



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Dispute Resolution Commission

Meeting Minutes

Commission Meeting

Friday, August 18, 2023

10:00 am

In Person Meeting at the NC Judicial Center, Raleigh, with Remote Access via WebEx

Commission Members present in person: Judge Gorham, Judge Tyson, Ketan Soni, David Wijewickrama, David Niblock, Robin Stinson, Dolph Sumner, Judge Bragg, Zach Bolen, Judge Southern, and Frank Laney.

Commission Members present via WebEx: Lori Hamilton and Charlot Wood (10:00-12:36am).

Ex Officio Members present in person: De Maca Adams

Ex Office Members present via WebEx: Tina Estle (10:00-11:42am) and Denise Cline.

DRC Staff present: Tara L. Kozlowski and Mary Brooks.

With regrets: Alice Stubbs, Justina Tata, Judge King, DA Benjamin David, Diann Seigle, Tammy Nance, and Maureen Robinson.

Commission Guests: Judge Michael Stading.

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

1. Welcome and Announcements – Judge Gorham
 - a. Thank you all for joining us today, we have a few members who are attending remotely. I hope everyone has had time to review the meeting packet in preparation for today's meeting.
 - b. Approval of April 21, 2023, Meeting Minutes.
 - i. Ms. Stinson made a motion to approve the April 21, 2023, meeting minutes. Seconded by Mr. Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.

- c. Before we get started, we would like to honor two of our members whose terms have expired, and we want to show them our appreciation. One of those members is Judge Tyson.
 - i. Judge Tyson was presented with a plaque of appreciation for the dedication and service to the Commission as a Member and Vice-Chair. He has been a member since 2017.
 - 1. Judge Tyson thanked the room and said serving on the Commission was a honor. Judge Tyson introduced Judge Stading as he was selected by Chief Justise Newby to fill Judge Tyson’s seat on the Commission. Judge Tyson expressed that he has enjoyed serving with him on the court. Tyson is amazed at the amount of work that gets done here at the Commission with the limited resources we have. Judge Tyson was glad to let everyone know that he just recertified as a DRC mediator. And he thanked everyone for the opportunity to serve with them.
 - ii. Commissioner Ketan Soni was presented with a plaque of appreciation for the dedication and service to the Commission from 2020-2023.
 - 1. Ketan Soni thanked everyone and commented that just because he is not behind the desk doesn’t mean he is not still doing work. He assured the room we would all hear from him soon.
 - iii. Commissioner Charlot Wood was presented with a plaque of appreciation for the dedication and service to the Commission. She has been a member since 2017.
 - 1. Ms. Wood thanked everyone and said it has been a real honor and pleasure to serve on the Commission.
 - d. New Ex Officio Member. The NCBA DR Section’s ex officio position has moved to the new Chair of the section, Will Oden. Mr. Oden was not able to attend today’s meeting and has requested Denise Cline to fill in for him. Ms. Cline is online today.
2. Office Report – Ms. Kozlowski
- a. Budget.
 - i. We have just concluded our fiscal year last month. The DRC began the FY with a balance of \$321,567.00 in our bank account. We brought in just over \$200,000 in receipts from certification fees, trainer fees, and application fees. We spent \$153,787 on staff salaries, supplies, meetings, and retreats. This gives us a surplus on the year of almost \$48,000, leaving our beginning balance for FY 23-24 just under \$370,000. Keep in mind, the AOC continues to cover Maureen’s salary until such time we can implement the Commission’s request to increase annual dues into our Mediator Platform on Odyssey.
 - b. Renewal.
 - i. We are at halfway mark and 41% of mediators have renewed.
 - c. Trademark update.

of the cases settle keeping people from moving on to the next level. They are interested in coming in under our Rules and regulations to have some oversight of the program. The sense of the committee was that it makes sense to bring them under our jurisdiction, so now the matter is in front of the civil subcommittee for consideration. If we do move forward with this, it will require some work from a few different committees.

- a. Discussion: who does the training for OSHR mediators. CDSS provides the training.
- b. Kozlowski: The training is taught by CDSS and is substantially complaint with our programs.

b. Executive Committee Report – Judge Gorham

Under DRC Rule 1(c)(1), the Executive Committee may make decisions on matters which require action before the next Commission meeting, the votes are reported at the next Commission meeting. We have had two matters that were brought to the executive committee’s attention since our April meeting.

- i. HB116 vote on May 1, 2023. Judge Tyson, on behalf of Judge Gorham. Chuck Spahos, with the Conference of DA’s, filed HB116 on February 14, 2023, to modify laws affecting district attorneys. On March 1, the bill was amended to include proposed language addressing the district criminal court mediation program and fees, that is spelled out under NCGS 7A-38.3D and 7A-38.7. Mr. Spahos was in contact with our staff and explained their motivation for the change was to allow a mediation center that had received private funding to conduct district criminal court mediations, to be able to do so without asking the judge to waive the mediation fee on a case-by-case basis. Our staff meet with Frank Laney, Jody Minor of the Mediation Network, and Chuck Spahos to determine the best language that would allow for the fee to be waived for a class of cases and still protect the centers that did not have private funding available. All agreed on language for Mr. Spahos to submit in the next draft of the bill. A few weeks later, our staff requested AOC legal to determine if we could bypass paying the clerk of court the DCC mediation fee, under the same statutes, if the DRC received grant funding to support that program. The staff’s goal in obtaining funding would be to pay the community centers directly for work completed. The response we received from AOC legal with a narrow position on the statutory language, indicating we would have to pay the clerk directly for each mediation, and not the centers. AOC legal recommended we include language into HB 116 that would allow a third-party payor to pay the centers directly. After meeting with Frank Laney, our staff requested Mr. Spahos to include language that would allow funding from an outside source to be paid to the centers directly, without the need to move through the clerk of court’s office. Mr. Spahos did not believe the DRC would need to actively support the requested legislation but thought it best to gain DRC’s approval

in the event the legislation was questioned. The Executive Committee voted by email with 5 members in favor: Ben David, Judge Gorham, Judge Hamilton, Mr. Laney, and Mr. Soni, and received no vote from the remaining 2 members. The motion carried to support the proposed legislation. We were not asked to give a formal position on the proposed legislation. Mr. Laney will cover the bill in his report under legislative liaison.

- ii. Mr. Laney, I can address this issue now. The purpose of this bill was to allow the third party to pay for the mediator. The current system requires the parties pay the clerk, then the clerk sends a check to the mediation center once a month. The problem is a lot of people don't have \$60 to pay for the mediation, so a lot of mediations are not held due to lack of funds. So, the proposed language allows a third party, such as grant funds, to pay the centers directly for the work without having to funnel the mediation fee through the clerk's office. The legislation has been passed.
 - iii. OSHR Mediation Program Inquiry vote on May 30, 2023. The other matter was brought up by Mr. Bolen, and that was the request for approval to start investigating the possibility of assuming certification and regulation over state mediators and bring this matter before the necessary DRC committees for consideration. The executive Committee voted by email with 5 members in favor: Judge Gorham, Judge Hamilton, Mr. Soni, Mr. Laney, and Ms. Wood, and received no vote from the remaining 2 members, Judge Tyson, and Mr. David
- c. Grievance and Disciplinary Committee – Judge Hamilton
- i. Update on complaint activity.
 - 1. Mediator A-23, appeal. Good morning. It is great to see everyone. I am going to start on the complaint activity. The Grievance and Disciplinary Committee reviewed the complaint that was filed by staff regarding mediator A-23's conduct during a mediation, her response, and all supplemental documentation. The committee deliberated and we did determine probable cause existed to believe that the mediator's conduct was inconsistent with professional behavior, and in violation of the following MSC Rules and Standards: Rule 2(a); Rule 4(c)(4); Rule 6(b)(5); Standard 3. Confidentiality; Standard 4. Consent; Standard 5. Self-Determination; and Standard 6. Legal and Other Professional Advice Prohibited. The Grievance and Disciplinary Committee determined to sanction the mediator by imposing a public admonishment and requiring additional training. The mediator requested to negotiate the terms of her sanction, but the committee denied the request. The mediator has appealed the sanction and the appeal hearing will be held at the Judicial Center on November 3, 2023.

2. Mediator E-23. Mediator self-reported a matter involving a potential conflict of interest with a party to a mediation they conducted. The potential conflict was discovered after the mediation had concluded. Mediator was office sharing with a colleague and did not have at that time a conflict check system in place. However, the two attorneys share a website, firm name, letterhead, and box at the courthouse for orders. The colleague had represented a party to the mediation several years prior. The mediator holds themselves out to the public as being a partner with the colleague. Under DRC Rule 9(c)(3), I reviewed the matter and requested staff to send a letter to mediator regarding best practice for conflicts checks moving forward. Mediator was informed the letter would be placed in their file.
 3. Mediator F-23. Court staff brought a matter to staff's attention, by asking how to code a Report of Mediator in CaseWise. The mediator had incorrectly filled out their Report of Mediator by marking the mediation as not being held and listed the reason as "defendant did not show". Under DRC Rule 9(c)(3), I did review the matter and requested staff to send a letter to mediator regarding proper procedure for completing the Report of Mediator when a party does not attend the mediation and to caution the mediator on confidentiality moving forward. Mediator was informed the letter would be placed in their file.
 4. Mediator G-23. A complaint has been filed against Mediator G-23. The Mediator has been provided a copy of the complaint and has until September 1, 2023, to provide their response to this committee for review. We have no additional information on this case as we are awaiting their response.
- ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
 1. New matters: Letters of Concern regarding reporting requirements. During the certification renewal period every year, staff will discover a few mediators who inaccurately report pending matters on their renewal, who failed to initially report the matter when the mediator was put on notice. Staff sends a letter to each mediator reminding them of the DRC Rules and reporting requirements. The letters are placed in the mediator's file. Currently, staff has two individuals on this list.
 - iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
 1. One previous matter: Applicant D-23. Staff received an application for DCC certification that fell outside of the guidelines concerning past moral conduct. The applicant had several past misdemeanor

and felony charges, all of which occurred more than 20 years ago. Since that time, applicant has avoided all criminal activity aside from traffic matters, they have received an education, and been successfully employed. Applicant has worked for the community mediation center sponsoring the application for several years and has the full support of the center director. The committee determined to certify the applicant with a one-year probationary period, where the applicant must remain clear from any criminal activity, not receive any complaints from their work as a mediator, and not violate DRC Rules and Standards.

d. Mediator Certification and Training Committee – Judge Tyson

- i. CME offerings approved since the Commissions April 2023 meeting. If you look at page 29 of your packet, there is a list of 5 courses that have been approved. The Mecklenburg County Bar, the New Hanover County Family Court, the NCBA, Wake County Bar Association and our own Conflict Resolution Day. We have approved these training courses for CME.
- ii. Applications for certification that came before the Committee.
 1. None.
- iii. Previous Matters
 1. None.
- iv. New Matters
 1. CME document proposed amendments. After creating the first DRC podcast, staff realized creating 10-minute podcasts as currently allowed in the DRC's policies, would be a nightmare to create and track for recording CME. The committee recommends modifying the DRC's CME documents to reflect a one-hour podcast for CME credit. Please see the DRC documents in your meeting packet. Under the DRC Comment Policy, these documents do not need to be posted as they address procedures. If approved, the changes will take effect immediately.
 - a. Discussion: The guidelines, can we change from a current commissioner may record a podcast, to including former commissioners. Any objection? None.
 - b. Discussion: why don't we allow for CMEs to rollover to next year.
 - c. Kozlowski: The DRC implemented CME courses as mediators were running into problems violating the Rules and Standards. The DCR felt that by implementing CME, the mediators would stay on track with an annual reminder of the Rules and Standards. Because the DRC only requires 2 hours per year, it was decided extra CME courses could not be rolled over into the following year.

- d. Comment: The State Bar is changing their reporting requirements to a 2-year reporting period for 24 hours, and there will be no rollover for extra courses.
 - e. Question: On page 14, it states the CME must be 1 hour in duration to receive 1 hour of credit, the State Bar allows 50 minutes of presentation with a 10-minute Q&A, can we do that?
 - f. Kozlowski: We allow Q&A all through the program, so there is no time limit for questions.
 - g. Judge Tyson made a motion to adopt proposed amended language to require all CME courses to be a minimum of 1 hour to receive credit and allow former commissioners to record podcasts. Seconded by Mr. Laney. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
2. Proposed amendments to FFS Rule 8(a)(1) and (5).
- a. The proposed changes are very slight. Staff has requested to clarify FFS Rule 8(a)(1) and 8(a)(5) as the current language causes confusion with applicants. Under subsection (1), there is a change from should be able to shall. And subsection (5) the proposed language eliminates the word civil and asks for family related disputes. This is to ensure individuals training for family financial certification are observing family financial mediations.
 - b. Kozlowski: staff receives calls on this issue all the time, therefore staff wanted to clean up this language to be clear for our applicants.
 - c. Judge Gorham: Can I have a motion to approve? Judge Tyson makes a motion. Seconded by Mr. Sumner. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
- e. Standards and Advisory Opinions Committee Report – Mr. Laney
- i. Previous Matters
 - 1. State Bar matter: Drafting an Agreement to Mediate. Two individual mediators, Sarah Kromer, Danae Woodward, approached us to come up with an agreement to mediate where the case has not been court-ordered into mediation. The mediators want to have the parties enter into an agreement to mediate before the conference to allow them to agree to confidentiality without needing to provide legal advice or asking them to seek out an attorney. One of the concerns was the State Bar going after a mediator, for over mediating. The mediators want to make sure they are not in violation of the Rules. Staff worked up a draft with the two mediators. It went through the committee, then to the State Bar committee. The State Bar does not govern us, we are submitting this

out of courtesy. The State Bar committee met and has requested additional changes, that have not yet been provided to this committee for review. We are still working on this project and will continue to update the Commission with any progress.

