



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Dispute Resolution Commission Meeting Minutes

Friday January 26, 2024

10:00 am

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

Commission Members present in person: Judge Bragg, Zach Bolen, Frank Laney, Judge Hamilton, Angela Kidd, Paul Ekster, David Wijewickrama, and David Niblock.

Commission Members present via WebEx: Ralph Meekins, Justina Tate, and Denise Cline.

Ex Officio Members present in person: De Maca Adams.

Ex Officio Members present via WebEx: Tina Estle.

Commission staff present: Tara Kozlowski, Maureen Robinson, and Mary Brooks.

Commission Guests present via WebEx: Ashley Benefield.

With regrets: Judge Gorham, Benjamin David, Alice Stubbs, Robin Stinson, and Randolph Sumner.

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

1. Welcome and Announcements – Judge Hamilton
 - 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. Judge Hamilton: I am a new vice-chair, and it is my honor to have been asked to take this position and I'm certainly looking forward to fulfilling my obligations as your vice-chair.
 - i. For the Record: The Vice-Chair position on the Commission became vacant when Judge Tyson completed his second term on September 30, 2023. The full Commission participated in an email vote to elect a new Vice-Chair. Judge Gorham nominated Judge Hamilton to serve as Vice-Chair and the motion was seconded by Judge Southern, Zach Bolen, Frank Laney, and Justina Tate. The following Members voted yes: Bolen, Bragg, Ekster, Gorham, Kidd, King, Laney, Meekins, Niblock, Southern, Stinson, Stubbs, Sumner, Tate, and Wijewickrama. The following Members did not vote:

David, Stading, Hamilton. On October 16, 2023, the Commission elected Judge Hamilton to the position of Vice-Chair.

- c. New Members. We have a couple of new Commission Members I would like to introduce:
- i. Judge Stading is a Court of Appeals Judge appointed by the Chief Justice to fill Judge Tyson's seat as a North Carolina Judge.
 1. Mrs. Kozlowski: For the record, the State Ethics Commission has reviewed Judge Stading's Statement of Economic Interest and did not find an actual conflict of interest or the likelihood for a conflict of interest.
 - ii. Ralph Meekins is an attorney mediator appointed by the Chief Justice to fill Ketan Soni's seat as an MSC Superior Court.
 1. Mr. Meekins: I am from Charlotte originally, I practiced law in Raleigh for 10 years. I moved to Shelby 29 years ago, became a mediator in 1993 and was on the original Commission years ago. I was glad to be back on and participate. I am also on the board of trustees at Chapel Hill.
 2. Mrs. Kozlowski: For the record, the State Ethics Commission has reviewed Ralph Meekins' Statement of Economic Interest and 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. Angela Kidd is a Clerk of Superior Court appointed by the Chief Justice to fill the vacant seat of as a Clerk of Superior Court.
 1. Clerk Kidd: I am the Clerk of Court in Caldwell County, I am one year into my second term so I have been the Clerk for 5 years. I have 20 years of service to the state of NC, through my years in judicial services and approximately 10 years with the department of corrections. I look forward working with you all.
 2. Mrs. Kozlowski: For the record, the State Ethics Commission has reviewed Angela Kidd's Statement of Economic Interest and did not find an actual conflict of interest or the likelihood for a conflict of interest.
 - iv. Paul Ekster is an attorney non-mediator appointed by the President of the NC State Bar to fill Charlot Wood's seat as an attorney non-mediator.
 1. Mr. Ekster: I practice in Southeast part of the state, in Tabor City. I have been with the same firm since 1997 when I was a law clerk, and my graduation from Law School in 1999. We do all small-town practice, which covers everything including mediation. I was honored to accept Ms. Armstrong's recommendation to this seat.
 2. Mrs. Kozlowski: For the record, the State Ethics Commission has reviewed Paul Ekster Statement of Economic Interest and did not

find an actual conflict of interest or the likelihood for a conflict of interest.

