. We are limited in what we can do, we are not able to provide legal advice. Last year we had a settlement rate of 68% and this year our settlement rate

is 52%. The program was established about 10 years ago and is still very active.

- ii. Question: When you do these appeals in mediation do you receive a copy of the record? Tyson – we have a document that goes out to the parties, where both parties must agree to participate in the mediation. When we get the cases early in the process the settlement rate is much better. I have settled 17 of my 18 cases.
- iii. Ms. Kozlowski – just to let you all know, Judge Tyson was kind enough to join us here at the AOC for an interview for the *All Things Judicial* Podcast. It will be released next week. The first half of the podcast is the interview with Judge Tyson, and the second half is staff talking about sticky situations in mediation.

f. NCBA Dispute Resolution Section – Mr. Cooley

- i. Thank you – I learned a lot this morning, thank you for having the opportunity to be with you today. Tara and Maureen have provided a wonderful service to the members of our section. We have been busy since June. Our race and equity committee has been hard at work with a program called “Try Someone New”. This program is aimed at increasing opportunities for dispute resolution professionals of color. We have been working to provide pro bono and low bono services. They have been active in surveying mediators around the state and to facilitate opportunities. You have already heard the work that our ethics and practice committee has been doing with Tara and the State Bar. We are planning a series of regional meetings, trying to get small groups to work in person, I am sorry we could not meet in person today. We need to keep working toward meeting in person. We are making progress on our long-range planning task force. The main topic I want to mention is that we have been making progress on our long-range planning task force. We have surveyed the council of the DR Section, we have strong support for thought leadership task forces in several areas. For example, what have we learned from COVID, another one is exploring the new world of dispute resolution concepts of pre-litigation dispute prevention and the role of online dispute resolution. We want to look at continuing relationship mediation, that is dealing with both profit and non-profit, that are facing significant internal conflict. How can we use mediation services to help those people? Working with Ketan and the Family Law Section, we hope to do a study of whether there are areas of potential dispute resolution in the family law areas that have not been addressed. I am working on a survey to determine how many section members are interested in pursuing this kind of thought leadership about the future. In particular I want to find out how many of them are willing to put some skin in the game, to get us looking at some of these important issues. Thank you for the support the Commission provides for us. I am open to questions and suggestions from anyone on the topics just mentioned.

- g. Legislation – Mr. Laney
 - i. I am not aware of anything pending at the legislature, there is language coming out of criminal subcommittee that is pending but that will be handled by the AOC staff.
- 6. Update on next meeting – Maureen Robinson
 - a. It has been a pleasure working with LeAnn and Barbara. Our next meeting will be the end of January in person – if weather is not cooperating, we will move to remote. I will get an email out next week to see which dates work best. We are hoping to have a retreat next spring. We will follow up with you all as quickly as possible.
- 7. Adjournment – Judge Gorham
 - a. Mr. Laney made a motion to adjourn the meeting. Ms. Morgenstern seconded. No discussion. Vote – all in favor, none opposed. Motion carried. Adopted.



Dispute Resolution Commission Meeting Minutes

**Commission Meeting
Friday, June 3, 2022
8:30 am**

Remote Meeting Held Via WebEx

Commission Members present: Judge Gorham, Judge Tyson, LeAnn Nease Brown, Frank Laney, Charlot Wood, Zach Bolen, David Wijewickrama, Ketan Soni (8:30 am – 9:29 am), Barbara Morgenstern, Judge Hamilton (8:30 am – 9:31 am), Judge King, David Niblock (8:30 am – 9:56 am) and Justina Tate.

With regrets: Judge Southern, Dolph Sumner, Benjamin David, and Lisa Johnson-Tonkins.

Ex Officio Members present: Tina Estle, Tammy Nance, DeShield Greene, Diann Seigle (9:09 am – 10:15 am).

Ex Officio with regrets: Sarah Kromer.

Guests: Jim Cooley on behalf of Sarah Kromer.

Staff present: Tara Kozlowski, Maureen Robinson, Mary Brooks.

The Honorable Judge 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.

8. Welcome and Announcements – Judge Gorham
 - a. Welcome. Good morning, it is good to see you all hear. We are going to get started and run through some things quickly.
 - b. Introduction of newly appointed DRC Member and Ex-Officio Member.
 - i. H. David Niblock is an attorney/mediator with Craige, Jenkins, Liipfert & Walker in Winston-Salem. David was appointed by Chief Justice Newby in April to replace the seat held by retired Judge Rebecca Knight, as Judge Knight relocated to TN. David, please introduce yourself.

1. David Niblock: I am honored to be a part of this group and I look forward to working with you.
 - ii. Diann Seigle, former two-time DRC Member, has been invited to serve as an ex-officio member based on her ties to mediation in several NC mediation programs. Diann is not on the call yet this morning.
 - iii. Judge Lori Hamilton, and Judge Toni King are on the call this morning. They were “active” in October, but not able to attend the Nov or Feb meeting. We also have, Justina Tate on the call, she became a DRC Member earlier this year, but was not on the Feb meeting when introductions were made.
 1. Judge Hamilton: Good morning, I am a resident Superior Court Judge in Davie County and I’m happy to be part of the Dispute Resolution Commission. Thank you for having me.
 2. Judge King: Good morning everyone, I am the Chief District Court Judge in Cumberland County in Fayetteville. It is a pleasure to be here, and I look forward to working with all of you.
 3. Justina Tate was on the call but having trouble with her audio.
 - c. We have one Member who has resigned her seat on the Commission. Debra Griffiths was in her second term on the DRC resigned in March as she took a new position with the General Assembly.
 - d. Recognition of Service.
 - i. Judge Knight and Debra Griffiths were both provided a plaque from the DRC thanking them for their years of service.
 - e. Approval of February 25, 2022, Meeting Minutes.
 - i. Ms. Morgenstern made a motion to approve the February 25, 2022, meeting minutes. Ms. Wood seconded. Discussion: One change requested to correct a typo, from Bryson County to Bryson City. Vote – all in favor. None opposed. Motion carried. Approved.
9. Ad Hoc Committee Reports
 - a. Attendance Committee – Ketan Soni
 - i. We have proposed language in the meeting packet. As a quick background, last year we were tasked with three things. One was to determine the remote attendance rule, number two was to talk about the pilot remote training program and number three was to deal with remote observations. We have dealt with the training and observations, leaving the big issue of attendance. We have had some good discussions over multiple meetings. We are proposing to leave the decision about how to do things in the hands of the mediator. The issue that is raised in general when it comes to attendance is what if there is a conflict between how one party wants to attend versus the other. We did not want to leave the decision making in the hands of the mediator because that may impinge upon neutrality. This draft is an attempt to address that issue in a way that allows the mediator to have some choice and also provide a default rule for each mediation. We started with the definitions and the fact that the parties and media collectively can always

agree on some other method to mediate, but if they can't agree the mediator now has the opportunity to elect their default method. On the NCDRC website, there is a section where each mediator can select "I do remote", "I do in person", or "I do both" methods of mediation. Then if the parties do not agree on the method, whatever is listed on the website for the mediator will be the default method. This leaves the mediator out of the decision-making process for each individual mediation. Mediators have the opportunity to change that designation at any time just by visiting the website. We added language that allows the mediator to withdraw from the case if the presiding judge orders the mediation to be conducted in a method contrary to the mediators selection. We have put a lot of thought into this. This is a broad overview, and we would love to hear comments.

ii. Kozlowski: We have had a couple of recommendations on the proposed language. One is to clarify if a mediator changes their election, they are still bound to hold the mediation in the method that was listed at the time the mediator was designated or appointed to the case. I worked on inserting the language into the rules, and it doesn't read well. The committee didn't have time to review this, and we need to consider other recommendations such as using the word "elected" to avoid confusion with being designated. Maureen reviewed the suggestions and discovered we need to clarify rule 2(c), the mediator information directory paragraph. If we look at 2(c) in correlation with Rule 4, we could use the word "declared" instead of "elected". If you all want to move with this, that is fine, but I would like to make sure we are not drafting in vain.

iii. Discussion:

1. I am on the committee and am in favor of this.
2. This is a good path for everybody. If folks know before, and have a choice before, that is fair.
3. That is the goal, everyone can choose in advance.
4. A concern was the mediators won't know or go to the website to make the election. But if you all get appointed and have to do something they don't want to do, they will quickly correct the situation. These issues will work themselves out.
5. Maureen: I have included in the renewal notice to correct this in their application and make a selection under the keyword search.
6. We are transitioning to odyssey in some point, and there is a block that prohibits us from changing our platform. This is the best option with the technology we have to work with.
7. The last sentence that all attendees shall comply with our federal, state, and local safety guidelines that are in place at the time of the mediation is designed to give you an outlet if something changed and we had to go back to remote. We may want to say out loud that

if the guidelines require an alternate method, that method will be followed.