2. State Bar matter: Mediator acting as scribe. Staff requested a formal opinion from the State Bar on the ability of a mediator to act as a scribe, and the impact of a term of the final agreement that violates the Rules of Professional Conduct. The State Bar has not responded to the request as of this date.
 - a. Question: What authority does the State Bar have when the attorney is not acting as a lawyer?
 - b. You are always a lawyer. Even if you are not practicing law.
 - c. Discussion: Mediators being regulated by other regulatory bodies and lawyer's requirement to report bad acts by other lawyers. There may be overlap where a mediator is clear under one governing body, but not clear under a different regulatory body. Confidentiality applies at all times, but a mediator under investigation may respond to the Commission to defend their actions.
3. Request for AO and State Bar matter: Request regarding immunity. A mediator informed us another mediator promulgated an agreement that limited liability. He was concerned if this was legal. We contacted the State Bar, and there is no violation with RPCs. We contacted lawyers mutual. They advised judicial immunity, that is primary liability, and you can't have secondary liability if there is no primary liability. We responded to the request that we think it is overkill and not needed because you already have judicial immunity. But on the other hand, there is no legal or State Bar reason that would prohibit it. At this point the DRC is not making a rule saying you can't do it. One thing that comes out of this question is that we can tell people to incorporate the Rules and the statute, as the immunity is in the statute not the Rules. We cannot advise if the contract will stand up in court, if challenged, that will be up to the presiding judge.
 - a. Comment: Judicial immunity is a status by virtual by the position, so if challenged you need to raise it as a defense.
4. Proposed amendment to Standard 3(d)(2). This Commission approved the committee's request to amend Standard 3(d)(2) at the April meeting. The proposed language was posted for 30 days, staff did not receive any comments. This committee recommends adopting the amended language to the exception of confidentiality under subparagraph (2)(d) to include language that would allow for an exception by statute or by a program rule.

- a. Standard 3(d)(2) provides “if a statute, or a rule promulgated by an entity created by statute, requires or permits a mediator to testify, give an affidavit, or tender a copy of an agreement reached in mediation to the official designated by the statute or rule, then the mediator may do so.”
 - b. This language will ensure a mediator may not follow corporate policy or rules that are inconsistent with DRC policy or Rules. However, if a state or federal agency requires tendering a copy of the agreement, the mediator may do so without violating the Standards.
 - c. Judge Gorham: Can I have a motion to approve?
 - i. Committee made a motion to adopt the proposed language to Standard 3(d)(2). Seconded by Mrs. Stinson. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
- ii. New Matters
1. OSHR mediation program. The committee is waiting to see if funds are available, then will look at OSHR Standards vs. DRC Standards.
 2. Clarify language in Standards. Staff received a request to clarify “terminate” and “discontinue” in the Standards. The committee felt the terms did not cause confusion to the general public, but that we should send the request to the Supreme Court in 2024 as clean-up, using the word terminate.
 3. Request to remove “reasons” from mediator filed forms. The committee considered a request to amend mediator forms that request a “reason” for filing the form. There are two forms that provide for a “reason” section for a mediator to complete: AOC-DRC- 19, and AOC-DRC-20. The form asks for reasons, which is an open invitation for mediators to start talking about what’s going on in the mediation. The committee approved this request to help mediators avoid violating Standard 3(c) by limiting communication with the court. Maureen drafted samples for you to compare with the original forms. If you approve the forms, the AOC forms committee will revise the forms and publish. Under form DRC-19 we have listed the need for discovery, scheduling, need additional information, need more time to complete, and other. Under form DRC-20, the notice of withdrawal/disqualification the committee has the appearance of bias, appearance of prejudice, potential of partiality, potential conflict of interest, scheduling conflict, and other.
 - a. Discussion: Judge Southern confirmed, that he would find these reasons sufficient.

- b. Judge Gorham asks for a motion. Motion made on behalf of the committee to include the list of reasons on the form. Seconded by Mr. Niblock. Discussion: Request to consider the Clerk program forms. Friendly amendment recommended by Mr. Soni and approved by all. Vote – all in favor. None opposed. Motion carried, approved.
 - 4. Request for advice from mediator. A mediator contacted us about bringing his paralegal into the mediation. The answer to date under the current ethic Rules is, no. The committee has discussed this but not yet reached a conclusion. The question becomes if we should amend the Standards to allow a mediator to bring a paralegal into the mediation.
 - a. Discussion: I would say they should be able to attend, if you have a complex matter that takes days to mediate, all that documentation has to be managed somewhere. When you have a county govt that is involved it becomes complicated.
 - b. I say no. This request came from a family financial mediation and the mediator wanted to bring in his assistant to run the spreadsheets.
 - c. If we make a rule, it needs to apply to everyone the same. All in the discussion agree to this concept but disagree on the main issue of allowing a paralegal to attend.
 - i. If we allow paralegals to attend, do they need to take the training? Something the committee is considering is the mediator would be responsible for their staff.
 - ii. We are accountable for our staff.
 - d. Thank you for comments, they will be considered at the next committee meeting.
 - 5. Discussion about child abuse and the duty to report as an attorney or mediator for the parties. The Commission’s Standards for mediators allow the mediator to remain in compliance with any reporting requirements provided by law.
4. Mr. Laney’s Ad Hoc Committee Reports
 - a. DRC Funds Committee – Mr. Laney
 - i. Proposals from committee. The committee proposes amended language to the DRC Budget Policy, please see #7. Special Event Trainings. This will allow staff to use no more than 10k per year on training events. Tara has a request under #8, in include her State Bar dues and any membership dues for the NCBA DR Section.
 - i. Judge Gorham: Can I have a motion to approve? The committee made a motion to adopt #7 and #8 in the DRC Budget Policy. Seconded by Mr. Niblock. Discussion: This language is specific to the NCBA, do we need to

broaden the language? Stinson makes friendly amendment to change the language to the NCBA and dispute resolution section dues. Vote – all in favor, except one. Mr. Soni abstained. None opposed. Motion carried, approved. Additionally, the committee approved ordering pins with the Commissions logo.

Judge Southern left meeting. A quorum was maintained.

- b. Ad Hoc AO Review Committee – Mr. Laney
 - i. Update on progress. The committee has met and divided the AOs by category, to give each committee member a section to work on. The committee has determined to clean up some of the language, update any bad law, and create a headnote for the top of each AO that provides quick guidance. The committee would like to hire an indexer to create an index that will allow mediators to perform a quick search of the AOs based on a specific term. We are in progress, but a long way from being done.
 - c. Green Book – Mr. Laney
 - i. I have not set a meeting for this committee yet. We are thinking to create a steering committee that includes Ketan Soni, Ralph Walker, Jackie Clare, etc. Our job is to tear apart the book and ask people to edit. The section does want to participate, but don't have the funds to contribute too much, as the cost may around ten thousand dollars.
5. Committee Reports Continued
- a. Legislation – Mr. Laney
 - i. DCC legislation. HB116 passed, with the language approved by the executive committee on June 9, 2023. The ability to pay the centers directly will go into effect on October 1, 2023.
 - b. 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.
 - i. The forms are still on hold with the AOC.
 - b. Updating forms to allow for email service under Rules of Civil Procedure, Rule 5. Staff is waiting on response from Odyssey developers to reconcile our forms with the new forms and Rule 5 to allow service by email.
 - 2. Proposed amendment to all rule sets "no weapons". The Commission voted to amend the following language to MSC Rule 4(g), FFS Rule 4(f), Clerk Rule 4(e), and DCC Rule 5(c). (The Farm Nuisance Rules incorporate MSC Rule 4 by reference.) We went round and round at the last meeting about the specific language needed for this matter. The proposed language was posted for 30 days, and we received two comments. The committee agreed on the proposed language that incorporates one of the comments from a mediator to include the

language in the other methods of ADR in the Rules. The committee makes a motion to recommend that the Commission adopt the approved amended language and include the language in MSC Rule 10(c)(9)(d) and FFS Rule 10(c)(8)(d).

a. Judge Gorham recognizes the motion and asks for a second. Seconded by Mr. Niblock. Discussion: None. Vote – all in favor, except one. Judge Tyson abstained. None opposed. Motion carried, approved.

3. Proposed amendment to MSC Rule 8(3)(c). The Commission voted to amend MSC Rule 8(3)(c) to allow for a Department of Labor Mediation to qualify for an MSC observation. Many of our mediators have participated in these mediations and the trainings. The issues and the complexity of those issues are similar to superior court matters and matters before the Industrial Commission. The proposed language was posted for 30 days, and we received no comments. The committee makes a motion that the Commission adopt the approved amended language allowing a Department of Labor mediation to qualify for one observation.
4. Judge Gorham recognizes the motion and asks for a second. Seconded by Judge Tyson. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.

ii. New Matters.

1. OSHR mediation program. We have the request on the table to bring OSHR under our umbrella. The committee discussed this and had a few questions. If all existing mediators are going to be certified by the Commission, that would require a full application be submitted with a background check completed, along with an annual renewal application, and staff would have to process complaints and conduct investigations. It would be a tremendous undertaking and a lot of time for the Commission and the concern is where the funding would come from. It would be an awful lot to ask our Commission staff to absorb without additional funding. DRC staff is going to work with OSHR to determine if state funds would be available for the OSHR mediators' application fee and annual dues. If funds are not available, it is unlikely this committee will recommend moving forward.
2. Kozlowski: We have reached out to Bailey Hodgin who is the mediator coordinator about resources that would be available. Hopefully we will hear back from her soon.
3. Public Records program. Ms. Wood asked Ms. Kozlowski to report on this issue as it is still unfolding.
 - a. Kozlowski: Staff received a call from court staff asking about the process for Pre-litigation Mediation of Public

Records Disputes. They were asking what forms to file. Staff discovered that the program created by statute, 7A-38.3E, intends for the parties to use DRC forms that do not exist. The statute provides for voluntary pre-litigation mediation, and mandatory mediation if an action is filed under Chapter 132. The mediation is conducted in accordance with G.S. 7A-38.1 and G.S. 7A-38.2, under the MSC Rules and Standards. After investigating this issue, staff discovered a Letter of Notice sent to Clerks of Superior Court on October 12, 2010, from AOC's Deputy Legal Counsel, Pamela Best. Ms. Best describes the procedure for handling these matters, and states "the DRC has not yet developed forms for this purpose...". Unaware of any such forms, staff reviewed old DRC meeting minutes. In the September 17-18, 2010, meeting minutes, Judge Lee mentioned the new legislation providing for pre-litigation of public record disputes and asked Andy Little "to contact the General Assembly and relay concerns about the program's design, i.e., the pre-litigation format, and express the Commission's interest in having the opportunity to consult on future legislation that establishes mediation programs." The Public Records Mediation Program has not been mentioned in any other DRC meeting minutes. When the General Assembly adopted this legislation, it appears the DRC did not provide guidance on how the program would operate. Staff is currently working with the AOC to determine the best course of action as the legislation provides for actions that may be inconsistent with the MSC Program Rules. We will keep you updated on any progress made.

b. Discussion: This is common issue for Office of the Sheriff where people will file suit and it has to be mediated, but it is a serious one. Especially, when folks are getting access to incident reports, camera footage, etc.

c. Criminal Sub Committee – Benjamin David/Tina Estle

i. Previous Matters

1. Ms. Kozlowski: Before we move into this report, I wanted to let everyone know that we have lost Jody Minor, Director for the Mediation Network, to cancer recently. We worked with Jody frequently and he will be missed. The Commission also acknowledged the passing of Ralph Peoples and George Cunningham. The Commission took a moment of silence for these individuals.

2. Benjamin David and Tina Estle are not present, Ms. Brooks is prepared to give the report. Ms. Brooks: Update on grant funding. The first initial grant we applied for, we hit a hiccup and Tara Kozlowski can provide information on this grant.
 - a. We were successful in applying for a Z Smith Reynolds grant for a state level systematic change program.
 - b. We were looking to apply for a JAG grant, however, to apply at the state level we would need to go through the Governor's Crime Commission. On a local level, we simply do not qualify.
 - c. We also found several general funds directed grant opportunities, but they also require applying through the Governor's Crime Commission.
 - d. The last grant we found is through IOLTA. Ms. Brooks attended a webinar and learned they gave away 6.2 million last year.
 3. Ms. Kozlowski: We started this project without any training on the subject, so we are learning as we go. We are in an odd position as we are a state agency trying to find money for local non-profit organizations. We were encouraged by the support we were receiving from the AOC, however, the first grant that we spent days working on was not submitted by the AOC. I did not have authority to submit the application and am currently going around and around with legal on gaining that authority. We are going to continue to try to find the funds, but we are having a difficult time.
 - a. Discussion: A number of grant program names were thrown on the table, Ms. Brooks recognized many of them and had already reached out to them. All were encouraged to send any information on funding sources to Ms. Brooks.
 4. Ms. Kozlowski: We are working with AOC legal on an agreement between the Commission and the Community Mediation Centers indicating we would be a financial sponsor.
- d. New Media Committee – Mr. Soni
- i. Updates to website. Staff continues to update the website. In May, the COVID-19 information was removed from the DRC website. Articles posted regarding how to conduct a remote mediation, were also moved to the Commission's Articles page.
 - ii. Social Media Presence. Maureen continues to post Commission information on Twitter and LinkedIn. Especially, about renewal reminders.
 - iii. Vignettes of the Rules. The committee voted to create video vignettes of the Rules. Short videos that will define the Rules quickly, in a fun manner. Staff spoke with Chris Mears, at the AOC, and we will try to record in multiple settings and backgrounds. We will provide links to each video, for each

rule, so mediators can send out a letter to all parties and attorneys with the links. We want to give a little information on the Rules, a little humor, and to drive traffic to the website. This is at the very initial stages.