- v. New Ex Officio Members:
 - 1. Kevin Howell has taken the place of Tammy Nance as the Industrial Commission's liaison to the DRC.
 - 2. Ketan Soni has been named an Ex Officio Member of the DRC to assist with the video vignette project and technology in general.
 - d. Approval of August 18, 2023, Meeting Minutes.
 - i. Mr. Wijewickrama made a motion to approve the August 18, 2023, meeting minutes. Seconded by Mr. Bolen. Discussion: Please add staff under the attendance at the meeting. Friendly amendment to the motion. Vote – all in favor. None opposed. Motion carried, approved.
2. Office Report – Ms. Kozlowski
- a. Budget.
 - i. Financial Services has rolled out a new accounting program, and we are still on the learning curve. Please let us know if you have not received reimbursement from a submitted expense request, as some payments have been delayed and some requests have been lost in the system.
 - ii. The accounts payable are not correct and need to be sorted – while our account show approximately \$491,152. in the account. However, this amount may fluctuate as some of the expenses, including salaries, are not being funded from the proper source. We are working to fix this, and I will keep you all posted.
 - b. Renewal.
 - i. We have about 1260. We had a lot of people retire this year, and 93 new certifications.
 - c. Trademark update.
 - i. We are officially trademarked, please see the Trademark Certificate showing our service mark was registered on October, 24, 2024.
 - d. Conflict Resolution Day.
 - i. Conflict Resolution Day was a huge success despite technical difficulties. Dwight Golann was the speaker and we had over 140 attending. Judge Edmunds, James Young, Deb Dilman, and I held a panel on hard to discuss topics. The training is now available for CME credit on our website.
 - e. Training/Education.
 - i. Staff continues to provide training and educate mediators, attorneys, and the public as much as possible.
 - f. Committee assignments. With new members we have new committees approved by Judge Gorham. Please reach out with questions or concerns.
3. Committee Reports –
- a. Criminal Sub Committee – Mr. David/Ms. Estle
 - i. Previous Matters.
 - 1. Update on grant award. – Ms. Brooks.

- a. Ms. Brooks announced that the Commission received an IOLTA grant from the Administration of Justice category for the promotion and support of full range dispute resolution techniques. Staff created and updated forms for the member's review and are reaching out for any suggestions.
 2. Mrs. Kozlowski: The centers who will be providing the mediators to mediate the district criminal court matters, all entered into the Memorandum of Agreement that provides for payment terms to the participating centers.
 3. Discussion: If there are cases with wealthy parties, should they pay the fees? Ms. Kozlowski explained that the grant is for all mediations, but that economic statistics regarding the parties will be collected.
 - ii. New Matters.
 1. None.
- b. Executive Committee Report – Judge Hamilton
 - i. 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 before it after our August meeting.
 - ii. Vote on DCC Pilot Counties and Training Guidelines.
 1. Judge Hamilton: The wonderful news that Ms. Brooks was able to obtain a \$100,000 grant through IOLTA to operate the DCC Pilot Program for one year. Additionally, a DRC certified trainer requested to increase the number of remote attendees from 15 up to 22 persons per class, an adjustment we made to the MSC and FFS training guidelines last year. Please see the Memo to the Executive Committee in your meeting packet for further information. The Criminal Subcommittee recommended inviting the following counties and community mediation centers to join the pilot once the grant has full approval from the Supreme Court.
 - Cumberland County, Cumberland County Dispute Resolution Center
 - Guilford County, One Step Further Mediation Services of Guilford County
 - Alexander and Iredell Counties, Piedmont Mediation Center
 - Wake County, Carolina Dispute Settlement Services
 - New Hanover and Pender Counties, Coastal Community Mediation Center of NC
 2. The following Executive Committee members voted yes to both proposals: Mr. Bolen, Judge Gorham, Judge Hamilton, Ms. Stinson, and Mr. Wijewickrama. Frank Laney abstained, and Benjamin David did not vote.
 3. Discussion: Mrs. Kozlowski stated that we invited all 100 counties, district attorneys, community mediation centers and judges to participate. The pilot was awarded one fifth of original requested

amount. Staff and criminal subcommittee trimmed pilot down to 7 counties based off demographics, established relationships, income, and diversity. Staff was concerned that two centers may not be able to perform.