8. We had a question about the footnote at the bottom of the proposed rule. We intend to list this as a comment within the Rules. We did not feel we could force attending by video conference but want to encourage attending by video. We are also trying to avoid another Advisory Opinion being issued.
9. You can also address the issue about following safety guidelines and alternate methods in the comments.
 - iv. Soni: If you all think we are going in the wrong direction raise your hand. No hands were raised.
 - v. Gorham: Do you all want to vote then or take this back to the committee?
 - vi. Soni: It sounds like we are on the right track and just need to tweak the language a little.
 - vii. Kozlowski: Yes, if we are on track, we can modify the language and vote by email. The proposed language will then be posted for 30 days, where we can discuss at our next meeting which will be in person.
 1. All Members Agreed.
 - viii. Soni: This committee has done a lot of work, research, polls, evaluations, there are outside members on the committee, and everyone has done an incredible amount of work.
10. Committee Reports
 - a. New Media Report – Ketan Soni
 - i. Maureen is awesome and she is posting information on twitter and on the website.
11. Office Report – Ms. Kozlowski
 - a. State Ethics Commission Report on Newly Appointed Commissioner.
 - i. Mr. H. David Niblock, appointed by the Chief Justice of the Supreme Court, Paul Newby, has completed his SEI. 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.”
 - b. Applications/Member Renewal.
 - i. We are gearing up for the renewal period beginning in July. Maureen will begin sending out reminders for mediators to ensure they accurately complete their renewal application between July and September 30th. We will make sure mediators know they are able to elect their preferred method. This will be putting the world on notice as there is no rule regarding selected methods at this time.
 - ii. Applications continue to come in keeping Mary on her toes.
 - c. Budget.
 - i. We began the year with a surplus of \$258,882.00 in our account. As of April 30, we have a positive balance of \$345,956.

- ii. The trademark application was filed with the US Patent and Trademark Office on March 9, 2022. The DRC's \$5,200.00 invoice for legal services, received from Coates and Bennett for trademark work, was paid by the AOC on March 11 but assigned to the wrong account. Upon discovery, we notified the AOC, the accounting was corrected, and the paid invoice will reflect on our May budget report.
 - iii. New computers have been ordered. Staff would like to thank Members for responding to staff's April 21st email requesting new computers at the recommendation of our IT dept. We received 10 email votes to regarding the purchase of the equipment at an approximate cost of \$5757.00. 10 votes met our requirement for a quorum, where we received unanimous approval. The computers have been ordered We hope they will arrive by June.
- d. Conflict Resolution Day.
- i. We are looking to Conflict Resolution Day 2022. Staff has been in communication with the AOC's Custody Mediation Manager, Stephanie Smith, and the upcoming chair for the NCBA DR Section, Jim Cooley. I would like to request funds in the amount up to \$5000.00 to secure a speaker, if needed. We have not decided on in-person, remote, or hybrid conference. This will largely depend on the key-note speaker's preference and the AOC's technological abilities.
 - 1. We will invite the Chief and Governor to say a few words during the lunch break, among other distinguished guests.
 - ii. The State Bar is currently reevaluating their CLE Rules, and it looks like they will begin to charge a flat fee to sponsors when they apply to host a program. I have been in communication with Peter Bolac with the State Bar and while the fees are not set, he anticipates the fee for an hour CLE that is offered at no charge to the participants will be approximately \$25/hour. I would appreciate knowing if you all are comfortable with the DRC spending funds to provide courses throughout the year, specifically the 2-hours of CLE/CME we provide on Conflict Resolution Day. Offering CLE credit is a big draw for our programs, last year I think we had about 350 people attend the courses offered by the DRC.
 - iii. Discussion:
 - 1. There are a lot of changes to the CLE Rules, the most recent addition is listed in the State Bar Journal. I do a lot of free CLE on my own so I am curious to see how this plays out.
 - 2. Kozlowski: To clarify. If the sponsor is going to charge a fee to the participants, the \$25 application fee may be higher. The estimated \$25 fee is for courses that will be offer at no cost to participants.
 - 3. The Rule is open for comment, it is on the State Bar website. there are a lot of charges. Have we estimated a cost for this as a budget item?

4. Kozlowski: We are looking at about \$50 - \$100 per year for the DRC.
 5. What happens with CLE that are links on our website, are we able to post those courses and have to be responsible for those costs? I am not sure they have thought that deep into the weeds, but that could come back and be difficult for sponsors trying to help people out.
 6. Kozlowski: The courses we have on our website, and only offer CLE on any courses that are on the website, we only offer CLE for live courses. There are sponsors that offer courses with CLE, and we simply provide links to their websites. It is a great idea to follow this and make sure we are not assuming any liability for fees by providing these links. The State Bar was very responsive to my inquiry and answered my questions in a few days, I encourage you all to take a look at the proposed changes.
 7. We may need to look to see if this will impact our CME program. They are changing the timing to allow for 36 hours every three years instead of 12 years annually. It puts us out of balance of what we require and what CLE requires. Nothing to do now but something to think about.
 8. Kozlowski: The Mediation Certification and Training Committee will keep this on their radar.
 9. Tyson: There are a lot of changes coming, and we are going to keep this on our watch list. If this issue is affecting you, we all have a duty to speak up. The law schools are also taking a look at the proposed changes.
 10. As a trainer, I have been in contact with the State Bar as well, as the mediation trainers may remove the CLE credit. When we only have 6 or 7 people in the class, we cannot afford \$50/40 hours. With a flat rate from the State Bar, it will make the course very hard to provide economically.
 11. This is going to impact all providers. This does not seem to have been fully thought through as to the changes this will produce. It is an interesting change. I believe they are trying to avoid billing attorneys and it is a large administrative piece. From a CME perspective, it is in good hands with Judge Tyson's committee.
- e. We have recently sent out an email educating our certified mediators of the different mediation programs they are eligible to mediate for by being a DRC certified mediator. We have also created a link on our website that will take people to different organizations that use DRC certified mediators to mediate in their programs.

- f. Judge Gorham asked for a motion to approve CME speaker funds up to \$5000 for conflict resolution day. Mr. Laney made the motion. Judge Tyson seconded. Vote – All in favor. None opposed. Motion Carried. Approved.
 - g. Judge Gorham asked for a motion to table the issue of the CLE costs. Ms. Nease Brown made the motion, this is still in the comment stage. Judge Gorham tabled the item.
12. Committee Reports Continued
- a. Executive Committee Report – Judge Gorham.
 - i. Nothing to Report.
 - b. Grievance and Disciplinary Committee – Mrs. Nease Brown
 - i. I have taken over the chairmanship of this committee as Debra Griffiths has stepped down. I am filling big shoes.
 - ii. Update on complaint activity.
 - 1. The committee found probable cause of violations of the Standards of Conduct against Mediator B.
 - a. Staff received a complaint against Mediator B, alleging multiple violations of the Standards of Professional Conduct, on January 4, 2022. This committee found probable cause the mediator did violate the Standards of Professional Conduct for Mediators, Standard 2, 3, 4, & 8. The committee determined to issue the mediator a public admonishment under DRC Rule 9(e)(13)(2). The Mediator acknowledged receipt of the notice and has appealed the committee’s decision. The appeal hearing will be held on Friday, August 26th at the Judicial Center in Raleigh. Kathryn Shields from the Attorney General’s office will be representing the DRC in this matter, which is the practice at this stage of the process. All Commission Members are invited to attend the hearing, except for those who served on the committee that issued the sanction are not allowed to be a part of the hearing. If you are available to attend the hearing, please contact DRC staff for additional information. We need to be sure there is a quorum for the hearing, and the more of you who can attend the more fulsome the review. The hearing panel must have a minimum of 3 members, and we have 6 members who have confirmed their availability to hear the matter. Please note, DRC Rule 9(e)(6) does not allow for ex parte communication concerning the subject matter of the appeal, except for communications with staff. It is a live hearing at the Judicial Center in Raleigh.
 - 2. A complaint was filed against a DCC Mediator, Mediator C.
 - a. A party to a district court criminal matter filed a complaint against their DCC certified mediator. The complaint was

filed with the DRC office on March 10, 2022, regarding a mediation that was conducted on August 6, 2021. The DRC staff brought the matter to then Chair Debra Griffiths. Ms. Griffiths declined to review the complaint as it was not timely filed under DRC Rule 9(c)(6). The DRC Rule has a 3-month limit to file a complaint after the conclusion of a DCC mediation. The complainant was notified and failed to appeal the chair's decision to the full Grievance and Disciplinary Committee. That matter is concluded.

3. Staff investigating potential failure to accurately report on a renewal application by Mediator D.
 - a. Mediator D was sanctioned by the State Bar, where staff discovered Mediator D failed to accurately report her pending State Bar grievance matter on her renewal application. Staff reached out to Mediator D for a response, and this committee is currently taking the matter into consideration. We have seen this with regularity, and we have made efforts to educate mediators.
- iii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
 1. None.
- iv. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
 1. Denial of Superior Court application, Mediator E.
 - a. Staff received an application for certification in the Superior Court Program listing some, but not all of the numerous open/unpaid judgements and liens. The committee found probable cause that the applicant's conduct was inconsistent with good moral character and denied the application under DRC Rule 9(d)(2). The applicant failed to file an appeal with DRC staff and may reapply in two years.
 - v. Discussion: I have a procedural question; Mediator C was dismissed because it was not timely. If staff believed the mediator's actions were egregious, could staff prosecute?
 - vi. Kozlowski: The Rules state the grievance shall be dismissed. The Rule was modified to create a three-month statute of limitations to file a complaint against the mediator. This was based on a number of reasons. One was the issue of funds being pocketed by the mediator which caused some problems.
 - vii. Staff would not have felt that they could have gone forward on their own motion. Kozlowski: correct.
- c. Mediator Certification and Training Committee – Judge Tyson
 - i. The MCTC has met frequently to discuss a number of items.