6. Ad Hoc Committee Reports

a. eCourt Committee – Ms. De Maca Adams.

- i. There is nothing to update from the subcommittee as we have not met. However, Tara, Maureen, and I met with Emily Westover and the Business Analysis and Process Management group on July 27, 2023, and discussed current configuration time standards and extension of deadlines for cases eligible for/ordered to ADR in Odyssey. Odyssey will roll out in Mecklenburg County on October 9th. Currently, deadline extensions are not configured into Odyssey, which present a challenge in a few of the pilot counties because local rules may not align with time standards configured in Odyssey. ICMS does not have the ability to be modified. Odyssey is a clerk-driven program and clerks are responsible for entering certain codes to trigger flags. If the clerk uses an alternate date to flag an ADR eligible case, district court staff may not receive the flag established for the process. This is an issue because court management staff cannot make updates in Odyssey. The BAPM team is working on resolving this issue. Emily noted that many local rules are outdated. Because local rules do not always align with time standards for ADR deadlines, BAPM have asked for a review of the MSC and FFS timelines to possibly remove the local rules timelines. Ms. Adams worked with the BAPM team to come up with a way to pull stats from the 4 pilot counties. Duplicate ADR data was generated in Odyssey reports with the conversion from the legacy systems to ICMS. The number of end pending cases pending in the ADR process at the end of FY 22-23 were used as the beginning number of pending cases in the four pilot counties. Data change occur for many districts between the end of the fiscal year and beginning of the next due to local case audits (and are reported) but are not for the pilot counties at this time. Odyssey collects information differently from CaseWise, and we are working on a way to extract the same information from Odyssey that is currently extracted from CaseWise for reporting more precise begin pending information.

b. Video Observation Committee – Mr. Wijewickrama

- i. Nothing to report.

c. Cherokee Nation Mediation Program

- i. David has talked to Justice Snooke. Their election is in 3 weeks, and they will have a new chief after this election. The executive committee in the tribe, the chief will have to let them know we are entering into this program. The ability of the justice system in Cherokee to adopt the Rules lies with the chief. He can do that and will do that. They have requested for one individual to be grandfathered in until they can pay to get him certified and trained. To give him one year to get certified and come into compliance

with the Rules. I have invited Tara to come up in Oct or Nov to visit and hammer out the details. I think that our requirements will become their process.

- ii. Discussion: The grandfathered person a local lawyer? No just a person who mediates. When we implemented programs in the past, we have grandfathered people in. They do, within their culture, allow grandparents to the mediation for child custody and tribal elders, to keep children safe. They request that we acknowledge this.
- iii. Question: Do you have to be licensed at the State Bar to practice as a member of the Cherokee Bar. Yes. To mediate, you would have to be DRC certified to mediate on the reservation, but you do not have to be a lawyer to mediate.

7. Ex Officio and Other Organization Reports.

- a. Mediation Network - Ms. Estle.
 - i. Not present.
- b. NC Court Managers Conference –Ms. Tate.
 - i. Ms. Tate is not able to attend the meeting. Nothing to report.
- c. NCBA Dispute Resolution Section – Denise Cline for Mr. Oden.
 - i. Ms. Cline was not present on WebEx.
- d. Court Staff – Ms. De Maca Adams.
 - i. Stats for MSC, FFS, and ARB. Initially, we were having problems pulling stats, but we have figured it out to get the FY 22-23 stats. There are configuration issues, and we are working on it. July 2023 DRC Report re: statistics (July22-June 2023).
 - 1. Over the last few fiscal years, both programs have seen an increase in settlement rates. The CMP program continues to be underused—only 4 counties (Harnett, Alamance, Wilkes, and Watauga) reporting 10 cases completing the process.
 - 2. For the 4th quarter of the FFS program, there was a 71% (72% settlement rate last quarter) reflecting cases that completely or partially resolved and the rate increases to 75.5% if the cases that settle prior to or during mediation recess are included.
 - 3. For the 4th quarter of the MSC program, there was a 60% (60% settlement rate last quarter) reflecting cases that completely or partially settled and the rate increases to 68% if cases that settle prior to or during mediation recess are included.
 - 4. For the FY22-23, 4,170 cases were ordered to arbitration, 1,861 were arbitrated, 768 dismissed before hearing and 1,097 disposed in some other way (not by arbitration). 361 appeals filed for a 19% appeal rate (22% appeal rate reported fourth quarter last FFY).
 - 5. Stats will next be pulled mid-October for July 2023- Sept. 30 quarter.

Charlotte Wood left the WebEx meeting.

- e. Industrial Commission –Ms. Nance
 - i. Ms. Nance was not present on WebEx.
- f. Court of Appeals – Judge Tyson
 - i. Mediation Statistics. We had an all-court conference last week the report speaks for itself. We have conducted 14 cases year to date, as opposed to 15 mediations last year. It may not sound like a lot, but over half our case load is criminal and we cannot mediate criminal. We cannot mediate or termination of parental rights, if you look at the cases that are eligible to mediate, mediation is a larger part of the program than it appears. We have lost three judges who were certified mediators.
- 8. Update on next meeting – Ms. Kozlowski
 - a. Ms. Kozlowski will be out for 2 weeks on vacation in September and will undergo shoulder surgery in November. Our next meeting will be held toward the end of January 2024, or early February 2025. Please give us any requests for retreat location or dates.
- 9. Adjournment – Judge Gorham asked for a motion to adjourn. Judge Tyson made the motion. Niblock seconded. All in favor. None opposed. Motion carried, approved.



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Dispute Resolution Commission

Meeting Minutes

Commission Meeting

Friday, April 21, 2023

1:00 pm

In Person Meeting at The Beaufort Hotel, Beaufort NC, with Remote Access Via WebEx

Commission Members present in-person: Judge Gorham, Judge Tyson, Frank Laney, Zach Bolen, DA Benjamin David, David Niblock, Ketan Soni, Judge Southern, Robin Stinson, Judge Bragg, and David Wijewickrama.

Commission Members present via WebEx: Charlot Wood and Judge Hamilton.

Ex Officio Members present in person: De Maca Adams and Jim Cooley.

Ex Officio Members present via WebEx: Diann Seigle.

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

With regrets: Justina Tate, Dolph Sumner, Alice Stubbs, and Judge King.

Ex Officio with regrets: Tammy Nance and Tina Estle.

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

10. Welcome and Announcements – Judge Gorham
 - a. Thank you all for joining us today. I hope everyone has had time to review the meeting packet in preparation for today’s meeting. Welcome to our annual retreat in Beaufort....and welcome all who are attending remotely.
 - b. New Ex Officio Member. I am pleased to announce we have a new Ex Officio Member joining us from the AOC. De Maca Adams, was previously a Court Manager from District 19B, Hoke and Moore Counties, and has recently taken the position as Court Management Specialist with the AOC. Ms. Adams, please introduce yourself to the Commission.
 - i. I have been with the AOC for over a month, and I am still getting familiar with the position. I am from district 19B, from Moore and Hoke Counties, and been with the AOC for 19 years.

- c. Approval of January 27, 2023, Meeting Minutes.
 - i. D.A. David made a motion to approve the January 27, 2023, meeting minutes. Seconded by Mr. Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
- 11. Office Report – Ms. Kozlowski
 - a. Education and Community Outreach. I had the opportunity to teach a 2-hour CME/CLE for the Mecklenburg County Bar Association and stopped in to visit with the family court administrator Darwin Rice and a family court coordinator, Albert Hendrix. I was invited to speak to Rick Igou’s ADR class at Central Law School and participate in a role-play with Frank Laney’s Mediation Advocacy class at Campbell this past quarter. I will be speaking at the AOC’s family court educational conference in Concord next week to review rules and procedures with family court judges and court staff. The Mediation Center in Ashville has asked me to present a one-hour CLE/CME next Friday, where the program will be presented again in August and September.
 - b. Budget. As of March 1, we had a total year-to-date revenue of \$192,343.95 and an ending balance of \$423,521.46. As of April 1, we had a total year-to-date revenue of \$196,197.58 and an ending balance of \$414,500.59.
 - c. Ghana Delegation Report. We were pleased to collaborate with the AOC Custody Mediation Program, the NC DOL, and NC IC, and AOC staff to host 4 delegates from Ghana’s Ministry of Justice and Attorney General’s Department. I would like to thank Stephanie Smith, Kari Marvin, Harriet Hopkins, Tammy Nance, De Maca Adams, and Frank Laney for participating in the educational event. My contact in Ghana has expressed the team enjoyed their visit and they are interested in continuing to a relationship with the DRC.
 - d. Rules submitted to the Supreme Court.
 - i. Standards, Farm, DCC, FFS, MSC, and Clerk.
 - ii. The Rules were submitted in November of 2022 and signed on April 4, 2023. They will go live on May 1, 2023. We have a few questions pending before AOC legal to clarify how we will transition from old to new rules. i.e. does the attendance rule apply at the time the Order to Mediate was issued, or on the date of the actual conference. If old rules apply, then how do we regulate MSC matters for reporting a partial settlement, where the Order to Mediate was issued under the old rules.
 - iii. The following forms have been updated to comply with the new rules: CV-813, CV-817, DRC-01, DRC-03, and DRC-08. These forms will go live on May 1, 2023.
 - iv. Staff has been working diligently on updating all material to comply with the new rules and will hopefully have all material re-posted on the website on May 1. Staff sent email communications to all certified mediators regarding the new rules. We will do our best to educate our mediators about the changes as quickly as possible.

- e. Trademark update. The DRC has been issued a Notice of Allowance for our Trademark, giving us 6 months to implement the mark to show how the mark is used. Staff has worked diligently to re-brand all DRC material and will go-live once everything has been created or completed. In 6 months, Coates and Bennet will file a Statement of Use showing our use in the three classes requested.
 - f. Staffing request. At the January meeting, the Commission voted to increase Mary Brooks hours from 20-25, at her regular salary, to work on obtaining grants to fund the DCC program. Mary will provide her findings with Ben David's report under the Criminal Subcommittee. Mary's additional time in the office has proved to be valuable and necessary to staff. I ask that Mary be permanently moved to 25 hours per week moving forward.
 - i. Under DRC Rule 2(b), Judge Gorham, in consultation with the Director of the NCAOC (they have approved the change) may employ professionals as necessary. Judge Gorham approves the request to increase Mary Brooks' hours to 25 hours per week.
12. Committee Reports –
- a. Executive Committee Report – Judge Gorham
 - i. Nothing to Report.
 - b. Grievance and Disciplinary Committee – Judge Hamilton
 - i. Update on complaint activity.
 - 1. Mediator A-23. Staff initiated a complaint into a matter based on several allegations. The mediator was allegedly party-designated by some, but not all the parties. Mediator allegedly scheduled the mediation without seeking input from all parties to the action. Mediator allegedly drafted for pro se parties and provided legal advice. Mediator allegedly circulated a final agreement without copying the pro se parties named in the action. Mediator allegedly encouraged parties to name a designee to sign on their behalf while present at the mediation. Mediator allegedly violated confidentiality by providing excess information to court staff, after being advised not to do so. A number of issues in this situation, and we have discussed this matter at length. Mediator A-23 timely filed a response with staff and will be reviewed by the committee.
 - ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
 - 1. Two previous matters: Mediator E, Mediator F.
 - a. Mediator E reported he received notice of a pending grievance from the State Bar in a timely manner but failed to report the matter remained pending on the renewal application. The committee issued the mediator a private admonishment and advised of reporting requirements. The matter was not appealed by Mediator E.