4. Staff concerns: Cumberland County currently has one certified mediator.
 - a. Ms. Estle: I'm currently working on certifying as a trainer. At the moment, cases have been slow, 1-5 cases per week.
 - b. Mr. Laney: Training was planned for last week but was delayed until the grant was announced.
 - c. Ms. Estle: Cumberland will have 10 very active mediators. Maybe 15-20 people who do not come as often that will come when scheduled to be the mediator.
5. Staff's other concern is in Wake County, CDSS. With Diann Seigle retiring and other new information, staff is concerned with what's going on with the center.
 - a. Mr. Laney: I am not sure of the office switch date; Diann Seigle is retiring and will be moving to Portugal. Also, Ms. Kimberly Rose who was the case manager for the office, has left and moved to England to attend law school. Mr. Laney introduced Ashley Benefield, who is attending by remote means. Ms. Benefield is a third-year law school student, who will take the bar in the summer, and will take become the executive director in the fall. Mr. Laney also mentioned that he was acting executive director and remain in that position until Ms. Benefield is able to take over the position. I am a volunteer director and will not take any funds, my goal is to keep things up and running. We will replace another staff person in a few months. Ms. Benefield is going to focus on the Medicaid mediations. We have promoted a longtime volunteer, Mr. Bill Steinburg, who is a certified DCC mediator, and a minister. He has agreed to be the DCC coordinator. Mr. Steinburg will also be volunteering, and we are looking for more volunteers to have 6 regular volunteers. There is a lot of turnovers at CDSS but hopefully it is well in hand.
6. Mrs. Brooks: the number of certified DCC mediators is my concern. Mr. Laney stated that after Ms. Seigle leaves, CDSS will have 3 certified DCC mediator. Until we could tell people what was going on we could not recruit. Staff considered Conflict Resolution Center in Hildebrand and Burke County as a plan B backup if needed. They have good demographics; all centers have remote capability.

7. Mrs. Robinson: I would like to remind the Commissioners of the DCC training requirements and that the Rules allow for experienced mediator to have the co-mediations and observations waived.
 8. The question was asked to Mr. Laney and Ms. Estle if they could handle the requirements of this program, both answered affirmatively.
- c. Grievance and Disciplinary Committee – Judge Hamilton
- i. Update on complaint activity.
 1. Mediator A-23, appeal. The appeal hearing scheduled for this matter on November 3, 2023, was continued to March 8, 2024. The appeal panel will include any Commission Member that did not sit on the committee issuing the original sanction. The mediator is appealing the committee issued sanction of violating 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.
 2. Mediator G-23. A complaint was filed against a mediator by a party to a mediation. The party alleged that the mediator held the mediation past the mediation deadline, among other claims. Staff reviewed the complaint and the mediator’s response and determined there was no violation. The Order to Extend the mediation deadline was granted by the county’s mediation coordinator, however, a paper copy of the extension could not be located in the court file. The mediation coordinator confirmed approving the request, and the extension was noted in CaseWise. Staff brought the matter to me for review under Rule 9(c)(5)(a), and I agreed with staff’s recommendation to dismiss the matter. The Complainant timely appealed my decision to the committee. The committee reviewed the complaint and the mediator’s response and determined there was no violation. The matter was dismissed.
 3. Mediator H-23. Mediator filed a Report of Mediator listing the party who failed to appear at the mediation. A few days later, mediator filed an amended Report of Mediator listing additional information on the report that included substantive information about the mediated settlement conference. Commission staff initiated a complaint and sent the mediator a letter of inquiry, and the mediator did respond in a timely fashion. The committee reviewed staff’s complaint, mediator’s response, and found under DRC Rule 9(d)(2) that the mediator violated Standard 3. Taking all factors into consideration, the committee issued mediator a private reprimand and required mediator to complete a 16-hour DRC certified training

course within one year. Mediator has until February 16th to appeal this decision.