- ii. CME offerings approved since the Commissions February 2022 meeting.
 - 1. The committee approved an application submitted by The Mediation Center in Asheville, for a two-hour CME training course “Mediator in the Middle: 2022 CME for Certified Mediators”. This was approved.
 - 2. Staff recently worked with the NCBA to have the newest version of the 12-hour Basics of Family Law posted for Family Financial mediator applicants. The On Demand program is available at a discounted rate of \$99.00, and the applicant has 2 weeks to watch it. No CLE credit is provided for watching the discounted program.
- iii. Applications for certification that came before the Committee.
 - 1. None.
- iv. Previous Matters.
 - 1. Much of our work has focused on Rule 8, on page 23 of your packet you will find redlines to the Rules. We are going to be asking for a motion on three of the five changes today. The overview is that there’s a question of whether or not additional specific training in the area of family law should be required as a prerequisite. The family financial training is the only area in which there is a substantive law component. We don’t have contract requirement, real property requirement, another other than family law. The committee is bringing forth today, based on comments received, items 1-5, as listed below. We are asking for approval on 2, 3, 4 regarding Rule 8(a) and that we continue to address items 1 and 5, at committee level.
 - a. 1. Rule 8, making the 12-hour family law basics course a pre-requisite for the 40 and 16-hour training course.
 - b. 2. Rule 8, clarify a NC State Bar board certified family law specialist is exempt from the 12-hour family law training.
 - c. 3. Rule 8, remove stale grandfathering language.
 - d. 4. Rule 8, require the 6-hour legal term course to be a prerequisite for the 40 or 16-hour training.
 - e. 5. DRC Compliance Policy.
 - 2. Under item 1, there are exceptions to the 12-hour family law training, attorney who are board certified specialists. We had some grandfathering language under item 3 that we will be removing. And item 4, we are looking to move the 6-hour legal term course to be a prerequisite for taking the 40-hour course for certification for those applicants who are not attorneys.
 - 3. The committee would tender that we adopt the changes set forth in items 2, 3, and 4. The committee would like to retain in the committee in items 1 and 5.

4. Judge Gorham: Is there a motion? Tyson: I would put that as a motion. Morgenstern seconds. Vote – A request for clarification was made on what items are up for a vote.
 - a. The committee is having trouble with the amount of substantive knowledge of family law a mediator needs before walking into the training. We have not done a good job of articulating this, and we continue to use the NCBA training course. The committee wants to retain the issues dealing with this matter.
5. Vote – all in favor. None opposed. Motion carried. Approved.
- v. Rule 9, removing family law training from Rule and Guidelines.
 - a. Family Law Training Guidelines 40 and 16-Hour Mediation Course. The committee continues to investigate this matter and has been working with the NCBA Family Bar section to determine the best level of family law education that should be provided in mediation training.
- vi. New Matters
 1. Review of request to amend Advertising Policy.
 2. This is an unusual matter. Apparently, it is possible to gain access to a list of cases assigned to court. A mediator in Mecklenburg County was making direct solicitations to be retained to mediate those cases. We reviewed the advertising policy and the State Bar’s Rules of Professional Conduct. We declined the mediator’s request to define limits – this would violate the duty of neutrality by the mediator. Mediators do not directly solicit litigants but are networking within the community. It would be difficult to notify their colleagues, that they are mediators. We have always allowed this, just as attending a Bar function or anything else, and letting people know that your services are available. Our committee determined those being solicited had the responsibility to decline the request by the mediator, if the mediator is not a good fit for the case. I would like to put this out for discussion. We discussed at committee level and did some research to make sure we are on a good footing.
 3. Kozlowski: I sent the committee’s result to the requesting party, and they were disappointed. The requesting party then sent me some samples of emails where the mediator was soliciting business and I did not find anything particularly offensive. The emails were polite and said, “I saw that you guys are doing this case, if you need a mediator, I’m happy to be your mediator”. Apparently, this was allegedly putting pressure on attorneys where they felt they had to save face with their colleagues.

4. Discussion: In my training, I recommended people reach out to attorneys to build their practice.
 - a. I agree completely with the committee. We are not in the business of regulating speech or advertising. Congratulations to the committee for a job well done.
 - b. If any of you have had a family member who has gotten a traffic ticket, this is a postman's full employment act. Solicitation for services, for those who market, if it's not working you learn that pretty fast and you do something different. This is not the Commissions obligation to police this.
- d. 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.
 - b. Again, no update on the forms, we are on hold due to the implementation of eCourts. Those will remain on hold, so no change there.
 2. Forms Updated: AOC-DRC-22.
 - a. DRC Clerk program form, AOC-DRC-22, allowing the clerk to extend the mediation completion date without a motion, has gone live.
 3. FFS Asset Guide.
 - a. The FFS Asset Guide strictly for guidance to help the parties know, particularly pro se parties, what is helpful to bring to a family financial mediation, has gone live and is posted on the DRC website.
 4. All Rule Sets – proposed amendments no retrieval of metadata.
 - a. The next items we talked about at the last meeting, the proposed amendments to all rule sets on the retrieval of metadata. You may recall this was because there had been reports or parties, not participants, in the remote mediations who had access to metadata. We discussed this matter and moved it over to the S&AO Committee for a potential Advisory Opinion.
 5. MSC Rule 6(b)(4) allowing for partial settlements.
 - a. This committee proposed amendments to MSC Rule 6(b)(4) and 11(g)(3) allowing for partial settlements. This would allow mediators to report their mediations with multiple parties and multiple claims. Some of the issues may be resolved leaving one or more parties for trial or one or more

- causes of actions for trial. Our form doesn't allow the mediator to report a partial settlement.
- b. The proposed language was posted for comment for 30 days. Staff received no comments. The committee made a recommendation that we amend the Rules as indicated, and a corresponding amendment to the Report of Mediator form.
 - c. Kozlowski: Staff received a late comment last week. The comment requests our amended language to be consistent with the Rules of Civil Procedure, Rule 8 General Rules of Pleadings. This Rule uses the term 'claims for relief' instead of 'causes of action'. It would change the sentence in both paragraphs to read: "If a partial agreement was reached at the conference, and the report shall list the claims for relief that were resolved and any parties who have no claims remaining for trial".
 - d. Wood: Yes, I agree with this language, and I don't think anyone in the committee would have any issue with making that language consistent.
 - i. Discussion: For some reason, this provision is in the FFS Rules but was not put into the MSC Rules. I think it is a good amendment.
 - e. Judge Gorham asked for a motion to approve the changes to 6(b)(4) and 11(g)(3). Ms. Nease Brown made the motion. Mr. Laney seconded. Further Discussion: when would this Rule go into effect?
 - i. Kozlowski: The Rules will be presented to the Supreme Court within the next few months, and then we are on their timeline.
 - ii. We need to look at how this will affect statistics, especially changing the way we collect our statistics mid-year but can have that discussion offline.
 - f. Vote – All in favor. None opposed. Motion carried. Approved.
6. All Rule Sets – proposed amendments mediator's duty to announce no recording.
- a. This language would change the MSC, FFS and Clerk Rule to add the additional provision to the mediator's duty to put all parties on notice that the Rules prohibit the recording of the settlement conference.
 - b. The proposed language was posted for comment for 30 days. Staff received No comments, committee moves to full Commission for adoption.

- c. Judge Gorham asked for a motion to approve the mediator must announce there shall be no recording at the beginning of the mediation. Nease Brown made a motion. Judge Tyson seconded. Vote - All in favor. None opposed. Motion carried. Approved.
 - ii. New Matters
 - 1. None.
- e. Standards and Advisory Opinions Committee Report – Ms. Morgenstern
 - i. Our committee met to discuss two new matters since our last meeting.
 - 1. Metadata – Proposed AO, A-22. The committee met to discuss two new matters since our last DRC meeting.
 - a. The Civil Subcommittee sent us the issue of how to prevent the retrieval of metadata after a remote mediation. The committee agreed the draft language provided by AOC legal will be best served in a stand-alone Advisory Opinion. The protections we offer for confidentiality are paramount to the mediation process. Tech savvy individuals who are able to retrieve metadata puts this protection at risk. This issue has now been raised by multiple mediators who are concerned individuals are able to retrieve a transcript from metadata. An example is when a party in a remote mediation accesses the transcripts from the closed captioning feature. The committee does not want to limit the use of the cc function; therefore, we determined an AO would be appropriate to put mediators and parties on notice that retrieval of metadata is prohibited. Please see the draft proposed AO, A-22.
 - b. Judge Gorham asked for a motion to approve. Ms. Wood made a motion. Ms. Nease Brown seconded. Discussion, none. Vote – All in favor. None opposed. Motion carried. Approved.
 - 2. Ability to Draft Certain Provisions of an Agreement to Mediate.
 - a. The committee also discussed a matter that has been brought to staff's attention. What items may a mediator include in their Agreement to Mediate for pro se parties. Can the Agreement include a clause prohibiting the mediators ability to testify in court, or a confidentiality clause between the parties, without violating the NC State Bar 2012 Formal Ethics Opinion 2?
 - b. AO 29 provides the mediator is under a duty to define and describe confidentiality and inadmissibility, but they may not provide a legal interpretation of these concepts. The parties are encouraged to enter into a confidentiality

agreement between themselves as Standard 3 only applies to the mediator.