- b. Applicant D-23. Staff has received an application for DCC certification that falls outside of the guidelines concerning moral conduct. The committee has not had the opportunity to review this file, the matter remains pending.
- c. Mediator Certification and Training Committee – Judge Tyson
 - i. Before we get started, I have an announcement for the Commission. Andy Little requested to take a one-year sabbatical from DRC training, effective April 1st. Andy has been very instrumental in training many mediators. We want to thank Andy for his tremendous accomplishments in furthering the DRC and all our mediation programs. We have wonderful trainers and those who want to apply to be a certified trainer, may apply. Our committee was not able to meet as a committee this quarter, therefore we did not have the chance to review the Civil Subcommittee’s recommendation to allow for Department of Labor mediations to be used for MSC observations. However, we will have the opportunity to discuss this matter during the Civil Subcommittee’s report.
 - ii. CME offerings approved since the Commission’s January 2023 meeting.
 - 1. The committee has been active and approved 4 new CME certifications and trainings. We have approved several new CME training courses. Please see the list of approved courses in your agenda. I would like to point out that the Commission has posted its first podcast available for CME credit. The podcast does not provide CLE but carries a full hour of CME credit.
 - 2. Question: State bar allows CLE to be 45 min of lecture and 15 min of Q&A. do we have anything like that?
 - 3. Ms. Robinson: no, we just approve the agenda.
 - 4. Discussion: As a trainer, we want people to have the full hour of class, and not run short if no questions. Another trainer commented they always run over 60 minutes. This does not seem to be an issue as a practical matter. One member listened to the podcast, and it was very informational.
 - i. Applications for certification that came before the Committee.
 - 1. None.
 - ii. Previous Matters
 - 1. Applicant with advanced degree in ADR. MSC and FFS. We have previously discussed eventually allowing applicants to be certified, to qualify, with an advanced ADR degree. There are a number of schools in NC offering this as an option. We have discussed keeping the requirement of 5+ years of expertise after obtaining the degree.
 - a. Ms. Kozlowski: We have seen a lot of requests from the public for this, and we want to track this under the MSC program. We don’t want to lose track of this to potentially

move the same threshold requirements under the FFS program. This does not require any action today.

iii. New Matters

1. Certifying the Eastern Band of Cherokee Indians. At the January meeting, David Wijewickrama indicated there may be interest in certification for mediators in the Eastern Band of Cherokee Indians. Any update?
2. Mr. Wijewickrama: The tribal chief justice is up for reappointment. To compound matters, they went from a 2 chief primary race to 8 individuals. They will be voted on in June. The Eastern Band of Cherokee Indians is interested in moving forward, and they are curious about the process, and how long it will take. The district court judges want it, one judge is a retired NC judge, and two district court judges, one tribal and one non-tribal. They want to get it done, all lawyers who appear are NC licensed attorneys. The judges do not fall under the NC Judicial Standards, but all lawyers do fall under the NC State Bar. They have a tribal mediation program for criminal and child custody, they also have a community mediation program. Currently, the mediators are not required to be certified.
3. Ms. Kozlowski: It sounds like we could take two paths, 1. Create separate rules that apply to the programs they operate. 2. They could create their own rules that use our certified mediators, like the Industrial Commission.
4. Mr. Wijewickrama: The attorneys have a separate admission to the Cherokee nation. There is a federal component, where US marshals and feds hold court in the tribal court room, but I am not aware of the laws that allow this. But there is some overlap where they can come onto the reservation. Why can't we just require the mediators to have their certification?
 - a. The catch is this, if we discipline on the Reservation then that carries over to the State Bar. We need the same thing in place with the DRC.
2. Ms. Kozlowski: We require all actions to be report to our grievance committee, and if we see something concerning the DRC can act. So, sharing information on behavior, and following each other's lead, should not be a huge barrier.
5. We will take this into consideration and see what steps need to be taken to move forward.

d. Standards and Advisory Opinions Committee Report – Mr. Laney

i. Previous Matters

1. State Bar matter: Drafting an Agreement to Mediate. Staff has been working with Sarah Kromer, Danae Woodward, and the State Bar on the issue of what provisions may be included in the Agreement to

Mediate (service contract). Sarah and Danae are mediating things that are not in litigation where everyone is pro se. There may be interested parties/participants who want to attend but don't have a dog in the fight. Leaving the problem of confidentiality. They want to promise what we do here today is confidential. But mediators cannot impose that – the lawyers typically will draft the confidentiality agreement. But these parties do not have lawyers to draft the confidentiality agreements. We have been working to find a solution of how to incorporate the issues of confidentiality between the parties and the mediator's inability to testify in the Agreement to Mediate. The State Bar has moved this topic to a request for a formal opinion. However, the proposed language for a formal opinion did not solve the problem. The State Bar suggested the mediator draft the contract on behalf of the parties as a consentable waiver of the conflict of interest. However, the Standards of Professional Conduct for Mediators prohibits an attorney/mediator from representing one (or both) of the parties prior to acting as a mediator out of the same cause of action. As an alternative, we are looking to create a stock form that can be used for all mediations, pro se, represented, voluntary, court ordered, etc. The form will be provided by the AOC, the DRC, the NCBA or other organization. The parties can talk about the form, and the mediator will not give legal advice on the document.

- a. Discussion: Inadmissibility of negotiations, although it is in the statute, but the statute may not apply. The next provision is no recording, again in the statute, but the statute may not apply. The rest of the contract is options, starting with confidentiality.
- b. Mr. Laney: After discussion, we added the name of the mediator to the first line because some of these things actually protect the mediator. If the mediator does not sign the agreement, they do not avail themselves to the protection of the contract. For example, if someone is agreeing not to subpoena the mediation, if the mediator does not sign the agreement there is nothing they can do.
- c. Question: If we are going to streamline this, can we delete the two top paragraphs and refer to the statute? We did it this way as the statutes are too broad and will be overwhelming.
- d. People think they can record anything anytime. That disclosure is very important. The expectation is important to have.

- e. Question: What is the goal today? We want at least a vote of endorsement. This form will be reviewed by the State Bar Ethics Committee to ensure the form is in compliance with the RPCs. The form should benefit mediators, without putting them in peril with the State Bar.
- f. Question: Who would house the form? The AOC, or DRC, or NCBA DR Section. We are not clear on this yet. Comment: I like the thought for AOC to house the form, it will be more available.
- g. Is there a motion to endorse this form to be reviewed by the State Bar Committee?
 - i. Mr. Laney made the motion. Seconded by Ms. Stinson.
- h. Discussion: This goes beyond our mediation rules. This says all statements and conduct, even in a different civil action. This brought up the idea about the protection from compelled disclosure. Concerned that there is no right to compel in any civil forum.
 - i. Comment: then they don't sign the form, this is another aspect of confidentiality. I agree we are going beyond the rules, but we are dealing with people who are not mediating under the rules. We are going beyond the rules to accommodate the needs of the parties.
- i. Question: Would this prohibit someone from asking if you 1. Went to a mediation, or 2. Did you settle? Response: yes, I think it would. Response: the fact of mediation and the outcome are not confidential.
 - i. Add in language to the confidentiality of the mediation: Last line in confidentiality of the mediation: In addition, the participants agree that the fact that they have, or are attempting, dispute resolution through a mediation process and the terms of this Agreement to Mediate are not confidential.
- j. Question: If you mediate pre-litigation, and you didn't settle, are you going to be required to mediate again? How are the parties able to file a motion to waive mediation if the first mediation is confidential?
 - i. The concern here is the confidentiality clause may be too strict, the parties can't even file a motion about the first mediation.

- ii. Can we add “the fact that the parties participated in mediation or that they have attempted to resolve their dispute through ADR is not confidential”?
 - iii. Ms. Kozlowski to re-write last sentence to include this language.
 - k. Discussion about stenographer and the difference between using a stenographer and a paralegal who writes down conversation. Stenographer is trained and certified.
 - l. No further discussion.
 - m. Ms. Kozlowski confirmed motion, brought by Mr. Laney, seconded by Ms. Stinson, is as follows: to endorse the agreement to mediate with following changes. We are removing the underline from admissibility of negotiations. The last sentence under confidentiality of mediation paragraph is going to include that the ADR process is not confidential. And permitted disclosure we will add a check line for a participant’s lawyer.
 - i. Vote – all in favor. None opposed. Motion carried, approved.
- 2. State Bar matter: Mediator acting as scribe.
 - a. Letter on behalf of Mediator/Attorney. Staff provided a letter of support citing the DRC Rules and Standards to the mediator under State Bar review for her actions as a mediator. Staff has not received a response.
 - i. This arises out of a mediator who mediated over a period of time and was emailing back and forth between the parties. One of the provisions written by an attorney, my client will not sign unless there is a line that no one will report to the regulatory body. The mediator included this into the agreement, acting as a scribe. It came to the attention of the State Bar, who said this is a Violation of the Rules of Professional Conduct.
 - ii. Staff wrote a letter to the mediator’s attorney providing an outline of the Program’s Rules and Standards, giving the attorney the option to use the letter in the mediator’s response to the State Bar. Staff does not believe the attorney used the letter, as the attorney did not follow up with staff.
 - b. Letter to State Bar requesting clarification. Staff sent a letter to the State Bar regarding this matter. The letter asked multiple questions about what would and would not violate the RPCs. If the mediator is aware of the term, are they in

violation? If they act as a scribe, and put the term in the contract, but the contract is not signed, is the mediator in violation? Etc. Tara is scheduled to speak with Mr. Oten the week of April 17th on other matters and will inquire about the status of the letter.

- i. Question: Is it correct there is different treatment between lawyer and non-lawyer mediators? The non-lawyer mediator can include this language in the agreement, if they are acting as a scribe?
 1. Provisions have been carried back and forth for years. The State Bar is asking mediators to make legal determinations. Example, in ED case, if the lawyer carries over information that is a violation - where do we draw the line? What if it is an SEC rules? I do not know the SEC rules and law.
 2. This does draw a line between attorney and non-attorney mediators.
- ii. Ms. Kozlowski: there are many differences between attorney and non-attorney mediators. We are also getting conflicting preliminary information from different individuals with the State Bar. Hopefully the letter requesting a formal opinion will provide some guidance. We know “once a lawyer always a lawyer”.
- iii. Discussion: as a mediator, if I pull the attorney to the side and say, “hey this provision is not going work”, am I then advocating for one side over the other?
- iv. Can you say, “do you think this is right?” or “do you want to check the rules of professional conduct to see if your in compliance”? and if they refuse, you can withdraw as a mediator.
- v. Ms. Kozlowski: Let’s see what the State Bar comes back with in response to the letter of inquiry. This is a complicated matter.

Ms. Kozlowski called a 10 minute break.

ii. New Matters

1. Request for Advisory Opinion. An undesignated mediator sent us a request for an advisory opinion as to whether another mediator in the firm was correct to include in their retainer agreement language that waived liability as to the mediator and the partners in the firm. “The Parties agree that neither [mediator nor others in his firm] shall be liable to any party for any act or omission in connection with any

mediation conducted under this agreement, and specifically waive any right to make any such claim.”

- a. Mr. Laney: The first thing I did was call Lawyers Mutual to ask if the law partners are liable for the mediator’s actions, even though the mediator has judicial immunity. Lawyers Mutual said “I don’t think so. If the primary mediator is not liable, the secondary cannot be liable.”
 - b. The committee determined the language is not necessary as mediators who mediate under a DRC program are granted judicial immunity under each programs enabling statute. Lawyers Mutual confirmed that if the mediator is immune there is no primary liability. Without primary liability, derivative liability cannot attach to the other members in mediator’s firm. The judicial immunity provided in the statutes give better protection than the draft language in the request for an AO.
 - c. However, the committee considered the State Bar’s prohibition on lawyers limiting civil liability under RPC, Rule 1.8(h), and recognized the DRC Rules and Standards do not contain similar language. The DRC Rules and Standards do not cover immunity as it is provided in the statutes. The committee is aware that DRC certified mediators often mediate outside the DRC programs, where they are not granted automatic judicial immunity. Therefore, the committee changed directions and is now considering the certified mediator’s ability to include immunity, or reference the DRC statute, in their Agreement to Mediate when conducting a voluntary mediation.
 - d. Staff reached out to the State Bar to inquire if the attorney/mediator may incorporate a statute providing judicial immunity, or language that limits their civil liability, in the Agreement to Mediate for voluntary mediations without violating the RPCs.
 - e. This is all questions, no real answers. We wanted to bring this to your attention. This is just for your information only.
2. Request for Ad Hoc Committee to review S&AOs.
 - a. We are proposing to form an ad hoc committee to go through all the AOs with the new Supreme Court Rules to make sure they are correct and consistent. We know some of them are out of date, especially the attendance rules. But we are trying to formulate an ad hoc committee to resolve all these issues. Please let us know if you would like to join the committee.
 - b. Under the DRC Rules, this committee requests DRC Chair, Judge Gorham, to create an ad hoc AO Review committee to update, and revise the AOs.

Relief From Obligation To Pay Mediator’s Fee: *(Please attach Petition For Relief.)*” The Commission requested the form be modified a few years ago to remove the language to attach the petition to the Report. The Commission felt the mediator should not be filing any pleadings on behalf of a party. While modifying the form, they also removed “*(Please attach Petition for Relief.)*” as this removal was previously requested.

2. Updating forms to allow for email service under Rules of Civil Procedure, Rule 5. Staff is waiting on response from Odyssey developers. We have followed up multiple times, no response.
3. Approved amendment MSC Rule 4(c)(4). This proposed amendment was brought before you at the January 27 meeting to align the Rule with AO 42 and allow a party who is not physically present (attending remotely) to designate someone to sign on their behalf. The proposed language was posted for 30 days, and we did not receive a comment. Staff recommends the Commission adopt the amended language. If the proposed rule is adopted by the Commission, the proposed language will be sent to the Supreme Court early in 2024. We would like to have a motion this be approved.
 - a. Judge Gorham: Can I have a motion to approve this amendment?
 - b. Ms. Stinson moved to adopt the amendment to MSC Rule 4(c)(4). Seconded by Mr. Laney. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
4. Proposed amendment to all Rule sets “no weapons at a mediation”. The second item we have on the agenda will generate more of a discussion. This is a proposed amendment to all of our Rule sets that no weapons be allowed in a mediation session. We looked at this matter in the January meeting, and the proposed language was too broad, and the matter was sent back to committee. Your packet includes a summary of the language and the concerns. The committee came up with a proposal at the bottom of the page, that language references two statutes that talk about what weapons are and incorporates them by reference instead of listing all things that could be a weapon. The committee recommends adding the following language to MSC Rule 4(g), FFS Rule 4(f), Clerk Rule 4(e), and DCC Rule 5(c). The Farm Nuisance Rules incorporate MSC Rule 4 by reference. If the proposed rule is approved by the Commission, the proposed language would be posted for a 30-day comment period. The committee is asking for a motion to approve this language.
 - a. Judge Gorham: Can I have a motion to approve?