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

- 1. Update on sanction for Mediator F-22. Mediator was sanctioned with a private reprimand and requirement to complete a 16-hour DRC certified training course within one year. Mediator timely provided staff with a certificate of completion from the course. That matter has been taken care of.

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

- 1. Applicant I-23. Staff received an application for DCC certification that fell outside of the guidelines concerning past moral conduct. Applicant had several past misdemeanor and felony charges, all of which occurred more than 15 years ago. Applicant also had numerous failure to appear and failure to pay matters on her record, mostly involving traffic matters and driving without a license. All traffic matters have been resolved more than 6 years ago, and applicant does currently hold a valid NC driver license. Applicant has worked for the community mediation center sponsoring the application for several years and has the full support of that center's 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 – Mr. Bolen

- i. CME offerings approved since August 2023. We have approved several new CME training courses. Please see the list of approved courses in your agenda.

- ii. Applications for certification that came before the Committee.

- 1. None

- iii. Previous Matters

- 1. Proposed amendments to FFS Rule 8(a)(1) and (a)(5). At our last Commission meeting, we approved proposed modifications to the language in the FFS Rules to clarify FFS Rule 8(a)(1) and (a)(5). The new language eliminates confusion around required observations and requirements for family law education for applicants. The language was posted for 30 days, we did not receive any comments. The committee recommends the Commission adopt the language. If the language is adopted, the amendments will be submitted to the Supreme Court for review.

- a. Discussion: None.

- b. Mr. Niblock made a motion to adopt the proposed amendments to FFS Rule 8(a)(1) and (a)(5). Seconded by Mr. Laney. Discussion: None. Vote- all in favor. None opposed. Motion carried, approved.
 - 2. Discussion post-vote: Who is responsible to check if potential applicants qualify? If family law required before training? Staff recommends trainer check. Tell applicants to contact staff unless they're family law specialists.
 - i. New Matters
 - 1. None
- e. Civil Sub Committee – Mrs. Kozlowski for Ms. Stinson
 - i. Previous Matters.
 - 1. Forms still pending with AOC civil forms subcommittee:
 - a. Revisions to Petition and Order for Relief from Obligation to Pay Mediator’s Fee: AOC-CV-814; AOC-CV-828; and AOC-G-306.
 - 2. Updating forms to allow for email service under Rules of Civil Procedure, Rule 5.
 - a. Until Odyssey is up and running the DRC may not make any changes unless we have amended rules or statute change that require a form change/update.
 - 3. OSHR mediation program.
 - a. Since our last meeting, multiple committees met regarding the OSHR program. Staff had a request from OSHR into one of our programs, unfortunately the statewide coordinator couldn’t find an available path to fund the process. We reminded them staff is 100% receipt funded from mediator dues. Each committee differed to the criminal subcommittee who agreed if no funding, no program.
 - 4. Public Records program.
 - a. After reviewing the relevant statutes, our committee determined the Commission may provide rules for the public records mediation program but is not required to do so. While comparing the public records statute with the farm nuisance statute, we discovered the farm nuisance program is in need of some updates. The committee decided staff should draft the necessary amendments to update the Farm Nuisance program rules and forms. Additionally, the committee requested staff to create some simple draft language to provide options on how the rules would look if the committee decides to bring this program to the full Commission for consideration. The sample drafts will include standalone rules for the public records program,

rules that may be added to the current MSC rules, and sample forms for the program. This will be up for discussion again in our April meeting.