- c. AO 30 reminds the mediator the protections provided to the mediator regarding testimony or producing evidence under NCGS 7A-38.1(l) do not apply to voluntary mediations. The Opinion encourages the parties to request a court to order the mediation or enter into an agreement that the mediation will be governed by that statute and the MSC Rules if they want those protections to apply.
- d. We have learned there are several mediators who are questioning what language they can or cannot insert into their Agreement to Mediate for pro se parties. Sarah Kromer, chair for the NCBA DR Section has reached out to the State Bar and received an informal opinion stating the mediator may include the language in the Agreement to Mediate as the terms agreed upon control the mediation. This committee has determined there is enough interest to research and examine this issue. Staff will work with Ms. Kromer to gain additional information regarding the informal opinion for this committee to consider.
- e. Discussion: I was the recipient as the attorney for a party in a mediation of an Agreement to Mediate, from a mediator, which included additional provisions governing the mediation. Particularly it included a provision that the parties would cooperate with one another in discovery and would agree they had no discovery disputes. It was odd and I didn't sign it but sent back what I would sign. While we are looking at this issue, I think the issue of ancillary information in agreements is also worthwhile. It troubles me to think we are taking a court ordered mediation. We have a mediator who has been designated under a court appointment who is adding duties under an Agreement to Mediate. I am not sure we want to go down that path. I would just ask the committee to think about this.
- f. Morgenstern: We will do so.
- g. Kozlowski: This issue came up in a CLE/CME I was presenting, where mediators are concerned about what they are able to include in their Agreements to Mediate. It is a hot issue, and we are just now in the discovery phase of looking into this matter.
- h. Discussion: Trainers tell participants to consider putting into their retainer agreement a term addressing "if you call me to testify". We encourage language like "if you serve me with

a subpoena you have to pay me \$500/hour for every minute I have to fight that subpoena.” They can also include language that the Rules and Statutes apply to any pre-litigation case.

- f. Criminal Sub Committee – Tina Estle
 - i. Previous Matters
 - 1. Update on progress to revive the District Criminal Court program.
 - a. We have confirmed that the NC Conference of DAs are in support of our proposed concept to revise the DCC program to move the program statewide and seek funding for the mediators/centers who conduct the mediations. The Conference realizes the benefit of mediation and understands the need for a pilot program. While we have their support, please note, they do not wish to be tied to our funding request as they are not able to advocate for funding on our behalf. Staff continues to work with the AOC to move things forward.
 - b. Kozlowski: I just received an email from the Assistant Director of the AOC who will be meeting with a few DAs and I have a meeting with Mr. Boyce later next week. We are hopeful things are moving in the right direction. And congratulations to Tina Estles’ center for applying for DRC DCC certification.
13. Ad Hoc Committee Reports –
- a. Committee on Long Range Planning – Ms. Nease Brown
 - i. Nothing to Report.
 - b. eCourt Committee – Ms. Greene
 - i. There is nothing to report- we have not met as there is not a need to meet. There is not much of an update, the project managers have not given a date to implement odyssey, everything is hinging on replacing NCAWARE. Until that is ready to go and deployed, everything is on hold.
 - c. Video Observation Committee – Mr. Wijewickrama.
 - i. Nothing to Report. We worked on Ketan’s Family Financial video, that was the last project and have had nothing come down the pike.
14. Ex Officio and Other Organization Reports.
- a. Mediation Network – Ms. Estle
 - i. Nothing new to report. We are very anxious to hear about the DCC revision, lots of centers are excited about it and we hope to serve all 100 counties.
 - b. Court Staff – Ms. Greene
 - i. Stats for MSC, FFS, and ARB.
 - ii. The data I have is through the third quarter, from July 1 of 2021, to March 31st. For the FFS program we have a 75% settlement rate, this is for cases that completely resolve or partially resolve. This is on par with last quarter

at 76%. The MSC program has a 61% settlement rate, this is the exact same as 2nd quarter. You also have statistics for the court ordered arbitration program. This is not under the DRC, but I know there is always some interest in the arbitration statistics. We had about 3400 cases so far this year, keep in mind it is not a statewide program. We had 395 appeals filed, which is roughly a 23% appeal rate. This is standard, we usually hover around a 20% appeal rate.

- iii. Discussion: If it is not onerous to do so, it would be interesting to look at statistics. We can compare numbers from 2018. It would be interesting to look at the statistics over time.
- c. NC Court Managers Conference – Ms. Tate
 - i. Noting to report
- d. NCBA Dispute Resolution Section – Mr. Cooley on behalf of Ms. Kromer
 - i. We are looking at a long-range planning committee, a series of task forces to fit together and over the course of the summer and early this fall. I understand some of those matters are already being evaluated by the Commission. I will work with LeAnn about the work of your long-range planning committee in the area of online dispute resolution. We are looking at studying three areas where we already have dispute resolution annexed to the court system in North Carolina, including evaluation of the District Court Arbitration Program. This Program has a good success rate in terms of the number of appeals. We are interested in whether this Program should be expanded further to those districts that do not have it. There are a number of other points we want to look at, including matters that are currently outside of the court system. Where mediators can play and are playing a significant role. We have a lot to learn about our forced pilot program of how to handle disputes when the courthouse is closed. We are looking at a number of areas to see if we can come up with some ideas and then work with this Commission to expand access to dispute resolution in North Carolina for citizens before matters make it into the court system. We have a lot of work that we plan to do and I look forward to coming back and reporting to you some of our progress in the future.
- e. Industrial Commission – Ms. Nance
 - i. I want to thank Tara and Maureen for identifying mediators on our website who are not active, that has been corrected. We do have a lot of work to do on the Rules, but we are devoting a lot of time to the case management system, so we have not had the opportunity right now. But we want to fix our website so we can reflect the remote vs in person. There are two procedural things we have adopted recently. First, we are a receipt funded agency, or we depend a lot on receipts. A lot of our receipts come from \$200 that is invoiced in every Report of Mediator. We are having trouble collecting these funds, we send receipts out to carriers, and do not receive payment, or the carrier sends it back saying we had the wrong address.

Starting June 1st, we now send the invoice to the defense attorney who will forward the invoice to the proper adjuster. The defense atty can bill their atty for the admin work, where we do not have the resources to spend time on this. The second item, as we move to our new case management system in an effort to become completely paperless, we began sending out the Appointment of Mediator Orders by email to the plaintiff's attorney, the defense attorney, and the mediator. We are trying to improve our process, so please let us know if anyone has concerns or questions.

- ii. Discussion: Question was asked if Ms. Nance was newly appointed dispute resolution coordinator for the IC. Ms. Nance clarified she is the Chief Deputy Commissioner who has been asked to act at the Dispute Resolution Coordinator after John Schaffer's retirement.

- 1. Kozlowski: On that note, I want to add that Ms. Nance, Harriet Hopkins, and myself have been taking to a delegation from Ghana who wishes to visit NC to learn about our mediation programs.

- f. Court of Appeals – Judge Tyson

- i. We have a court conference next Tuesday at 4:00 and I will have updated stats for 2022, but I do have numbers for 2021. The Court of Appeal judges mediated 21 cases. We had two our new judges added to the court in January of 2021 and they started to conduct mediations. For those of you who do not know about the program, this is a free service offered by sitting court of appeals judges. There is no charge to the parties, it is strictly voluntary where both parties must consent to the mediation. We do not mediate criminal cases, child custody cases, or termination of parental rights cases. We mediated 21 cases last year, during the pandemic. Mediated cases were up by four cases over the previous year in 2020. It is a small program, but it does give the parties the opportunity to settle and clear our docket. The cases that settle don't have to go to a panel, no opinion is written, and confidentiality is protected.
 - ii. Discussion: Who are the new members of the COA? Judge Carpenter and Judge Wood are the new COA judges.

- g. Legislation – Mr. Laney

- i. Nothing to report.

- 15. Update on next meeting – Maureen Robinson

- a. The next Commission meeting is scheduled for Friday Sept 30-Sat Oct 1, and will be held at Shelton Vineyard located in Dobson, NC. On April 11th, I sent you all an email about reservations at the Hampton Inn.
 - b. Diann Seigle is on the call, welcome Diann.
 - i. Ms. Seigle: I'm excited to be included and I look forward to working with everyone.
 - c. One more update, if you haven't completed your tax IRS form to waive the per diem, please do so. If you would prefer to be considered a state employee and claim the per diem on your taxes, please let me know. The per diem rate is \$15/day.

16. Adjournment – Judge Gorham

- a. Judge Gorham asked for a motion to adjourn. Judge Tyson made the motion. Ms. Nease Brown seconded. Vote – all in favor. None opposed. Motion carried. Approved.