- i. Judge Bragg made the motion to approve the proposed language. Seconded by Ms. Stinson.
- ii. Discussion: What does “possess” mean? We have three lawyers, under one roof. We can’t control what other lawyers do in their office, I can only control what is in my office.
 - 1. Comment: It would not cover them if they were not a participation to the mediation.
- iii. Active or construction possession if it is not subject to your control then you are okay. Possess is a legal term of art, we are okay with that one.
- iv. What about the presence of a law enforcement officer, or a military person whose job it is to be armed.
 - 1. Comment: We included the statutory language to define a weapon, to make this as clear as possible.
- v. There is a second amendment right to be armed, so there is an issue there.
- vi. This is a court proceeding, even though mediations occur in offices, it should have same protection as court proceedings. Parties cannot carry weapons into a courthouse.
- vii. Many mediators have called staff on this topic to express concerns about their safety, or to share stories they have experienced.
- viii. Concerns were expressed about the inability of law enforcement to respond timely, and the parties have the right to defend themselves. That right to defend yourself does not stop.
- ix. The intent of the committee was to prohibit anyone in attendance to carry a weapon into the mediation.
- x. Look at the totality of the circumstances. We have certain circumstances that abrogate our civil right to bear arms. If it is our goal to create a neutral and safe environment. We have to keep people safe and comfortable. If someone thinks someone has a gun on them, they will not be safe. Folks have to understand there are times when their first and second amendment rights are going to be lost.
- xi. Constitutional rights, arming mediators and parties, carrying weapons on planes, were all discussed in detail.

- xii.** You are scribing an evil view or evil characteristic on an inanimate object. The gun on its own is not evil. In the hands of a bad person, it could be used for evil. Having a weapon and being able to stop a mass murder could be useful.
- xiii.** I know of a case where a law enforcement officer showed up in uniform with a firearm, and the mediator asked them to go change as they were off duty. This was the right decision as this particular party then threatened to kill the mediator, the other parties, etc.
- xiv.** I object to the second sentence – if you cannot stop a mass murder, you are taking away the safety of the mediation. This would be a blanket prohibition.
- xv.** The importance to me is not the right to carry guns, but too many spouses who have been exposed to abuse. Creating something like this promotes the ability to feel safe and negotiate in good faith. Also reinforces the mediator will not tolerate any physical attacks. It sets the tone for mediations that there is nothing threatening.
- xvi.** If you can't carry the weapon into courthouse, you can't carry the weapon into the mediation.
 - 1.** The courthouse has an armed bailiff.
- xvii.** This is wonderful exchange of ideas.
- xviii.** I want to amend the language to remove the second sentence. This is a friendly amendment.
- b.** Judge Gorham – let's take the vote on the first amendment to the proposed language.
 - i.** Judge Tyson moved to amend the proposed language by removing the second sentence. Seconded by Mr. Niblock.
 - ii.** Discussion: Why was that second sentence included? It was a comment from last Commission meeting. It was a suggestion but is not necessary.
 - iii.** Vote on striking the second sentence. Vote - All in favor. None opposed. Proposed language modified to remove second sentence.
 - iv.** Vote on the friendly amendment to the proposed language. Vote - 12 in favor, 1 opposed. Motion carried, approved.

ii. New Matters

1. Proposed amendment to MSC Rule 8(3)(c). This one does not have a whole lot of discussion with it. We have been asked to broaden out Rules to allow for a Department of Labor Mediation to qualify for an MSC observation. Mr. Laney and Ms. Seigle have both indicated these matters are similar to MSC matters. Please see the notes considered by this committee in your packet and the proposed language. Please note, Harriet Hopkins who operates the mediation program for all DOL REDA claims, has approved the proposed language. The committee has confirmed the mediations are like superior court mediations. A corresponding amendment is to use the “rules of the applicable entity”. If approved by the Commission, the proposed language would be posted for a 30-day comment period.
 2. Judge Gorham: Can I have a motion to approve?
 3. Ms. Wood made the motion to approve the proposed amended language. Seconded by Mr. Wijewickrama.
 4. Discussion: Does the Department of Insurance conduct mediations that our applicants could follow? It would be nice to include all programs now and not have to piece meal.
 - a. Ms. Kozlowski: Yes, I believe they have a program, but we want to make sure the mediations are similar enough to provide a true experience to superior court matters. We are not trying to piece meal, but we want to make sure the mediations are on the correct path. The DOL mediations land in superior court if they do not settle in mediation.
 5. Vote – all in favor. None opposed. Motion carried, approved.
- f. Criminal Sub Committee – Benjamin David/Tina Estle
- i. Previous Matters
 1. Update on progress to revive the District Criminal Court program. We had a very good discussion in the January meeting. We knew the writing was on the wall, we were trying to get state funding to fund pilot sites across the state. Mediations need to be funded at the state level and not be placed on the backs on the parties. There was a gap between the services the AOC declined to include the DRC’s DCC Pilot Mediation Program funding in their budget request. We need to have Ms. Brooks expand her hours from 20 to 25 a week and provide funds for training on grant writing. Ms. Brooks has been investigating grants that may be available to fund the current DCC mediation program. We have reached out to many districts to see if we can gain their support in participating in the Pilot Program.
 2. Ms. Brooks: It has been a very busy three months; I have taken a lot of training to familiarize myself with the grant process. We met with the Innocence Commission, and they introduced us to Sean Callan

with the AOC. Mr. Callan pulled in AOC legal and financial services, who will assist the DRC in applying for the grants.

3. Ms. Kozlowski: The AOC's assistance is paramount as we operate as a hybrid under the AOC's umbrella as well as being on our own. We were not sure how to apply for some of the grant funding, whether we needed to apply from scratch or through the AOC.
 4. Ms. Brooks: With the AOC's help, I just need to find the grants and draft the required documents. A lot of the grants request letters of support, so I have asked all centers and district attorneys to provide letters of support. A few of the grants we are looking at will provide significant funding, if awarded.
 5. Question: If you were to receive funds, what would you do with it?
 6. Mr. David: We would distribute the funds to the pilot districts and start moving these cases through the program. We can do a lot more of these cases if we can send them into a safe space to allow them to work through the mediation. We can show the success than the other districts if funded. We will also be able to show less recidivism for these cases as well. Ms. Brooks, thank you for all of your work on this.
 - ii. New Matters
 1. None.
 - g. New Media Committee – Mr. Soni
 - i. Updates to website.
 - ii. Social Media Presence. Ms, Robinson keeps posting stuff on the website and post on Twitter and Linked In. We now have host site for our podcasts – we have enrolled in a subscription, for a small monthly fee, that will allow us to post three new hours of material every month. Staff has been working with the AOC's graphic designer to create a new logo for the podcast.
13. Ad Hoc Committee Reports –
- a. Ad Hoc Attendance Review Committee – Mr. Soni.
 - i. Supreme Court approved the Rule changes. I move to dissolve the ad hoc committee.
 1. Judge Gorham approves the dissolution of this committee.
 - b. Committee on Long Range Planning – Mr. Bolen
 - i. Committee considerations.
 1. Noting to report.
 - c. eCourt Committee – Ms. Adams
 - i. Update on Odyssey. Odyssey rolled out in mid-February. Court staff are getting calls on the new software. We are going to continue to get more questions and issues will come up. Court staff in Johnston County called the help desk the week of April 10th, requesting 2 mediators that are regularly used in Johnston County be added to the mediator list in Odyssey. The help desk deferred the question to the AOC, the DRC's Odyssey

liaison, who reached out to staff to confirm the certification status of the 2 individuals. Staff notified Ms. Westover the individuals are not certified mediators and are not eligible to mediate under DRC programs. Under Odyssey court staff can only assign mediators to a case if they are on the list, unlike Case Wise where any name could be entered as the assigned mediator. Staff confirmed the help desk will not add names to the mediator list without confirming certification with DRC staff. We also asked for all calls regarding this issue be directed to the DRC, so we can explain why the names are missing from the list.

- d. Video Observation Committee – Mr. Wijewickrama
 - i. Nothing to Report.
 - e. DRC Funds Committee – Mr. Laney
 - i. Proposals from committee. The committee met and discussed possible options for spending the Commissions funds in reserve. We looked at looking at moving forward with publishing the Green Book, and we reached out to the NCBA to see their involvement.
 - ii. Ms. Kozlowski: These are the items the committee discussed.
 - 1. Fund podcast subscription. A capped amount of \$10,000/year on CME training including Conflict Resolution Day. I have asked for funds the past few years to bring in a speaker, so far, the speakers have declined to accept a fee, but they have attended the program remotely. As things move to in person this fee will likely be accepted and needed to cover travel expenses. We looked into SE conference for directors possibly holding another conference. There was talk about a summer intern, and equipment to make staff's lives easier.
 - iii. Ms. Kozlowski: Mr. Laney, do you need to create an ad hoc committee to revise Green Book? Mr. Laney, yes, it is different from the funds committee that will need its own focus.
 - iv. Mr. Laney: I would like to fund the book, solely, and hold copyright with the DRC. The total cost was \$33,000.00 that was printing and delivering the books. The freight alone was \$16,000.00 along.
 - 1. Discussion about how to edit the book, publish, disseminate, index, etc. Comments/suggestions were made on receiving help from AOC and other organizations to publish book.
 - v. Mr. Laney: Request for an ad hoc committee to revise and do an additional green book and add on Ms. Jackie Clare.
 - 1. Judge Gorham approves committee and the addition of Ms. Clare.
14. Ex Officio and Other Organization Reports.
- a. Mediation Network – Ms. Estle
 - i. Ms. Kozlowski: Ms. Estle was not able to attend, I received the following information from Jody Minor, ED of the Mediation Network.
 - 1. DCC revenues continue to be problematic for most centers. Pre-Pandemic statewide revenues generated around \$175,000 annually,

post-pandemic statewide revenues look more like \$120,000. There has been no appetite at the General Assembly to include funding for DCC mediation nor have they been receptive to raising the \$60. Fee. Senate Bill 621 was filed last week and contains language to eliminate Citizen Generated Warrants all to gather. This bill has been sent to Rules which means it probably won't be heard, which is a good thing.

- b. Court Staff – Ms. Adams
 - i. Stats for MSC, FFS, and ARB. For the third quarter of the FFS program we have a 72% settlement rate, if we include cases that settled prior to going to trial that increases to 75.6%. For the third quarter for MSC program, 60% settlement rate, if we include cases that settled prior to going to trial that increases to 67.8%.
 - ii. For court ordered arbitration in the third quarter there was a 23% of arbitration cases that moved onto trial. The average is about 20%. So, these statistics are consistent with the settlement performance over the past few years.
- *Ms. Kozlowski: Judge Gorham, we need to backtrack a bit to the funds committee for a vote on funds available for CME.*
- *Mr. Soni, you just need funds to provide training, yes? Ms. Kozlowski: Yes, per year.*
 - iii. *Judge Gorham: Do we have a motion:*
 - iv. *Mr. Laney proposes to amend our budget to give staff \$10,000 per year for training purposes annually. Seconded by Ms. Stinson. Discussion: None. All in favor. None opposed. Motion carried, approved.*
- c. NC Court Managers Conference – Ms. Kozlowski for Ms. Tate
 - i. Nothing to report.
- d. NCBA Dispute Resolution Section – Mr. Cooley
 - i. We are moving into beyond non-court-ordered mediation programs. Particularly in the area of relationship building. We are studying how certified mediators can be useful in these disputes. Working with businesses, non-profits, churches, etc. Anything that threatens the institution itself. Somewhere that certified mediators can be useful, institutions and organizations that have issues internally with their governance.
 - ii. We are looking at the pro se problem. There are so many iterations of that problem. We are looking at the Western Districts Federal Court Assistance Pro se Mediation Program would be a model for other areas.
 - iii. What did we learn from covid – remote mediation works. Do we need to do training and best practices. What kind of training do we need to continue to effectively mediate remotely.
 - iv. Online dispute resolution. We are late to the game, and the DRC has already looked into this, Ms. Kozlowski?