ii. New Matters

1. Clerk Program.

- a. We have received a request from Mr. Frank Johns to encourage the use of the Clerk Mediation Program by Clerks and attorneys across the state. It is my understanding that Mr. Johns wishes to advertise and educate, not recreate the program. He met with staff in November to review the history of the program. Frank Laney was invited to join the meeting to further discuss both the clerk program and the creation of a new certified clerk training course. Mr. Johns is working with the Elder Law and Estate Planning and Trust Sections, and the Elder and Special Needs Section of the NCBA.
- b. Discussion: Mrs. Kozlowski provided a brief history of the Clerk Program and the two-year pilot program that was unsuccessful. The Clerk Mediation Program has been used infrequently but continues to operate across the state. Clerks are reporting no overflow or need of program. Clerk Kidd recommended to Ms. Jamie Lassiter, Director of the Clerk's Conference. Clerk Kidd suggested the Clerk's revisit the program to determine what did and didn't work. Ms. Lassiter suggested this information be brought to the executive committee of the Clerk's Conference. Then the executive committee can bring the information to a conference meeting and bring a fresh new start. There are twenty-two new clerks with the state who may not realize this program exists.
- c. The former Clerk Training Program was outdated and pulled by staff. The Commission offers a mediation program, but we do not have a current certified trainer to train our mediators. Mr. Laney is willing to take it on. There's sudden new interest in the program. There was a clerk CME application from the NCBA and Mr. Johns that was denied since it didn't fall within the CME policy.

2. MSC Rule 4(c). We received a recommendation to strike the language from the MSC Rules that requires the final agreement to be signed by the party's counsel. The committee agreed that it is not necessary for the attorney to sign the final agreement and voted to remove the requirement from the MSC Rules. The Clerk Rules also require attorney signatures under Rule 4(b)(1), and need to be modified. The FFS Rules do not require the attorney to sign the final

agreement. Please see page 44 of the packet. If the proposed language is approved, it will be posted for comment for 30 days.

3. Mr. Laney made a motion to approve the amended language that removes the attorney's obligation to sign the final agreement. Seconded by Niblock. Discussion: Is this for domestic agreements? Kozlowski: this is only for the MSC Rules and will impact superior court final agreements. Vote – all in favor. None opposed. Motion carried, approved.

f. New Media Committee – Mr. Wijewickrama

- i. I am going out of order; I have the Chief Justice of the Cherokee Nation standing by. He will not need to go through tribal council, the Chief will be able to go through administrative code to require certification for mediators. Being that is the case, we are going to speed up the process. We have talked to one of our judges, Justice Saunooke. He is going to make the change and send it to us for consideration, then it goes back to him, and he will implement. We want to grandfather one mediator for a year to obtain the training. If that is okay, they will just go through rule making. Plan to have it done by the last day of February. We will receive comments from the Chief that we will send through the committee then up to the full commission in April.
- ii. Social Media. Staff has now posted a second podcast that is available for 1 hour of CME. Mediators can now log onto to their profile to report their own CME for the 24-25 renewal year. Staff has been keeping our social media sites up to date to provide a constant flow of information to our mediators and the public.
- iii. Vignettes of the Rules. We have not held a meeting to discuss the making of the vignettes, but we will hopefully gain some traction on this project this spring.
- iv. Mr. Laney presented his new book, "The Practical Mediator". The book is on Amazon and is a collection of writings, an array of articles, skills, rules, programs, etc.

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

i. Previous Matters

1. State Bar matter: Confidentiality Agreement.

- a. Staff has been working with Ms. Sarah Kromer, Ms. Danae Woodward, and the State Bar on the issue of what provisions may be included in the Agreement to Mediate (service contract). This is no longer a State Bar issue. 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. Hopefully after the committee meeting at lunch, the committee will have one draft for the Commission to consider. If the

Commission approves the draft, we will send it to AOC legal for review.