Dispute Resolution Commission

Meeting Minutes

Commission Meeting
Friday, February 25, 2022
8:30 am

Remote Meeting Held Via WebEx

Commission Members present: Judge Tyson, LeAnn Nease Brown, Frank Laney, Debbie Griffiths (8:30am-9:48am), Charlot Wood, Zach Bolen, David Wijewickrama (8:30am-10:54am), Judge Knight, Dolph Sumner, Benjamin David, Ketan Soni, Lisa Johnson-Tonkins (8:32am-10:21am), Barbara Morgenstern, Judge Southern (8:30am-10:06am), and Justina Tate (9:00 am – 10:20 am).
With regrets: Judge Gorham, Judge Hamilton, Judge King.
Ex Officio Members present: Tina Estle, DeShield Greene.
Ex Officio with regrets: Sarah Kromer, Tammy Nance.
Staff present: Tara Kozlowski, Maureen Robinson, Mary Brooks.

The Honorable Judge Tyson, Vice-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.

17. **Welcome and Announcements – Judge Tyson.**
 - a. **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. Due to last minute circumstances, Judge Gorham is not able to join us today, I will be working with DRC staff to provide Judge's Gorham's reports to the Commission.
 - b. **Kozlowski: We have two new Commission Members to introduce this morning.**
 - i. As you all know Jayne Zanglein stepped down from her seat as the DCC Commission Member. I am pleased to announce Frank Laney has filled this

seat. After 25 years plus as an Ex Officio DRC Member, Mr. Laney is now a voting member of the DRC. He is, a lawyer, and mediator appointed by the Chief Justice of the Supreme Court, Paul Newby. Mr. Laney replaces the seat vacated by Jayne Zanglein, with a term expiring September 30, 2023. Please introduce yourself.

1. Laney: I am very glad to be here, thank you for the vote of confidence. I look forward to working with you all for years to come.
 2. Tyson: For those of you who don't know, Frank does extensive training and also runs the federal mediation program at the 4th circuit. It's a real honor and pleasure to have him to join us as a voting member. Welcome, Frank.
- ii. I am excited to introduce our first court staff management Member. DRC legislation has recently changed to add the court management staff seat. Having a court staff member move from an ex officio position to a voting seat on the Commission will be extremely beneficial. Justina Tate, Superior Court Trial Court Coordinator for District 25A Burke County, appointed by the Chief Justice of the Supreme Court, Paul Newby. Ms. Tate fills the newly created court staff seat created by the General Assembly in 2020, with a term expiring September 30, 2024. Justina is traveling today and will try to join the meeting via phone, it does not appear she is on the call at this time.
 - iii. We introduced a few new members at the last meeting that were not in attendance at the November meeting who are here today. Judge Southern is the Chief District Court Judge in Surry County, will you please introduce yourself?
 1. Southern: Good morning everybody, it is a pleasure to be on with everybody this morning. Thank you for having me.
 2. Tyson: Welcome to the Commission, we look forward to your service.
 - iv. We also have a new ex officio stepping into the role filled by John Schaffer for a number of years, please welcome Tammy Nance to the DRC. Ms. Nance was not able to join us this morning.

c. Update on Commission Logo.

- i. Tyson: DRC staff sent out a separate memo from the packet with an update on the Commission's logo with a recommendation we obtain trademark copyright protection through 5 possible avenues. Tara will walk us through the options available and recommendations from staff.
- ii. Kozlowski: DRC staff obtained permission from Reuben Young, Civil Bureau Chief with the Attorney General's office, and the Governor's office, to use outside counsel to obtain a trademark on the proposed logo under NCGS § 114-2.3. On behalf of the DRC, I entered into a fee agreement with Coates & Bennett, and obtained a copyright assignment from Judge Heath,

director of the AOC, assigning all rights to the logo to the DRC. Coates & Bennet conducted a federal trademark clearance search under the trademark Class Five Category “Tracking and monitoring regulatory requirements in the field of alternative dispute resolution for regulatory compliance purposes; Alternative dispute resolution services.” We have a recommendation that any similar mark would not be viewed as confusingly similar, and we can move forward with the trademark application in Class Five. Please see supplement document that was sent out via email on Tuesday, February 22, 2022. Coates & Bennett identified other trademark categories that the DRC may be eligible to file for:

1. A certification mark indicating that a professional meets the legal requirements to act as a mediator in the state of NC.
 2. Maintaining a registry of mediators certified to provide alternative dispute resolution services.
 3. Education services, namely, providing training of mediators for certification in the field of alternative dispute resolution.
 4. Advising on the development of certification Standards for mediators.
- iii. The DRC is allowed to file in one class per application – each additional class/application requires an additional fee of \$350-\$500. If we request a clearance search in another class, we are looking at \$800-\$1300 per class. Coates & Bennett may be able to consolidate some of the work if we request to search multiple classes. After discussion with our attorney, staff recommends we only apply for #1 if we intend to allow mediators to use the logo. We can always revisit this one at a later time as well. Since the AOC website is frozen, there is no need to apply for #2 currently as the DRC uses the AOC’s website to display the list of certified mediators. Staff recommends we file an application for #3 and #4, but not complete a clearance search.
- iv. Discussion – Have we allowed mediators to use our logo in the past?
1. Kozlowski: our current logo is clip art, so anyone may use it. I have not been asked often if mediators can use the logo on their letterhead. There are numerous companies that will create a similar trademark for their employees/associates to use. If we create a mark for our mediators, we could include the word “mediator” in the logo, or “MSC”/“FFS”. This is not something we need to address now, we can file a new application for a mediator trademark in the future.
- v. Discussion – Don’t we use the DRC logo on our Find a Mediator page, for #2?
1. Kozlowski: The current AOC website does not have the DRC logo, only the AOC Judicial Branch logo. As we are not able to modify this page for a few years while we wait for Odyssey, Coates & Bennett recommended we hold off on this category. When applying for a trademark we have to show we how we will use the mark, and right now we are not able to use the mark to maintain a list of mediators. Once Odyssey is up and running and we can modify the

website, we may want to reconsider applying for this trademark category at that time.

- vi. Discussion – Kozlowski: We host Conflict Resolution Day training each year; therefore, Coates & Bennett recommend we apply for #3, but a search is not necessary. Category #4 is also recommended as this protect our logo for use when advising on the development of certification standards for mediators. This is a core mission of the DRC. Staff recommends we apply for category #3, #4, and #5, with only completing a clearance search for #5. Please note, the work on category #5 has already been completed. If we apply under category #3 and #4 also, we need to approve the use of additional funds to do so.
- vii. Discussion – I see this as what we need to do right now, and what do we need to do in the future. I think we should move on what we need to do right now.
- viii. Nease Brown makes a motion is made to proceed with #3, #4 and complete #5, we should revisit category #2 at such time we are able to move the Find a Mediator to a site where we can use the logo. Delay #1 to discuss at a later meeting as it is not necessary at this time. Knight seconds the motion.
 1. Discussion - Our name is the most important asset, and it is important to protect it through trademark. DRC or Dispute Resolution is a generic name that is merely descriptive of the service provided. It is important to have a logo that is ours and is something that can be branded. I highly endorse moving forward with the trademark process.
 2. Does category #3, include certified trainers? Can they use the mark?
Kozlowski: I do not think the category would include trainers, as we cannot use the mark for certified mediators. However, I will ask. Category #3 will cover the presentations we sponsor as well as our podcasts and training that we provide.
 - a. Can we expand the scope of #1 to include trainers?
Kozlowski: possibly, this is a question for Coates & Bennett. I will work with the firm to understand the boundaries of category #1.
- ix. Judge Tyson asks if there is any further discussion? None. Vote on the Motion to proceed with an application for categories #3 and #4 and continue forward with #5. Vote – all in favor. None opposed. Motion carries, approved.
- x. Kozlowski: Will the Commission allow for additional funding to support the vote to apply for additional trademark categories?
- xi. Nease Brown: I move to amend the budget to provide additional funding as necessary to complete the trademark work that we have voted to adopt and instruct the staff to proceed with the trademark work. Seconded by Morgenstern.
- xii. Judge Tyson: Any discussion? None. Vote – all in favor. None opposed. Motion carries, approved.