1. Ms. Kozlowski: The Long-Range Planning Committee engaged in a research project a few years ago to determine if online mediation services would be productive in NC. The committee worked with the AOC to interview several jurisdictions across the county who have implemented ODR. The reality, during the implementation of Odyssey in NC, the AOC does not have the funds or the capacity to implement this type of program at this time.
 2. Discussion: ODR provides fabulous resources to the community, provides access to justice. We want to keep the conversation going and keep this discussion alive until the state has the funds to implement such a program.
 3. ODR would work for other courts that don't have programs. NC is way behind on moving into this arena.
- e. Industrial Commission – Ms. Kozlowski for Ms. Nance
- i. Nothing to report.
- f. Court of Appeals – Judge Tyson
- i. I have a few corrections to the last meeting minutes. The spelling of Judge Stading's name, we lost three judges, we lost Judge Jackson too.
 - ii. Judge Flood and Judge Stading have indicated they will get certified to mediate cases. Right now, we have six judges conducting mediations, Judge Flood will be the seventh judge. We have 16 completed mediation in 2023, since January, with 8 that are pending for a total of 24. But there are only six of us doing the work and we are down three judges. Judge Riggs is running for reelection, so she does not have the time availability. Judge Stading is also an Air Force Jag Officer, so he has a lot of balls in the air right now. Judge Stroud is also not mediating right now. Our filing are up 33% as of today. We are going to have a 1200-1300 appeal year, during pandemic we had 900 cases. It is getting busy. We now have the parental termination right cases, that is 200 cases. We did receive a pay increase for our law clerks. There is a real issue with pay inequity. We have people turning down jobs because they can make more elsewhere. I don't know where it stops. We are seeing a lot of increased demand, as soon as we can get the training set, we will be able to handle more cases.
- g. Legislation – Mr. Laney
- i. DCC legislation.
 1. HB116 from DA's conference – working with NCBA, MN and Tara and Chuck Spahos.
 2. Ms. Kozlowski: Mr. Spahos proposed legislation that modifies payment for district court mediation funding. There is a center that is not affiliated with the DRC, that has received independent funding. To be able to mediate these cases and avoid having the judge waive the mediation fee case-by-case, Mr. Shapos proposed to modify the language to allow for the judge to waive a whole class of fees. Mr.

Laney and I reviewed the language to ensure that centers that do not have independent funding will not get swept up in this method. We proposed some modifications to the bill to require the consent of the center. The DRC is not being asked to endorse this language, but we have indicated that we have reviewed and do not object to the language.

15. Update on next meeting – Ms. Robinson
 - a. We are looking to August; I will send out an email in a few weeks to determine the best date.
16. Adjournment – Judge Gorham:
 - a. Judge Gorham: Can I get a motion to adjourn?

Mr. Soni made a motion to adjourn. Seconded by Judge Tyson. Discussion: None. All in favor. None opposed. Motion carried, approved



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Meeting Minutes

Commission Meeting

Friday, January 27, 2023

10:00 am

In Person Meeting at the NC Judicial Center with Remote Access Via Webex

Commission Members present in-person: Judge Tyson, Frank Laney, Zach Bolen, DA Benjamin David, Judge Hamilton, David Niblock, Ketan Soni, Judge Southern, Robin Stinson, and David Wijewickrama.

Commission Members present via WebEx: Judge Bragg, Justina Tate, and Judge King.

Ex Officio Members present via WebEx: Tina Estle, Diann Seigle, and Jim Cooley.

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

With regrets: Charlot Wood, Dolph Sumner, Judge Stubbs, and Judge Gorham.

Ex Officio with regrets: Tammy Nance and DeShield Green.

The Honorable Judge Tyson, Vice Chair, called the meeting to Order.

1. Welcome and Announcements-Judge Tyson

- a. Thank you all for joining us today. I hope everyone has had time to review the meeting packet in preparation for today's meeting. It is nice to be in person and welcome all who are attending remotely.
- b. Introduction of newly appointed DRC Members. I am honored to introduce three individuals who were appointed to the DRC for a term beginning on October 1, 2023.

- i. Robin Stinson. Ms. Stinson fills one of the two certified family law mediator seats on the Commission, appointed by Chief Justice Newby. Ms. Stinson, please introduce yourself to the Commission.
 1. I practice primarily in Winston Salem with Bell, Davis & Pitt and I've been doing family law for 38 years and mediation for 10 years although I recently got certified family financial when the Rules changed. I've been a superior court mediator since the program went in effect and I'm delighted to be here.
- ii. Alice Stubbs (not in attendance). Ms. Stubbs fills the non-mediator family law specialist seat on the Commission, appointed by the President of the NC State Bar.
- iii. Judge Christopher Bragg. Judge Bragg has graciously spent the past year on the Commission's ad hoc attendance committee, we are grateful for his

past service. Judge Bragg fills one of the two certified superior court mediator seats on the Commission, appointed by Chief Justice Newby. Judge Bragg, would you like to add anything?

1. No, thank you.

- c. Approval of the Agenda for the January 27, 2023, Meeting.
 - i. Everyone has a copy of today's agenda, does anyone have any objections or additions to today's meeting and if not, can I have a motion to approve?
 - ii. DA David made a motion to approve, Ms. Stinson seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
 - d. Approval of September 30, 2022, Meeting Minutes.
 - i. Judge Hamilton made a motion to approve the September 30, 2022, meeting minutes. Mr. Laney seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
2. Office Report- Tara Kozlowski
- a. State Ethics Commission evaluation of new members.
 - i. Judge Bragg – The State Ethics Commission reviewed Judge Christopher Bragg's Statement of Economic Interest and reported they did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.
 - ii. Robin Stinson – The State Ethics Commission reviewed Robin Stinson's Statement of Economic Interest and reported they did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.
 - iii. Alice Stubbs – The State Ethics Commission reviewed Alice Stubbs' Statement of Economic Interest and reported they did not find an actual conflict of interest but found the potential for a conflict of interest. The potential conflict identified does not prohibit service on this entity.
 - b. Applications/Member renewal.
 - i. The renewal period went well, we are still bringing in those who have accidentally lapsed. We lost quite a few mediators who retired over the past few years. We continue to receive applications including 71 applications since July 1. Ms. Brooks has a few in the hopper as well.
 - c. Budget
 - i. FY 2021-2022 collections for certifications and renewals, plus our legislative carryforward from previous years, totaled \$321,566.72. We are doing very well. At the end of December, we had additional cash receipts of \$186,388 less our disbursements of \$66,097 leaving a total availability of \$441,857 in our account. This is the highest our account has ever been and are grateful as our Commission has operated in the red in the past. As a reminder, the AOC is still covering Maureen's salary as they are not able to increase our mediator dues, so this expense is not reflected in our current budget reports.

- ii. Judge Gorham approved salary increases for all three staff members, thank you.
- iii. Question: Do we have a plan to spend the 441k?
 - 1. Discussion: Mrs. Kozlowski reported that we have no plan to spend the funds.
 - 2. Mr. Laney stated he would like to update the green book. The publication cost is 10k and may need to hire an editor. The staff editor costs 10-20k, but we may be able to put together a new committee to consider the cost involved.
 - a. Mrs. Robinson: We have spent about 17k on this in the past, and the NCBA has provided funds also.
 - 3. Judge Tyson: It sounds like a good time to update the book. Do we need further discussion on this matter at the April meeting?
 - 4. Ms. Kozlowski: Judge, I would like to create an ad hoc committee. Judge Tyson: lets create a committee, Frank will you chair the committee? Mr. Laney agreed to act as chair.
 - a. Discussion: Questions arose about how to spend the DRC's funds. A meeting was recommended, and the matter will be added to the DRC agenda in April. Interested individuals are named to the committee including Chair, Frank Laney, Ketan Soni and David Wijewickrama.
 - b. Ms. Kozlowski: we could consider potentially raising staff hours to offset our increased workload. A meeting will be scheduled for this new ad hoc committee prior to the April Commission meeting.
- d. Conflict Resolution Day. Ms. Kozlowski reported we had a total of two hundred and forty participants at the 2022 Conflict Resolution Day celebration. Staff has received excellent feedback from attendees regarding the program and quality of our speakers. We were honored to have Colleen Byers provide an hour CME/CLE along with an hour from the panel that included George Doyle, Jackie Clare, and Tom Clare. We concluded the program with California attorney, Stephen Sulmeyer, and attorney Mark Springfield. Thank you to all our presenters and to DRC staff for a wonderful program. We have the CME's posted online for mediator education. Also, I would like to give a special thank you to Judge Tyson for his interview with Commission staff on the NCJC's podcast, *All Things Judicial*.
 - i. Judge Tyson: I want to remind the Commission, there are audio and visual services at the AOC and those services are available to all Commission Members.
- e. Annual Report. The Commission's annual report has been completed for the 21-22 FY. The report covers who was on the Commission, reviews the budget, and discusses all projects that we have worked on the past year. I have not included the report in today's packet, but the report is available on our website.

- f. Rules submitted to the Supreme Court. Rules were submitted to Supreme Court November 28th, 2022. I have included the proposed changes in your packet as we have a few new Commission Members. If you find any errors, typos, or corrections that need to be made, please let us know. Mr. Buckner, at Supreme Court, notified our office that they would review the proposed amendments in the month of January, or after. Once they have reviewed and approved the final language the Rules will go up to the Court for adoption. When the Rules are adopted, we will have a 30-day runway until they take effect to allow staff to update all relevant material.
- g. Trademark Update. Please see the trademark in your packet that we are currently seeking trademark approval for through the law firm of Coates and Bennet. Will Pagán, our attorney, has notified us that the Trademark Examiner assigned to examine our trademark application for registration of the NC DRC logo has asked us to disclaim any claim of exclusive right to using the terms “NORTH CAROLINA DISPUTE RESOLUTION COMMISSION” and “1995” apart from the applied for mark. Under trademark law, the Trademark Office may require that “unregistrable components of a mark” be disclaimed. Components that are unregistrable include elements that are merely descriptive of the services provided (e.g., “dispute resolution”), entity designations (e.g., “commission”), primarily geographically descriptive of the services provided (e.g., “North Carolina”), and merely informational (e.g., conveying the year when the commission was founded, “1995”). Therefore, our attorney recommended we authorize the disclaimer requested by the Trademark Examiner.
 - i. Ms. Kozlowski: The Commission has given me permission to act on the Commission’s behalf, I authorized the disclaimer. The disclaimer covers the individual parts of the logo, if the logo is together it is protected.
 - ii. Comments: Does this body not own the name North Carolina Dispute Resolution?
 - 1. It is not the name itself; it is the pieces of the name. It is geographically descriptive. You cannot trademark North Carolina. The logo, not just the name keeps the logo safe. The trademark will give us protection over the logo used in conjunction with our Commission’s name.

Judge Tyson – There is one item that came up yesterday, Lisa Johnson-Tonkins was the clerk appointed to the Commission, and due to her work load she resigned yesterday. There are a lot of new clerks of courts in North Carolina that have recently been appointed to their position. If there are judges or active members here today who may be aware of a clerk that would be interested in the Commission seat, please let us know.

3. Committee Reports

- a. Executive Committee Report- Judge Gorham.
 - i. No report.
- b. Grievance and Disciplinary Committee- Judge Hamilton
 - i. Update on complaint activity- Nothing to report.

- ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff). These are issues reported by staff.
 - 1. Mediator E. – The committee found probable cause Mediator E violated the DRC Program Rules. Mediator reported the pending grievance issued by the State Bar in a timely manner, however he failed to report the pending grievance on his renewal application. Mediator E has no disciplinary history with the DRC or the State Bar. Mediator E was issued private admonishment and advised of reporting requirements. 30-day appeal period is pending.
 - 2. Mediator F. The committee found probable cause that mediator failed to report a pending criminal matter timely to DRC staff, but staff determined the mediator did report the matter the day prior to renewing her certification and reported the matter on her FY 21-22 renewal application. Mediator F was issued a letter of warning advising mediator of reporting requirements. Subsequently, Mediator F reported second criminal matter to DRC staff timely, and timely reported conclusion of 1st criminal matter. However, she failed to report second pending criminal matter on her renewal application for the FY 22-23. As the Mediator previously received a letter of warning, she was issued a public admonishment for failing to accurately report the pending criminal charge on the renewal application. Mediator F has appealed the committee’s decision.
 - a. Ms. Kozlowski: When a mediator appeals a committee’s decision the matter moves before the full Commission. A de novo hearing is held, and the Commission is represented by the Attorney General’s office. We do not have available hearing dates yet, but I will send dates out to you as soon as they are available. The grievance committee members who participated in the original decision to sanction the mediator are recused from sitting on the hearing panel, all other Commission Members are welcome to sit on the panel. We need a minimum of 3 Members to hear the appeal.
 - b. Question: I had offered to attend a past hearing, but you said I did not need to travel to attend the hearing.
 - c. Ms. Kozlowski: Yes, we only require three members to hear the appeal. If you prefer not to attend, and we have enough members, you may be excused from the hearing. If the mediator appeals the Commission decision, they may file an appeal with the Superior Court in Wake County.
- iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
 - 1. Applicant G. Applicant G applied for Family Financial Certification. The committee determined there was probable cause

that the applicant's past conduct was unprofessional and inconsistent with good moral character and declined to certify him. Applicant G was declined due to his criminal history, and multiple sanctions from the State Bar, including a suspension of his law license for a period of time. Applicant G may reapply in two years. The 30-day appeal period is still pending in this matter.