- b. The committee met and voted for substantive changes on language to be clear and legally enforceable, that allows for information to be shared with their attorney, accountant, or other professional regulated by statute.
 - c. Discussion – We don't want the parties to enter into an agreement where they are fooling themselves, we want the contract to be enforceable. Any regulatory profession, we believe, will understand confidentiality. Husbands, friends, co-workers, will not understand. This was originally drafted for ongoing church disputes. Confidentiality may need to be addressed upfront, but we don't want the mediator to give legal advice, so we created this form. We have reviewed this document before, so this is the last little change before going to AOC legal for review.
 - d. Mr. Laney makes a motion on behalf of the committee to adopts this document to be forwarded to AOC legal for review. Seconded by Mr. Bolen. Discussion: None. Vote – all in favor. None opposed. Motion Carries, approved.
2. State Bar matter: Mediator acting as scribe.
- a. 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.
 - i. Mrs. Kozlowski: Update on this case. The State Bar dismissed the issue against the scrivener attorney/mediator.
 - b. Discussion: What authority does the state bar have over us? Once an attorney, always an attorney. I don't think the State Bar has that authority over mediators, we have non-lawyer mediators. These people are scribes; they should stay in their lane, it's unauthorized practice of law.
 - c. It's a dismissed complaint, started 1.5 years ago with the question pending for months. There are various opinions about it. I have a suspicion that there are people at the State Bar that agree there are various opinions about this topic.
3. Forms AOC-DRC-19, 20, and 22.
- a. At the last Commission meeting, we voted to introduce various reasons a mediator may have to file the form to request an extension of time, or to withdraw. The purpose of listing reasons on the form is to help mediators avoid

violating Standard 3(c) by limiting communication with the court. The forms were sent to the AOC form committee and AOC legal for review and approval. Forms 19 and 22 were updated with the language requested by the Commission. Form 20 was a bit more complicated as legal requested to list the Standard that was applicable when completing the form. To make the reason clear to those who may not know the Standards by heart, we compromised with legal to include the reason with the Standard that applies. These forms went live on October 12, 2023.

ii. New Matters

1. Request for AO regarding processing fees.

- a. A mediator requested an AO to clearly define if the mediator may pass along the processing fee, charged by the vendor, to the party who is paying the mediator's fee. The committee determined out current AOs and Rules do not define this and an AO is appropriate. The AO is still in the works but will provide that the mediator must accept payment by cash or check to allow the party to pay the mediator fee without incurring a processing fee. However, if the party elects to pay the mediator through a third party, such as a credit card, Venmo, Zelle, PayPal, or any other electronic payment method, any fees associated with the payment will be responsibility of the party.
- b. Discussion: The mediator can offer cash/check instead of charging party. The mediator, on the front end before they start that if the parties pay remotely, they will be responsible for the processing fees. Flat fees or percentages will not be allowed, only actual fees. Mediators are responsible for the credit card processing fee during renewal. If someone is a mediator in an office building, they charge parking. This is opening a can of worms, a slippery slope. One third eat the fee, one third charge back; the commission allows the charge back, no flat fees.

2. Request for paralegal to attend mediation.

- a. Mediator has requested ability to use paralegal in mediations to assist with the spreadsheets. The concern includes that the Standards do not cover office staff. The only person allowed into the mediation by a mediator is an observer. If we are to allow a paralegal into the mediation, we need guardrails to ensure confidentiality, etc. The committee is divided on this issue, half feel including a paralegal in the mediation would be an impediment and interfere with the mediation, and half

feel that including a paralegal would only benefit the process. Before working up draft language to allow a paralegal into the mediation, the committee wanted to take the temperature of the Commission.

- b. Purpose is to have the paralegal with them to run the spreadsheets. It is fairly well established that the lawyers can bring a paralegal, but can the mediator bring in a paralegal.
- c. Staff said don't think it is a good idea, Mr. Laney said it could be done. The committee is completely divided.
 - i. If we allow paralegals into the mediation, we may want to consider the following:
 - 1. do we require they be certified paralegals?
 - 2. do we require they attend any current training certified by the DRC?
 - 3. do we create a new training program for paralegals or do we hold the mediators responsible for training their paralegals?
 - 4. how do we hold mediators accountable if staff violates confidentiality?
- d. Discussion: Can we put in guardrails? We do not generally certify paralegals. Unless objection by one of the attorneys, then paralegal should be allowed to come in. They already have a cloak of confidentiality, it's the attorney's responsibility. For clients, perception is the problem. We have a process in place for them to see the files, why can't they sit in the mediation? Going to the back office to the conference room. How does the confidentiality cloak the office staff inherently. The issue I have is when we have 60 parties involved then you need someone that can enter. Everyone understood and was in agreement. If we say the attorney is a scribe, then the entire office should be cloaked. Standard 3 has to do with destroying notes and filing. If you look at my notes in the mediation, you would understand what is happening. I don't like it. Should broaden language.
- e. Judge Hamilton asked for an internal temperature on the issue. Informally, those in favor of guardrails: Mr. Meekins, Mr. Wijewickrama, and Judge Bragg. Those against: Mr. Niblock, Judge Hamilton, Mr. Ekster, Ms. Kidd, and Mr. Bolen.
- f. Further discussion: There would be a temptation to broaden the paralegals responsibility. Take the discussion and the split and chew on it some more. There is no consensus. If