18. **Office Report – Ms. Kozlowski**
- a. State Ethics Commission Reports on Newly Appointed Commissioners.**
- i. Mr. Frank Laney, appointed by the Chief Justice of the Supreme Court, by Paul Newby. Frank Laney provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflicts of interests, 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.”
 - ii. Justina Tate, appointed by the Chief Justice of the Supreme Court, Paul Newby. Justina Tate provided a Statement of Economic Interest to the State Ethics Commission. After reviewing the statement for actual and potential conflicts of interests, the State Ethics Commission “did not find an actual conflict of interest or the likelihood for a conflict of interest.”
- b. Approval of November 19, 2021, Meeting Minutes.**
- i. Has everyone reviewed the November 19, 2021, meeting minutes beginning on Page 4 of your packet?
 - ii. Judge Tyson asked for a motion. Debbie Griffiths made a motion to approve the November 19, 2021, meeting minutes. Ketan Soni seconded. No discussion or comments made. Vote – all in favor. None opposed. Motion carried, approved.
- c. Budget.**
- i. We began the year with a surplus of \$258,882.00 in our account. As of December 31, 2021, we have received \$188,665 in revenue and have expenditures of \$66,164 giving us a current balance of \$381,382.
 - ii. We are doing well financially, and the AOC continues to carry the salary for our administrative staff to offset the inability to increase mediator dues, due to Odyssey.
- d. Applications/Member Renewal.**
- i. DRC staff, Mary in particular, has been busy this year, since March of 21, we have processed 90 new applications – that does not include Clerk or dual applications.
 - ii. Discussion – What about losing renewals? Didn’t we lose a number of mediators last year? Kozlowski: we did have a higher number of lapsed mediators this past year, however, we have a high number of new applicants that have offset the number of lapsed mediators. Additionally, Mary has been contacting lapsed mediators by phone and quite a few folks are coming back to the DRC.
- e. Supreme Court Rule Adoptions.**
- i. We have proposed amended language for Standard 9 on hold with the Supreme Court. This language provided for the anti-discrimination provision in the Standards of Professional Conduct for Mediators. The Supreme Court has not denied our proposal but wants to review the

Standard in conjunction with similar language being proposed by the NC State Bar.

19. **Committee Reports –**

a. Executive Committee Report – Judge Tyson

i. Update on the absorption of the Arbitration Program.

1. Kozlowski: We received notice from the Chief Justice’s office that they will not be pursuing the idea of the DRC absorbing the Arbitration program at this time. The benefit of revising the program to provide for DRC regulation, that would include the implementation of applications for certification and annual dues, does not outweigh the cost of leaving the program as-is, for now.

b. Grievance and Disciplinary Committee – Ms. Griffiths

i. Update on complaint activity.

1. The committee found probable cause of a rule violation against Mediator A. Staff received notice of an incident alleging a mediation was not held by the mediation deadline in a Superior Court MSC matter. This committee found probable cause the mediator did violate MSC Rule 6(b)(5), and determined to issue the mediator a private admonishment under DRC Rule 9(e)(13)(2) and to require Mediator A to provide written notice to DRC they have reviewed the Rules and Standards within 30 days. The mitigating circumstances considered by the committee included a spotless record with the DRC and State Bar, acknowledgement of the violation without excuse, and no serious harm came to the parties as the case ultimately settled in mediation by another mediator. The Mediator acknowledged receipt of the notice, accepted the sanction, and indicated they will not appeal the committee’s decision. Tara or Maureen, hasn’t the mediator already completed the review of the rules?

a. Kozlowski: Yes, the mediator has completed the review of the rules.

2. Staff received a complaint against Mediator B. The complaint against mediator B, alleged multiple violations of the Standards of Professional Conduct, on January 4, 2022. The complaining party contacted staff on January 10th and requested to withdraw the complaint. Staff, after consulting with me, determined to pursue the complaint under DRC Rule 9(c)(4)(c). Mediator B has been notified of the action and was provide 30 days from receipt of the notice to provide a formal answer. In a letter dated February 4th, Mediator B requested staff honor the complaining party’s request and withdraw the pursuit of the complaint. Staff presented the request to me and requested to move forward with the complaint. Based on the

seriousness of the allegations made, and the statements in the letter dated February 4, by the respondent, staff will continue to pursue the original complaint. Staff notified the mediator that the request was denied. Mediator B provided a formal response to the complaint to staff on February 15, 2022. Staff is currently investigating the matter and once the file is complete will present the matter to the committee for consideration.

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

1. Results of State Bar hearing NCSB v. Phair. Tara testified at the hearing regarding the DRC's sanction against Ms. Phair for failing to accurately complete her renewal application. The hearing panel found that Ms. Phair had failed to properly supervise her assistant by allowing her assistant to submit her DRC renewal application without review or personal attestation. It did not find the additional violations named in the original complaint filed by the State Bar. We have been informed Ms. Phair was issued a public admonition by the State Bar, although the sanction has not yet been posted on the State Bar's website.

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

1. Denial of Superior Court application. Staff received an application for certification in the Superior Court Program listing some, but not all of the numerous open/unpaid judgements and liens. The committee determined the applicants past financial trouble was not at issue, however, the applicant's lack of humility with the court in failing to comply with the judgements showed a lack of good moral character. The committee was concerned with the applicant's disregard for the decisions of the court. The committee found probable cause that the applicants conduct was inconsistent with good moral character and denied the application under DRC Rule 9(d)(2). The applicant has until March 14, 2022, to appeal the committee's decision.

c. Standards and Advisory Opinions Committee Report – Ms. Morgenstern

i. Previous Matters

1. None.

ii. New Matters

1. None.

d. 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. Again, no update on the forms, we are on hold due to the implementation of eCourts.

2. Forms Updated: AOC-DRC-01 and AOC-DRC-03. DRC applications for the MSC and FFS program, AOC-DRC-01 and AOC-DRC-03 were updated to specify that mediators have 30 days after receiving notice of a grievance, or if a response is permitted, they have 30 days after the response is due to the regulatory body to report those grievances or complaints. That change has been made and the forms are now posted on the website. Additionally, the FFS program application was amended to remove the sections allowing an applicant to apply under the grandfather rules that have now expired.
- ii. New Matters. There are several new matters that were brought to staff, and staff reworked them to discuss at committee level.
1. Clerk Form. DRC staff was asked to create an Order Without Motion Extending Completion Date for Mediated Settlement Conference Upon Stipulation of the Parties, Suggestion of the Mediator, or Upon the Clerk's Own Motion. This form exists for MSC and FFS programs, but not for clerk mediations. The committee recommends the adoption of the Clerk form to allow for extensions without the need for a formal motion. If approved, this would be a DRC form and we would be able to post this on the website for immediate use.
 2. FFS Guide. Staff was asked to create a form/checklist for the FFS program that would provide guidance to all parties, represented and pro se, on what items to bring to mediation. The concern was that sometimes people come to mediation, and they are unprepared. They aren't really aware of what assets need to be listed or considered, or what documentation they need to bring. The committee decided to create a guidance document and not a form, because we wanted to be careful that we are not giving legal advice to the parties. We are simply saying here are some documents that are helpful, and we added disclaimer language at the end, so if they have any questions they need to talk to a lawyer. Clearly, this document is not to be filed with the court.
 3. MSC Rule 6(b)(4) allowing for partial settlements. Staff has been contacted by multiple mediators and court staff asking for the ability to report partially settled matters in MSC mediations. Currently, the case is settled or not settled and especially cases with multiple parties or multiple issues, some issues may be settled out. Some parties may be settled or the claims with respect to some parties may be settled. This was our effort to provide that option to the mediators and then to follow that up by modifying the form. The committee

recommends amending MSC Rule 6(b)(4) and Rule 10(g)(3) to allow the mediator to report partial settlements.

- a. Report of Mediator. The Report of Mediator form would also need to be updated because the report does not allow for a partial settlement. This was our effort to allow mediation the option to make it clear to the court if some issues, or parties, no longer need to be considered when looking at scheduling the trial. The form would not be modified until the proposed language is presented and adopted by the NC Supreme Court.
4. All Rule Sets – proposed amendments no retrieval of metadata from remote mediations. Apparently, there has been one known instance reported to the Commission where somebody who was not actually a party to a mediation was able to retrieve metadata from a mediation and use that to prepare for trial, even though the conference was not specifically recorded. We wanted to clarify that it is inadmissible or inaccessible for anyone to access the data related to a mediation that’s created or stored on anyone’s remote technology.
 5. All Rule Sets – proposed amendments mediator’s duty to announce no recording. As part of the information provided to the parties at the beginning of the mediation, the mediator shall state that recording is strictly prohibited. This is particularly important in these days of remote mediations since we can’t see who’s got a smartphone or who might be surreptitiously recording. The mediator can warn that recording will be a rule violation and sanctions could be imposed. The committee also proposes the mediator to specifically state all recording devices shall be removed or turned off during the mediation.
- iii. Discussion: I see the electronic recording to be removed or turned off as a problem, especially if that includes a cell phone. Other Members agreed this would be a problem. It was brought to the Commission’s attention a lot of mediation participants may need to use their cell phone to listen for their children. Also, who would enforce this and tell people to turn off their phone?
 1. Recommendation: Delete the last sentence. I can’t turn off everything from the mediation as I am conducting the mediation,
 - iv. Discussion: This isn’t making the mediator the police, but to give a warning. What about turning off the recording capability? I 100% agree we can’t monitor the whole thing. I agree, but tech is changing all the time. When you are at home you have an Alexa or google, it is always listening...it takes effort and takes time. I don’t want to punish people because you don’t know how to turn things off. I like the recommendation

to just take off the last sentence. More Members agree with the recommendation to remove the last sentence.

1. Ms. Wood: I want to amend the proposal. Assuming the members of the subcommittee agree, I propose to amend the language to delete the last sentence starting with All recording...from all rule sets. Judge Tyson reminds the members that whatever we decide today, it will be posted for comment. The Subcommittee makes a motion to adopt all 5 items.
- v. Discussion: Can we talk about the metadata? If someone is mining data from a computer to review what was said in the mediation, isn't that like taking notes during the mediation? I am not ready to run with this rule, I think it is always dangerous to create a broad rule to address a series of factors – but I want to be careful that we fully understand how each thing applies. If I represent a party in a mediation, then I am not prohibited from sharing the info. If someone steals that info from me, I think we need to think about that.