2. Applicant H. Applicant H applied for certification in the DCC program, through her Community Mediation Center. This committee determined there was not probable cause to believe that the applicant's past conduct, and failure to disclose, was unprofessional and inconsistent with good moral character, and approved certification. The situation was that the applicant failed to list numerous criminal convictions for traffic matters, from 20 years ago. Applicant H did provide three different criminal background checks from last year, all three showed no past criminal history. The applicant did not believe she needed to provide the information from her past traffic matters as they incidents did not appear on her self-initiated background checks. The applicant was certified to conduct DCC mediations.
- c. Mediator Certification and Training Committee- Judge Tyson
 - i. CME offerings approved since the Commissions September 2022 meeting. See list on page 43.
 - ii. Applications for certification that came before the Committee and Previous Matters. Page 44.
 1. FFS Rule 9, removing family law training from 40-hour mediation training. This item has been discussed many times, with trainers and Commission Members Frank Laney and Ketan Soni, as well as others. The Commission did vote to approve removing the family law training from the 40-hour training course. I want to make sure we have the opportunity to comment on, and discuss, this matter today before we send this up for a vote.
 - a. Mr. Soni: We have vetted this topic for months and months.
 - b. Mr. Laney: I don't have any further comments.
 - c. Judge Tyson: As a general summary for the Commission Members here today, family law was the only substantive law that was required to be a part of the training. Therefore, it was removed. Folks in that area tend to have an expertise in that area, and they maintain their status and they are up to date on family law training. The Commission felt that time for the 40-hours could be more to the practice procedures and techniques instead of the law.
 - i. The proposed Rule was posted for 30 days, we did not receive any comments.

- d. Judge Tyson asks for a motion to adopt FFS Rule 9. Mr. Laney made a motion to adopt Rule 9, Mr. Wijewickrama seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
2. Guidelines for 40-hour FFS training program and Guidelines for 16-hour FFS training program. Judge Tyson – Ms. Kozlowski, I am going to defer to you.
 - a. Ms. Kozlowski: Thank you. If the Commission adopts the proposed language to remove the family law training from the 40-hour training, the 40-hour and 16-hour guidelines will require updating to reflect the change. The Rules provide a summary of topics the trainers will need to cover, however, the guidelines go more in depth on the topics that are to be covered. If the family law component is removed from the FFS training, it will free up two hours in the training guidelines that will be unaccounted for. At the pleasure of the committee staff was asked to follow up with the FFS trainers regarding the time-allotments that would be freed up if the family law portion was removed. As they are both present, I will turn over the conversation to Mr. Laney and Mrs. Seigle.
 - i. Mr. Laney: I have reviewed Tara’s suggested changes and agree completely with her suggestions. I prefer that the now undesignated hours become flexible hours, but if some should be designated, I recommend designating them for role plays, as we never have enough time to finish the role plays that we do. So, without further instruction, I will use those extra hours for role plays.
 - ii. Ms. Seigle: I agree with Frank, Roleplays run over, or we have to cut them short. These hours will help so much for the participates to have a better role-play experience. We are always running behind on role-plays so we will be very appreciative of these hours.
 - b. Judge Tyson: The committee recommends the drafts included in your packet on page 46 and 51. Mr. Wijewickrama made a motion to adopt the Guidelines, Ms. Stinson seconded. Discussion: Ms. Kozlowski: These will not go live until, and if, the Supreme Court adopts the proposed changes to the FFS Rules. Vote – all in favor. None opposed. Motion carried, approved.

3. MSC Rule 8, to allow applicants with an advanced ADR degree, and five years of experience to qualify for certification. This appears on page 53 and page 55 of your packet. Ms. Kozlowski, please review.
 - a. Ms. Kozlowski: This proposal has been around the Commission's block a few times before. As the industry increases in popularity, and as universities are beginning to offer ADR advanced degree programs, the committee determined to take this matter under review again. At the September 30, 2022, meeting, the Commission voted to approve the proposed language that provides the applicant could qualify for MSC certification with a master's degree or doctorate an ADR program 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. This would apply only to the MSC program, where we already have multiple paths to certification available to applicants. This option would allow the advanced degree in ADR to cancel out 5 years of professional experience required under the 10+ years of high level professional experience of an executive nature, required under one certification path as a non-attorney.
 - b. Judge Tyson: it would be a masters or doctorate? Ms. Kozlowski: correct. Ms. Robinson: Only two facilities in NC offer advanced ADR degrees. The Rule would allow a master's degree or doctorate from any accredited institution.
 - c. Ms. Kozlowski: The proposed rule was posted for 30 days, we received one comment on page 55 of your packet. The comment was not negative, but requested we ask for 7 years of professional experience.
 - i. Ms. Kozlowski: From a practical standpoint, it would be easier on staff to keep the requirement at 5 years.
 - d. Judge Tyson: Do I have a motion to adopt? Mr. Laney moved to adopt MSC Rule 8. Mr. Niblock seconded. Discussion: From a conceptual standpoint, I don't think a master's degree or doctoral degree means you can communicate. Anyone who can communicate and does not have these degrees are being excluded. But we are where we are. Vote – all in favor. None opposed. Motion carried, approved.

Mr. Wijewickrama steps out to take a call.

- e. Question: Is there any discussion as to broadening the FFS program, it is complicated, but limited on who we will allow

to certify. Ms. Kozlowski: There are 6 professions that we require an applicant hold, with 5 years of experience. We do have one path that does not require the professional degree, it is certifying as an Advanced Practitioner. We do have three mediators who have certified under the FFS program as an Advanced Practitioner .

i. Is there anything in the works to consider this path under the FFS Rules. Ms. Kozlowski: The MCTC determined to try this for the MSC Rules first, before considering adding a similar path to certification under the FFS Rules.

f. Ms. Kozlowski: We may be able to add these newly adopted Proposed Rule Amendments to our Proposed Rules sitting at the Supreme Court, as they have not yet been reviewed.

iii. New Matters.

1. Request to Increase the number of remote attendees in a training class. The request is to increase the number of remote attendees from 15 to 22. The request was made by Mr. Laney, who is one of our trainers. If we adopt this, it will be effective immediately.

a. Back when covid hit, we had to move to remote training to keep things moving. The live training allows up to 40 people, but we knew we would not be able to handle that number on screen. We originally adopted 15 people but as trainers, we have run into problems of additional people wanting to join the class at the last minute. We have discovered we can accommodate 25 people on screen where we can see them, and they can see us at all times. If we allow 22 attendees, that will provide enough space for the students and trainers.

b. The committee recommends increasing the limit of remote attendees from 15 people to 22 people. Please see the sample paragraph on page 56 of the packet.

c. Judge Tyson: Do I have a motion? Mr. Niblock moved to modify the remote attendance from 15 people to 22. Mr. Soni seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.

2. Request to require a DCC checklist for the apprenticeship portion of training.

a. Ms. Kozlowski: We recently update the DCC training to allow for an apprenticeship at the center where the trainee will be working. The Guidelines were modified to provide for an 8-hour apprenticeship and a 16-hour course. The committee considered a request from a DCC trainer for the

DRC to expand on the requirements for completing the DCC apprenticeship that is included in the 24-hour training. The committee was impressed with the sample provided to the committee, but we declined to adopt the document as a formal requirement. Each center operates under a different board and has different needs. However, we posted the checklist on our Articles and News page, with permission from the author, for centers to use if they wish.

- b. Judge Tyson: This is not an action item, but only for informational purposes.
- iv. Update the Observer Conduct Guidelines to mirror Proposed Attendance Rules and include the DCC program.
 1. Mrs. Kozlowski: When COVID hit, the Commission modified this Guideline allowing all observations to be conducted remotely. We have Proposed Rules in front of the Supreme Court that will default many cases to in-person mediation. The committee reviewed the Observer Conduct Guidelines in conjunction with the Attendance Rules now pending before the Supreme Court. The committee requests we move the observation requirement back to allow only one remote observation for attorney applicants and two remote observations for non-attorney applicants. Additionally, we provided for the DCC program within these Guidelines to keep the program requirements consistent.
 2. Judge Tyson: This still allows flexibility, but we feel it is important to attend at least one live observation.
 3. Judge Tyson: Do we have a motion? Ms. Stinson made a motion, Mr. Bolen seconded. Discussion: This will go live when, and if, the Supreme Court adopts our proposed attendance Rules. Vote – all in favor. None opposed. Motion carried, approved.

Mr. Wijewickrama returned to the meeting.

Mr. Wijewickrama– I am hearing a request from the Eastern band of Cherokee Indians who have put in a request for a mediation process at the end of the year. I have been talking to the Chief Justice Curtis Nook, and he would like to speak to someone with the Commission. In 2009 or 2010, the Eastern District required lawyers to be licensed by the State of NC. They are now looking to require mediators to be certified under our process. Potentially, to go through our training and ethics requirements, I am not sure where this falls, or if the Commission would want to entertain this idea. But they have asked to open a dialog. The Cherokee has two court systems, an appellate and trial court, no superior court division. The trial court does criminal and family law, the appellate division does everything including administrative issues. The Trial Court Division deals with the criminal dispute resolution process and the family law resolution process. They even have their own department of health and human services. When they did this with the State Bar, it was a process. Tribal council had to adopt and ratify laws, it was a complicated process.

Judge Tyson: I think if they want certified mediators to serve in that capacity is laudable. I am sure the staff, or me personally would be available, but not sure of the scope of their request.

Comment: There are two bodies I can think of in the moment, that use our list for their programs, the IC and OSHR. They use our list, and I am certain it can be done again.

Mr. Wijewickrama-They want to write the mediation certification into their code, if I understand the request, that individuals that mediate be certified under our process. The tribe wants to have transparency in their legal system similar to what we have in their court system with their own cultural nuances expressed and observed. This issue has been cropping up. I will pass this information along, and ask they contact you, Judge Tyson.

Judge Tyson: This will be back on April Agenda as well to follow up, so we don't lose track of this.

d. Standards and Advisory Opinions Committee Report – Frank Laney

i. Previous Matters

1. State Bar matter: Drafting an Agreement to Mediate. Sarah Kromer approached Ms. Kozlowski, and they approached the State Bar, to discuss how to handle when a mediator is approached by pro se parties who are not going to court. There is a desire for mediators to include confidentially provisions between the parties, the inability for a mediator to be called to testify, and to prohibit recording the mediation. After multiple calls with the assigned attorneys from the State Bar, the following items have been clarified.
 - a. 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.
 - b. The mediator may not create contract rights between the two parties.
 - c. 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.
2. Mr. Laney: The State Bar ethics subcommittee meet on October 20th, and again on January 9th. Ms. Kozlowski and Ms. Kromer were invited to join the January subcommittee meeting. The subcommittee worked on a first draft of a formal ethics opinion on the matter, but rather than offering an opinion they prefer to create a form that may potentially be housed at the AOC. The form would list the Rules of the Mediation before the mediation begins, it would be boiler plate language, and available to all. Danae Woodward and I have been brought into the conversation. Ms. Kromer and Ms. Woodward offered to work up a draft of the form. Ms. Kozlowski has reached out to the AOC to gauge their interest is providing such a form and is waiting for confirmation they would be able to house

the form. If we can create a form that is approved by the State Bar, then we will need to look at who is going to house the form. Preferably, it will be housed by the AOC.

- a. This is for the mediator to provide a pre-mediation on how things will operate.
 - b. Discussion: If you are a member of AAA you can build your own arbitration agreement, except for family law. What if we did something where we had options on the website, where the parties can pick the different options to create their form. Depending on cost, the DRC may be able to build this and house under the DRC's website.
 - i. Ms. Kozlowski: We are working on a form that will be static, as the problem is where to house the form. The State Bar has been great to work with on this, and they acknowledge the parties agreeing to terms of the mediation are not adversarial, the underlying issue makes them adversarial. One of the committee members recommended using forms similar to real estate forms.
 - ii. They may want to look at the AAA as an example.
 - iii. If we are going to discipline mediators for acting as a scrivener – it is incumbent on us to provide a form. There should be no question that the mediator is behaving under our Rules.
 - iv. I remember Leslie always saying the party's confidentiality is not our problem. They need to figure it out on their own.
 - v. The Rules already say what is and what is not confidential. If they want extra items in the contract, is it the mediator's responsibility? Isn't this going beyond what we are able to provide?
 - vi. We created a pool of mediators and trained them to mediate cases. It is our responsibility to ensure they do not break Rules or standards by mediating voluntary matters.
 - vii. Ms. Kozlowski: The matter remains before the State Bar, and we will update the Commission as soon as possible.
- ii. New Matters.
 1. Reviewed MSC Rule 4(c)(4) in conjunction with AO 42.
 - a. AO 42 allows for a party not physically present to assign signing authority to another individual. The Rules allow a party to assign signing authority if they do not attend a mediation. The language is inconsistent, the AO indicates physically present, and the Rule states not in attendance. This created a loophole where parties attending by remote

technology, who are not able to sign, could not assign signing authority. To align the Rules and AO, and the intent of the committee, they proposed to amend Rule 4(c)(4). The proposed language was sent to the Civil Subcommittee for review and consideration. The material provided for our committee's consideration can be found on page 61 of the meeting packet.