the parties consent let them do whatever they want. Pro se don't understand. We don't want to define legal advice, let's follow the AOC on this one. They can slip from note taking into the mediator box. Let's kick it to the committee; parties cannot stipulate their way out of our Rules. FYI there's a bill at the general assembly to allow paralegals give legal advice.

3. Review of Standard 2(b) and corresponding program rules.
 - a. Staff received a recommendation from attorney/mediator: To take the "guessing" of whether a relationship "may affect...or may have an appearance of affecting..." and just require disclosure, subject to the Standards and without violating the RPCs. The committee considered the request and declined to approve the proposal. Moving the standard from may to shall is stricter than the rule placed on our judges. The mediator is capable of determining if they are not neutral moving into a case and can disclose accordingly.

4. AI in mediation...

- a. It has come to the Commissions attention that law firms are starting to use AI to record conversations to create a summary of the discussion points for future notes. A mediator logged into a remote mediation and had a phone line identified as "_____ (attorney) AI Phantom account". This is not permissible under the Rules, and mediators should confirm the AI recording has been terminated from the call before beginning. We do not feel we need to take an official position on this issue, yet. We will keep watching the issue to see how it evolves over time.

- h. Green Book – Mr. Laney

- i. The committee has made substantial progress. Please look at the spreadsheet you all have, Commission spent about \$22k for the second edition. The NCBA Section kicked in \$5k. We had some profit to use for the second edition that we will not have for the third edition. The expenses are similar, but we do need an administrator. I am putting \$4k in the budget to pay for administrative help, I anticipate using about \$3k but would rather have enough money to pay for the admin.
- ii. The Commission did distribute several thousand copies from across the state and paid out about 16k for the distribution for the second version.
- iii. The administrator has already been hired by Mr. Laney to assist in pulling the book together.
- iv. Mr. Laney made a motion for the use of \$25,100 to produce the third edition Green Book and hire an administrator to support the committee. Seconded by Judge Bragg. Discussion: Mrs. Kozlowski clarified the DRC is not hiring or paying the administrative position, Mr. Laney will be hiring and

paying the admin's salary. All monies will be paid from the Commission funds as a vendor is normally paid. Motion is to approve \$25,100. Vote – all in favor. None opposed. Motion carried, approved.

- v. Katie Riddle is the admin's name and is building a spreadsheet for each chapter, diving the book into the chapters. That is being done as we speak. By next week, we will send out the chunk we have asked to edit. We have writers for all sections. Ms. Kozlowski has agreed to edit a large section of the book.

4. Ad Hoc Committee Reports –

a. eCourt Committee – Ms. Adams

- i. Nothing to update as the committee has not met. Track 3 of eCourts will roll out on February 5th in the eastern part of the state, track 4 is northern (10 counties) and will roll out on April 24th. Tracks 5 and 6 will roll out later this year.

b. Video Observation Committee – Mr. Wijewickrama

- i. Nothing to report.