Debbie Griffiths leaves call. Quorum is maintained.

1. I think there is something much more nefarious here. A lot of times a third party will attend a mediation who is a non-party. All parties are aware of the negotiations and the final terms of the mediation agreement. I think this causes a problem of non-party members attending the mediation. Was the person who swiped the info told to do so by the lawyer? We need to take a look at third party attending a mediation, but this is someone coming in and gaining information and obstructing the legal process – this is a pandora's box.
2. Maybe we should look at a broader conversation about 3rd party attendance, whether confidentiality should apply to the parties. This raises a much broader question. If we are going to have rules about what information is accessible and what is not, we should pull back and take a look at everything.
3. There is a difference from recording and notes. We all want that smoking gun, we want the recording – we show it to the jury. For that reason, whatever the source, electronic records are more convincing.
4. Are we making the assumption that the metadata is an actual recording of the conference? Is there a video? As I understand metadata, it will come out - I don't understand what they got. If it is a video, we already have a rule violation. If it is an actual recording, then we already have a rule.
5. The discussion continued through confidentiality, and how it does not apply to the parties, the art of taking notes during the mediation, and inability to require remote tech provider to disable the metadata function.

- a. Questions were raised on who can pull this information, if anyone, and if the rules already cover the prohibition on retrieving metadata. Technology is getting more sophisticated these days in making up and forging electronic records.

6. It sounds like we need a broader conversation about third party attendance and whether confidentiality should apply to parties.

Judge Southern leaves call. Quorum is maintained.

vi. Judge Tyson: What is the pleasure of the Commission?

1. The committee makes a motion to adopt items # 1, 2, and 3. Both forms and the amendments to Rule 6 striking the last sentence. Tyson seconds.

vii. Tyson: We have the Clerk Form, The FFS Form, then Rule 6 changes, Tara how will these move forward after today.

1. Kozlowski: The Clerk Form and Family Financial Guide would go live immediately if approved. Rule 6(b)(4) is a proposal for approval today, if approved it will be posted for 30 days for comment before coming back before the Commission. This is the same for Mediator's Duty and No Retrieval of Metadata. I hear you all want to hold off on the Metadata.

viii. Tyson: We have a motion on the floor for items # 1, 2, and 3. The Clerk Form, FFS Guide and Rule 6 MSC partial amendments. Vote – all in favor. None opposed. Motion carries, approved.

ix. Tyson: There was a motion made by Nease Brown to table item #4, metadata retrieval, and a motion to approve item #5, Rule 6 Mediator's Duty. Seconded by Soni.

1. Discussion: A request the metadata be considered as an Advisory Opinion instead of amending the rules.
2. Vote – all approve. None opposed. Motion carries, approved.

e. Criminal Sub Committee – DA David

i. Previous Matters

1. Update on progress to revive the District Criminal Court program. We first need to acknowledge exactly what we're talking about when we say criminal mediation. The vast majority of cases that fall into this category of the criminal justice system involve self-initiated warrants. North Carolina is one of the few states that allows a private citizen to take out a warrant through a magistrate who determines probable cause. Sometimes that magistrate is a non-lawyer. Then that case goes into a court room after service. Over 75% of the cases have no business being in court, but we are an open court system which is a good thing. We have used strategy's we have used over the years to be a gatekeeper on some of these cases. Many DA's use community mediation centers, with great success,

to keep these cases out of court. We send out a letter letting parties know they need to participate in mediation, and it is very effective. Right now, it is a real priority for the Chief Justice and down through the leagues to get the proper cases airtime. Mediation can pull a lot of the lower-level cases out of court. I met with my Chief District Court Judge, Judge Corpening, and Ryan Boyce with the AOC. I have also met with Sheila Evans who works with our community mediation center. There are two things we need to do. We need to make sure that community mediation is first and foremost state funded as opposed to how it is currently, which puts the fee on people who do not pay the fee. Or the fee is frequently waived by the district court judge understanding that poverty is a real issue in our county. What ends up happening is the centers don't receive a fee and they have little to no resources. We are not a self-sustaining branch of government. We are going to recommend to the legislature that this program be state funded. We need to speak with a unified voice. In the justice reinvestment program, we closed about 11 prisons about 8 years ago, and have reduced the prison population by 10%. We have saved the legislature over 500 million dollars. The DRC is the one regulatory body who should certify the mediation centers throughout the state with appropriate training, oversights, and protocols. The DRC should be the governing body to make sure there is a standard set. That the program be statewide with an opt out provision, not opt in. And that all rules and statutes be revised accordingly. The vast majority of self-initiated warrants can go through mediation before they reach a court room.

2. Kozlowski: The project is a work in progress, as there are many stakeholders involved. As we are working through the DRC but on the AOC's timeline, we may need to vote on these items via email before the next commission meeting. We are asking for revised legislation, and we will need to revise the program rules.

Lisa Johnson-Tonkins and Justina Tate leave the call. Quorum is maintained.

3. Discussion: How do we certify the DCC mediators? Kozlowski: The DRC certifies the mediators who are affiliated with one of the 11 centers that work with the DRC to provide criminal court mediations.
4. Discussion: how will this affect the community mediation centers? Kozlowski: it will only affect the DCC program, the centers are able to continue their work in the community and they will have the option to participate in the DCC program if they choose to do so. Question: Who all will this involve? Kozlowski: we are looking to bring in every stakeholder that is willing to participate in this project. We have reached out to all community mediation centers,

regardless of their affiliation with the Mediation Network, or the DRC. We have talked with Indigent Services, the Mediation Network, the NC Conference of DAs, and the AOC.

- ii. Ben David makes a motion that in the event we are able to seek statewide funding, that the DRC advocate that we are certifying body for centers providing services, and that the program moves to opt in. Sumner seconded. Vote – all in favor. None opposed. Motion carries, approved.

- iii. New Matters

- 1. None.

- f. New Media Committee – Mr. Soni**

- i. Updates to website. Staff has posted three videos from Conflict Resolution Day 2021, two of the courses provide an hour of CME credit, the third course taught by Colin Rule does not provide credit but is available for pure educational purposes. The videos are receiving great reviews. We have also updated Complaint page on website.
 - ii. Social Media Presence. Maureen continues to maintain the DRC Twitter and LinkedIn accounts.

- g. Ad Hoc Attendance Review Committee – Mr. Soni – this section was skipped, see below under ad hoc committee’s for this report.**

- h. Mediator Certification and Training Committee – Judge Tyson**

- i. CME offerings approved since the Commissions November 2021 meeting. Please see the list of courses approved for CME by this committee since November 2021 on page 35 of your packet.
 - ii. Applications for certification that came before the Committee.
 - 1. None.
 - iii. Previous Matters
 - 1. Posted revised Guidelines. All revised guidelines from the November meeting are posted on the website and have been disseminated to all trainers. Trainers have been given a few months to update their training materials, which will be reviewed for compliance by staff.
 - iv. New Matters
 - 1. Rule 9, removing family law training from Rule and Guidelines. The committee considered a proposal by FFS/MSC trainer, Frank Laney to remove the family law educational component from the FFS training. Ketan Soni has also provided a statement in favor of keeping the family law training as a requirement for certification. Staff confirmed there are 7 FFS mediators who are non-attorney mediators, one who is retiring.
 - a. Tyson: Laney brought to the committee to consider removing the family law component, Soni opposes removing the family law component. Frank or Ketan, who would like to start.

- b. Laney: We offer training to all applicants but do not teach the law in all the courses, we don't teach torts, or personal injury, but we do teach family law. Since the FFS program was adopted, we have the requirement of 12 hours of CLE or to be a specialist. I am requesting we move the substantive law portion from the FFS training. And either not require it or move it to the 12-hour requirement. The Family Specialist don't need anything. Family lawyers probably need a number of hours of CLE. The non-family law mediators, such as psychologists need more family law training. One of the problems we have is that we have family law specialist in the training, and we have the non-family law therapists both in the same class.
- c. Discussion: family law is a big component; they are not broad stroke issues but are fine nuances – it requires a specialist knowledge. If we are going to have non-lawyers, a 6-hour CLE is not enough to absorb what they need to know. There is a risk here. The whole concept of trying to teach a whole family law background is ineffective. We put lay people in a difficult situation – that is an issue for the parties and the perspective lawyers to decide. The subject matter falls on them.

David Wijewickrama leaves the call. Quorum is maintained.

- d. Discussion: family law is no longer taught in law school, family law is not tested on the bar. My background is in transactions and people did not hire me to mediate in other areas. This is a ticket to ride and not the destination. If we are not teaching substantive property law and torts, we should not be teaching family law.
- e. How do we then have requirements to become certified?
- f. I don't know what is taught, but I would suggest you don't see domestic courses in the MSC format. The negotiation skills that are taught, but those skills will be an indicator of success. We are not abandoning a requirement of training in a substantive area, I think for anyone who does not have family law training to try to mediate family law, would almost be malpractice.
- g. Kozlowski: I spoke to the Family Law Section of the NCBA and sent out a survey to determine their desire to keep family law training in the mediation program. The majority felt some training was necessary, but not for specialists. The question becomes this: is the 12-hour requirement sufficient, or does the three hours of additional training in the 40-hour

program need to supplement the basics training? We also reached out to the non-attorney mediators who are certified under the FFS program and discovered most of them do not receive any court-appointed matters, and few mediate FFS cases on a regular basis.