- b. This matter is for discussion only, no vote is needed. This committee recommended the Rule be modified and moved the matter to the Civil Subcommittee for consideration.
2. State Bar matter: Mediator acting as scribe.
- a. DRC staff received notice from a mediator/attorney who received a Letter of Notice and Substance of Grievance from the State Bar alleging the mediator's actions, while acting as a mediator, violated the Rules of Professional Conduct. Allegedly, mediator/attorney was acting as a scribe for the attorneys present to a mediation. The mediator committed to writing agreed upon terms in the party's agreement that allegedly violated the RPCs.
 - b. DRC staff began working with the State Bar's Grievance division under the following hypothetical situation: All parties to a mediation are represented. The mediator commits to writing a term that prohibits the parties from filing a complaint against the attorneys with the NC State Bar.
 - i. Does the mediator, acting as a scribe, knowingly assist the attorneys in violating the Rules of Professional Conduct under 8.4(a)&(d) in this situation?
 - c. After speaking at length with the grievance division of the State Bar, it was recommended the ethics division be brought into the conversation. This committee, including guests Jackie Clare and Tammy Nance, requested Ms. Kozlowski reach out to the Bar's ethics division to seek clarification on "knowingly assist" and to verify if certain provisions in the DRC's Rules, Standards, AOC, etc. follow the RPCs.
 - d. Staff has also been asked to provide support for the mediator by drafting a statement letter to the State Bar about the DRC Standards on Consent, Legal Advice, and Self-Determination.
 - e. The NCBA DR Section Chair, Mr. Cooley, has created an ad hoc committee to assist the S&AO committee in this matter. The committee has met twice and is ready to provide support as needed.

- f. Discussion: At the moment, the best recommendation we can make to mediators is not to take up the pen. Don't draft. Doesn't this align with the issue of drafting agreements?
- g. Ms. Kozlowski: We have three matters in front of the State Bar at the moment, and they are intertwined. The real issue is what is "knowingly assist".
- h. Discussion: There are all kinds of provisions and laws I know nothing about, but I negotiate an agreement and I do not know if I am violating the law. It becomes really complicated for mediators who are not specialists in the area of law they are mediation for.
 - i. Are we telling mediators about this? I am concerned there are mediators who are not aware of this situation, and they don't know what is happening.
 - ii. Ms. Kozlowski: Part of the problem is we don't know the outcome of this situation yet; we do not know if there will be a sanction. Everything we know now is speculation. We always encourage mediators not to draft – or act as a scribe. It is the attorney's job to draft.
 - iii. We did a blog post about this, and it is the most read post on the NCBA in the last year.
 - iv. Ms. Robinson: We will send the blog post out in the DRC Newsletter.
- e. Civil Sub Committee – Tara Kozlowski for 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. The forms are still on hold with the AOC.
 - 2. Updating forms to allow for email service under Rules of Civil Procedure, Rule 5. Staff is waiting on response from Odyssey developers. We have followed up multiple times, no response.
 - ii. New Matters
 - 1. Proposed amendment MSC Rule 4(c)(4). The Standards and Advisory Opinion Committee made a recommendation to this committee for a Rule change to clarify MSC Rule 4(c)(4) in relation to AO 42. The matter was brought before the S&AO Committee by request to clarify if a remote attendee, who was not able to sign electronically, could assign authority to another to sign on their behalf. The AO indicates this is allowed; the Rule indicates it is not allowed. The S&AO Committee and the Civil Subcommittee unanimously voted to amend the Rule to the proposed language on Page 62. If approved by the Commission, the proposed language would be posted for a 30-day comment period.

- a. Judge Tyson: This was discussed earlier if no further questions this is subject to a motion. Mr. Soni made a motion to approve the proposed MSC Rule 4(c)(4), Mr. Wijewickrama seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
 - 2. Proposed amendment to all Rule sets “no weapons at a mediation”.
 - a. We have received a request, considering the recent criminal activity after the conclusion of a mediation, to incorporate or add a Rule providing “Weapons are not allowed at a mediation”. The request came from a mediator who reports having to tell parties to leave their sidearms in the car during the mediation.
 - b. The committee recommends adding the following language to MSC Rule 4(g), FFS Rule 4(f), Clerk Rule 4(e), and DCC Rule 5(c). The Farm Nuisance Rules incorporate MSC Rule 4 by reference. “Weapons Are Not Allowed at A Mediation. No person shall bring a weapon to a mediation, including individuals that maintain a valid concealed carry permit.”
 - c. Judge Tyson- I would like to table this at this meeting, the word weapon is too generic.
 - i. Discussion: I have also been in a mediation with an off-duty law officer, who carries their weapon. This needs to be a statement that it is for the safety of the parties. There is a very narrow time where mediations cannot occur inside a courthouse.
 - ii. This prevents lawyers from keeping guns in their office too. Maybe locked down would be preferred language.
 - d. Judge Tyson do we have a motion? Ms. Stinson moves that this matter return to the civil committee for further consideration. Mr. Niblock seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
- f. Criminal Sub Committee – Benjamin David
 - i. Previous Matters
 - 1. Update on progress to revive the District Criminal Court program. Page 64-67 is a copy of the four-page memo to request inclusion on AOC budget. DRC staff submitted a request to the AOC for inclusion on their Judicial Branch’s legislative and budget priorities request to the Office of State Budget and Management and the General Assembly. I want to provide a little context and background as many of you know we have mediators in DCC since 1970’s. I was fortunate enough to become a prosecutor the day after

Columbine, in April of 1999, I became a DA, elected DA in 2004. In 2011 there was a great recession with community recovery courts and mediation centers begin defunded as it relates to criminal courts. All that stuff fell back onto the regular business of the people. If everything is a priority, then nothing is a priority. Here is where we are right now, I have 75k cases a year in my office, 70k are in district court. That's 50k traffic tickets, and 20k criminal misdemeanors with 5k felonies. We have multiple murder and rape cases being tried right now, and there is a priority. There are 40k cases a year are mediated on our administrative traffic court days. When it was a best practice, to save hundreds of hours in our district courts, it works. 1/3 of all of our felonies are being handles in district court – these are drug possession cases and breaking and entering. This leaves us in district court time with the two things that really kill time at the district court level, DWI's and DV. Chief District Court Judges and DA's have said they are not putting these cases in mediation, but they will put everything else in mediation. About 14% of cases, in these caseloads, are not violent, included self-initiated warrants. If the magistrate sends a letter saying consider mediation, and if you don't mediate, then I will take this into consideration. The parties will mediate. This has worked well in the past and then the bottom dropped out in 2011. Since that time, we now have a \$60 fee to mediate this. Two problems, it costs the mediator about \$104, so there is a short fall. And there are a lot of indigent people in these cases and the judge isn't going to order them to pay the fee. The Judicial Branch, the third part of government, has never been and should never be a self-sustaining branch. It makes sense for the state to pay for this fee. Approximately 14% are eligible for mediation, but only 1% are being mediated. These cases are capable of repetition; five minutes of airtime in front of a judge will just ensure they will be back. You put them back into mediation and let them work out their differences, there will be less recidivism. We looked at a pilot program and made a modest ask for 1.9 M. We worked with Kimberly Spahos, Director of the DA's found a handful of DA's who wanted to participate. Everyone loves the program, but no one is going to own it. The reality: the focus is on salaries. Unfortunately, the AOC denied our request. The committee is planning to meet next week on January 31st to investigate other options that may be available. We need this funding, it is the right thing to do, but we have few lawyers in the room making the case for it, when they need to fight for their own people first.

2. Discussion: How many lawyers do we have in this state, 50k? If annual bar dues went up \$15/ year would that fund the DCC?
 - a. If you gave 50k to every center that is serving the courts, you will be under that amount. Don't pay case by case – pay in lump sums. 35k per county or 50k per center. It never made sense to me to pay on a case-by-case basis. Get these guys stable so they can get their people over into the courts.
 - b. This is good insight, the need for certified mediators. From my historic perspective, the vast majority of the worst problems this Commission has dealt with is in DCC courts where the mediators were not certified. Historically they have not been trained, approved, certified.
 - c. Historically, the centers received state funding, but their funding was eliminated in 2010.
 - d. The NCBA may help in the future, we have reached out to their legislative team, and they said they were not able to assist now. Maybe they can help in the future?
 - e. There used to be law enforcement grants. We need to look at a grant source. What do you want this Commission to do today – it is good information.
 - f. Ms. Kozlowski: Each center is individually operated, they opt-in. We are trying to create a system where they would be required to be certified if they are to receive state funds. We focused on paying the centers on a case-by-case basis to pay for work performed. There was a lot of drama in the past when the centers received bulk funds. Some centers conducted many mediations and received less funding than centers who performed few mediations. The centers can, and do, write for their own grants. To require the centers to certify, the DRC would have to write for grants, and we do not currently have staff resources to do this. However, Mary Brooks may be interested in taking additional training and working additional hours.
 - g. DA David: We are not the AOC's priority; we need someone with juice in the legislature. The DRC needs to stand alone. We don't have enough money to hire a lobbyist. It would not be enough. If there was bulk funding, how do you decide who gets what. I think it needs to be paid on a case-by-case basis. Who the funding source is can only be the state. Maybe who funds the pilot may be different, we could do a short term ask outside the legislature.
 - h. DA David: I would ask that some of the DRC money go to finding a grant we can seek out by June.

- i. Judge Tyson: The message from the Chief Justice is we need help keeping what we already have. What can we do today on this?
 - j. Ms. Kozlowski: I propose moving Ms. Brooks hours up 5 hours a week to 25-hours per week to work towards grant writing.
3. DA David made a motion to provide \$500 in training for grant writing programs and increase Ms. Brooks weekly hours from 20 up to 25. Her current salary will apply. Hamilton seconded.

Judge King left meeting.

- 4. Discussion: Orange County have funding from the county. This is all terrific you may need matching funds. If we apply for a grant, what can you match. The counties and the bar association are great places to find the money.
- 5. DA David: We need to make the ask for funds, first with the 19 counties who volunteered to participate in the Pilot Program.
- 6. Vote – all in favor. None opposed. Motion carried, approved.

Mr. Wijewickrama left meeting.

- ii. New Matters
 - 1. None.
- g. New Media Committee – Ketan Soni
 - i. Updates to website and Social Media Presence.
 - 1. Staff continues to update the website and post on Twitter and Linked In. Staff has updated the mediator profile to allow a mediator to select in-person, remote, or any (instead of both) – to align with the proposed Rules. We have created a Farm Nuisance page under the Mediator Toolbox, adopted a Wills/Estates keyword search under FFS per the request of family court staff, and updated the DCC application to correct an inconsistency with the Rules. The CME courses offered on conflict resolution day are now posted on our CME page and are available at no cost. The hour CLE course presented on conflict resolution day is posted on our Articles and News page, for informational purposes only.
- 4. Ad Hoc Committee Reports –
 - a. Ad Hoc Attendance Review Committee – Ketan Soni
 - i. We have done our job, it is in the hands of the Supreme Court. The Rules under review at Supreme Court. The committee had good discussions, lots of opinions, and the ultimate result is a good one.
 - b. Committee on Long Range Planning – Zach Bolen
 - i. We have had one meeting to look at future considerations. But nothing substantive to report today.
 - c. eCourt Committee – Tara Kozlowski for DeShield Greene

- i. Ms. Kozlowski: DeShield Greene is not able to be here today, and we are sad to learn that she is leaving the AOC. We are very excited for Ms. Greene and her new adventure with the National Center for State Courts. In the interim, Lori Cole will be our contact until the position is filled.
 - ii. The committee was established to help implement the back side of the DRC's mediation programs into Odyssey. DeShield and I have been working with Emily Westover with the AOC to ensure the programs transfer well into Odyssey.
 - d. Video Observation Committee – David Wijewickrama.
 - i. Nothing to Report.
- 5. Ex Officio and Other Organization Reports.
 - a. Mediation Network – Tina Estle
 - i. Ms. Kozlowski: Ms. Estle is not on the call today. The Mediation Network is unhappy the funding did not come through for the DCC pilot, but they are going to continue to work with the DRC to find a solution to the mediation fee.
 - b. Court Staff – Tara Kozlowski for DeShield Greene
 - i. Ms. Greene usually calculates the arbitration rates, so I am going to skip that report.
 - ii. The Family Financial numbers are consistent. We had a 71% settlement rate, and the cases that reached an impasse but did not go to trial was a 74% settlement rate. The MSC program has a 61% settlement rate, and cases that did not reach the courtroom are at 68% settlement rate.
 - c. NC Court Managers Conference – Justina Tate
 - i. Nothing to report at this time.
 - d. NCBA Dispute Resolution Section – Jim Cooley
 - i. Ms. Kozlowski: Mr. Cooley had to leave but had noting too important to report. He was grateful to be on the call today.
 - e. Industrial Commission – Tamara Nance
 - i. Not in attendance.
 - f. Court of Appeals – Judge Tyson.
 - i. Please see the report from the COA that includes statistics for the end of last year's mediation settlement rates. It shows a comparison with 2021's settlement rates. The settlement rates for COA judge mediations have increased from 65% to 76%. Private-party mediations settlement rates have dropped from 54% to 29%. We have 6 members of the court who mediate COA cases, we lost Judge Jackson, Judge Inman, and Judge Dietz. We have new judges coming on the bench including Judge Riggs, Judge Flood, and Judge Stading. Hopefully we will have 9 judges back on the panel.
 - g. Legislation – Frank Laney
 - i. Other than funding – there are no other issues we are following.
 - ii. Discussion: Not directly related to DRC, Harrison is moving forward.

6. Update on next meeting – Maureen Robinson
 - a. April 21 in Beaufort. If you plan to bring your spouse, partner, friend to dinner please let us know.
 - b. Ms. Brooks: We are staying at The Beaufort Hotel. We have meeting space and dining space.
 - c. Commission Members expressed their thoughts and prayers to Ms. Robinson and her family for the loss of her father.
7. Adjournment – Judge Tyson
 - a. Can I have a motion to adjourn? Mr. Soni made the motion, Ms. Stinson seconded. Discussion. None. Vote – all approved. None opposed. Motion carried, approved.