c. Cherokee Nation Mediation Program – Mr. Wijewickrama

- i. The Eastern Band of Cherokee Nation is a sovereign nation. They have legal issues that bleed into state issues and then back into the reservation. Last year there was an officer involved shooting, the counties called for assistance erroneously, and they shot an unarmed guy. The Cherokee Nation police did not have the right to be on the land. There is a mediation in the counties, and now there is a lawsuit in the tribal land. They began a discussion a year ago to bring mediation into the Band. The mediated agreement to apply to the reservation.
- ii. Attorneys must be licensed in NC to practice in the Band (2011 statute). Then they wanted child custody mediation. The court asked Mr. Wijewickrama if the Commission could oversee their mediators, the Commission said yes.
- iii. This has been an eight-month process with Ms. Kozlowski and Chief Justice to work up the language. There is one elder who we want to grandfather in of one-year to get him trained and the tribe will pay for training.

d. DRC Funds Committee – Mr. Niblock

i. DRC Expense Policy.

- 1. At our August 2023 meeting, the Commission voted to approve amendments to the DRC's Expense Policy. The new language allows for staff to use DRC funds up to \$10,000 per year for training or presentations and includes language to cover the Executive Directors State Bar Dues and Section Dues. The amended policy was posted for 30 days with no comments. The committee recommends the Commission adopt the proposed amendments.

2. Mr. Niblock made a motion to adopt the amended DRC Expense Policy. Seconded by Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
- ii. Update on requests.
 1. Mr. Laney made the updated request for the Green Book earlier in the meeting minutes.
- e. Ad Hoc AO Review Committee – Mrs. Kozlowski for Ms. Stinson
 - i. We have reviewed 32 out of 43 AOs, so far and are continuing to work toward a more consistent, easy-to-read, set of opinions. We have one more meeting for a general overview.
- f. Long Range Planning Committee – Mr. Bolen
 - i. Nothing to report.
5. Ex Officio and Other Organization Reports.
 - a. Mediation Network – Ms. Estle
 - i. They have met since Jody’s passing and have had a virtual meeting. They have not decided if they will hire an executive director. Janice Almond has been handling things. They have had a few applications of non-profits to join the group.
 - b. Court Staff – Ms. Adams
 - i. Stats for MSC, FFS, and ARB. For second quarter FFS July 1- Dec 31, settlement rate 72%, increases to 76% for cases that settle prior to or during the mediation conference. For Superior Court, or MSC matters, 65% settlement rate for the quarter, or 70% if we include all settlements that occur prior to, or during, the conference. Arbitration does not fall under the DRC umbrella; however, we still like to report these numbers. For the quarter, there were 2274 cases ordered into arbitration. 1147 cases were arbitrated, 325 cases were dismissed before hearing and 675 cases were disposed in some other way than arbitration. There were 204 appeals filed for an 18% appeal rate.
 - ii. NC Court Managers Conference –Ms. Tate
 1. Ms. Adams for Ms. Tate: The Court Managers Conference is schedule March 13-15 in kitty hawk NC. Agenda goes out today.
 - c. NCBA Dispute Resolution Section – Ms. Cline
 - i. Nothing to report.
 - d. Industrial Commission –Mr. Howell
 - i. Nothing to report.
 - e. Court of Appeals – Mrs. Kozlowski for Judge Stading
 - i. Mediation Statistics. Judge Tyson provided our office with the mediation statistics found in your packet. The 2022-2023 settlement rates for COA mediations are lower than last year, but we are pleased the program is still running and for the information.
 - f. Legislation – Mr. Laney

- i. Mrs. Kozlowski was asked by the House Select Committee on Homeowners' Associations to speak at a committee meeting this past Wednesday. I will let her fill you in on the meetings events.
 - 1. Mrs. Kozlowski: The current legislation provides for voluntary mediation for HOA disputes, but either party can decline the request. The General Assembly seems to be interested in something more similar to our statutes that mandate mediation. However, the cost of our mediators is high for the typical HOA dispute and can be better handled by community mediation centers. The DRC does not have unlimited resources and is not able to absorb additional programs without additional funding.
- 6. Update on next meeting – Ms. Robinson
 - a. Our next meeting will be the retreat, April 19th in Atlantic Beach. I will send out an email next week.
- 7. Adjournment – Judge Hamilton
 - a. Motion to adjourn by Mr. Laney, seconded by Mr. Wijewickrama.