- h. The discussion continued to include how much family law a mediator needs to know to effectively mediate a case. What threshold requirements are necessary to be able to mediate a case if no legal knowledge is required? How do we separate who needs what training? After many comments, the matter was pulled from the table.
 - i. Laney: I recommend that we table it and come up with a different proposal. My idea was to get it on the table, I would like to remove this off for further review.
 - j. Motion made by Laney to remove the issue for further discussion. Soni seconded. Vote – 9 in favor. Sumner opposed. Motion carries.
2. Family law training Guidelines 40 and 16-hour mediation course.
 - a. Removed from consideration based on issue going back to committee.
 3. Rule 8. making the 12-hour family law basics course a pre-requisite for the 40 and 16-hour training course. Former DRC Commission Member and FFS/MSC Trainer, Diann Seigle, proposes to make the 12-hour basic family law education requirement under Rule 8(a)(1) a prerequisite for the 40-hour FFS course. The proposal is made in conjunction with removing the family law educational component from the FFS training, as described above. The family law complexities involved in the FFS mediation training program will be more comprehensible for attendees who have a basic knowledge of family law. The 12 hours may be obtained at any time by purchasing a course through the NCBA, at a discounted rate for DRC applicants.
 4. Rule 8, remove stale grandfathering language. The grandfathering language allowed FFS mediators to certify based on prior mediation experience. This provision expired on June 1, 2021 and should be removed.
 5. Rule 8, require the 6-hour legal term course to be a prerequisite for the 40 or 16-hour training. The committee proposes amending the FFS Rules to require the 6-hour legal term course as a pre-requisite for the 40-hour or 16-hour FFS training for all non-attorneys. This will mirror the recent amendments to the MSC program.
 6. DRC Compliance Policy. The committee proposes to update and mirror the amended language in the Compliance Policy reinforcing

the family law requirement must be met prior to taking the 40-hour training.

- v. The Committee makes a motion to approve # 3, 4, 5 and 6. Making the 12-hour family law requirement a pre-requisite to the 40-hour training and updating the policy, making the 6-hour general legal terminology a pre-requisite to the 40-hour training, and removing the stale grandfather language.
 - 1. Discussion: Nease Brown moves to amend the motion to clarify NC State Bar family law specialist in Rule 8(a)(1)(c).
- vi. Laney seconds. Vote – all in favor. None opposed. Motion carries, approved.

Added Matter not on the agenda.

At our committee’s recommendation, the Commission adopted a pilot program allowing DRC trainers to teach through the use of remote technology. At the November 19, 2021, meeting, the Attendance Review Committee proposed, and the Commission adopted, language for the Training Guidelines to allow DRC trainers to teach remotely, if they choose. As such, the pilot program is no longer necessary.

Judge Tyson: Do we have a motion to amend the agenda to include a vote to terminate the pilot program? Laney moved, Soni seconded. Vote – all in favor. None opposed. Motion carries, approved.

20. **Ad Hoc Committee Reports –**

a. Committee on Long Range Planning – Ms. Nease Brown

- i. Online Dispute Resolution update. Staff has continued to work with the AOC IT team to research the feasibility of operating an online dispute resolution program. We have now been told the AOC does not have the resources or capacity to take on the project. We will revisit this once Odyssey is live. We are not sure whether that means when the pilot is live or once all 100 counties are operational, but staff will continue to monitor the programs operating and will update us accordingly. Perhaps once we have pilots that are operational, we can look at ODR again. But we are on hold at this point.
- ii. Discussion: Is the idea that in broad strokes that once this is up and running the DRC would maintain a remote platform that mediators could then use to do online mediations?
 - 1. Kozlowski: The ODR project is not for the programs we currently operate. Over the past year and a half, we have been working with the National Center for State Courts, the AOC (DeShield and Ryan Helms) to see if we could implement an online dispute resolution program for lower courts that don’t currently have a mediation program. The program would be asynchronous and cover cases such as landlord tenant, civil district court, etc.

(3.g) Ad Hoc Attendance Review Committee – Mr. Soni – report was skipped above.

- iii. Previous Matters

1. Update on Rule 4. The committee continues to look into the best way to move forward with Rule 4. We met on January 21 and had two guests present on the call, Wade Harrison who is up in Burlington and Parag Shah. Mr. Shah was able to provide some stats from other states although we did look closely at the NC stats. The committee is scheduled to meet again on March 4th, and we are having good and vigorous discussions. We are trying to find good solutions that are going to work for us moving forward.

iv. New Matters

1. None.

b. eCourt Committee – Ms. Greene.

i. Nothing to report from the subcommittee as we have not met. We have been working with eCourts to make sure the stats we can track continue to be monitored and are available in odyssey. We have created new codes to create uniformity across the state, for better case management to help them determine better triggers. I did speak with the eCourts staff and if we are good to go. Mecklenburg, Harnnet, Johnston, and Wake, are the pilot counties and they are the actual process builders. looking at the step-by-step actual process. We added in, some clerk mediation information as they are not currently managed through any of the current systems. Maybe it would make it easier to utilize the program. As far as a go-live date, it is delayed again – we are in holding pattern. We don't have an exact date of when Odyssey will go live, even in the pilot counties. We are waiting on eWarrants – it is projected to go live in the spring, once eWarrants go live then 45-60 days later the pilot counties will go live. Everything is hinging on eWarrants going live. Additionally, the mediator app on the AOC's server that provides staff with data on all certified mediators is on hold. We were hoping it would be rolled in, before the renewal period this year. . Even if it went live in the next few months, it would be in the middle of the renewal period and it would be difficult to manage so the AOC is holding off for a least a year.

c. Video Observation Committee –Kozlowski on behalf of Mr. Wijewickrama.

i. FFS Observational Video update. The FFS Observation Video created by Ketan Soni, Todd Owens, Lynn Krueger-Andes, Heidi Risser, and Deb Dilman is now up and running on the DRC's website. The creators were gracious enough to give the DRC rights to the video so we can allow anyone to view the video. The video is available by request to any person, applicant, or curious individual. DRC staff reports they have already received several requests to access the video for certification purposes. We have received numerous compliments and lots of praise on the video.

21. **Ex Officio and Other Organization Reports.**

a. Mediation Network – Ms. Estle

- i. Nothing new to report – we are waiting on the new DCC rules and regulation. Past that everything is fairly quiet.
- ii. Discussion: How many centers are part of the network and where are they located. Estle– there are about 13 centers that are part of the network, and there are a number of centers that are not part of the network. My center is in Fayetteville. I have been really busy, I have been working with the Wilmington Center and helped to set up the center in Robeson County.

b. Court Staff – Ms. Greene

- i. Stats for MSC, FFS, and ARB. I am in Swain County, in Bryson City. I am reporting on court data. In your handouts you have statistics for this period. The statistics are from the 2nd quarter, from July 1 to December 31st. The FFS program has a 76% settlement rate. This takes into consideration 1210 cases in the mediation program. For perspective, the same quarter last year was at a 68% settlement rate, so it is slightly higher. For the MSC program, there is a 61% settlement rate, where last year the settlement rate was 56%. Again, we are seeing more settlements this year. For arbitration, we look at different statistics, the appeal rate. The current stats show a 20% appeal rate which is pretty normal for what we see in the arbitration program. Tara has joined us briefly, for the last couple of superior court managers training program at the AOC. We hold training for the judicial assistants, trial court coordinators, and new court managers as they are the people who manage these cases.

c. NC Court Managers Conference – Ms. Tate

- i. Not currently on call. Nothing to report.

d. NCBA Dispute Resolution Section – Ms. Kromer

- i. Not on call. Nothing to report.

e. Industrial Commission – Ms. Nance

- i. Not on call. Nothing to report.

f. Court of Appeals – Judge Tyson

- i. We continue to hold both remote and in-person hearings through the pandemic. We have two new judges that have joined the appellate mediation program and they are now doing mediations. We do about 15 cases a year, but if we can settle them, it saves a lot of time and expense. The panel does not have to hear the case or write the opinion, so it is an important program.

g. Federal Courts – Mr. Laney

- i. We have been virtual forever; we use conference calls and do not meet in person. I have been with the court for some 20 years. But I will be retiring from the court at the end of April. My successor is located in Minnesota.

h. Legislation – Mr. Laney

- i. Not aware of anything moving right now.

22. Update on next meeting – Maureen Robinson

- a. The next meeting will be held on June 3rd via webex. Fall meeting, we are looking at November 18th – goal was hybrid to allow in person, but we are having trouble getting a room.
 - b. Discussion: Can we have a retreat meeting? It would be great to hold a live meeting. Maureen: I will look into our options.
- 23. **Adjournment** – Judge Tyson asks if there a Motion to adjourn: Laney moves to adjourn. David seconds. Vote – all in favor. None oppose. Motion carries, approved.