

Dispute Resolution Commission

MINUTES

**Friday, September 15, 2017 &
Saturday, September 16, 2017
Commission Retreat
Morehead City, NC**

Friday, September 15 at 1:00 PM

Members present: Webb, Brown, Cash, Clare, Dollar, Evans, Hicks, Long, Marcilliat, McCullough, Seigle, and Vincent. Ex-officio members present: Estle, Laney, Leazer, Schafer, and Stroud. Guests: Little and Thompson. Members and ex-officio members unable to attend: Caldwell, Ponton, Nesbitt, Sutton, Tolbert.

Judge Webb welcomed everyone to the Commission's 2017 annual retreat. He called for approval of the May, 2017, minutes. They were approved as submitted. He next asked for Ms. Ratliff's staff report.

Ms. Ratliff noted that the office was in the thick of the 2017/18 renewal. She reminded everyone that the late fee would attach to applications received after September 30th, but mediators would have until October 31st to renew in light of the new continuing mediator education (CME) requirement. She reported that the CME requirement had caused substantial confusion this year in spite of staff's efforts to distribute information about the requirement and the courses available. She also reported bottlenecks caused by the lag in Commission receipt of NCBA attendance reports, with the NCBA needing at last 30 days to report attendance at CME. She noted that the "free" courses available online had been popular. Moreover, because mediators self-reported attendance at these courses, they could notify the Commission of their attendance immediately, staff could then update the database and allow renewal. The time involved was often hours rather than days. Ms. Ratliff thanked Ms. Dollar for the AOC's help in videoing courses and posting them online. She said she was pleased that so many trainers and others had stepped up and offered CME opportunities.

Ms. Ratliff next called attention to a short report on 2017/18 renewal activity to date. She noted that 672 mediators had fully completed the renewal process. Further, an additional 395 mediators had already completed their CME, but not the application, or were registered to attend CME. She added that left 398 mediators unaccounted for, but she fully expected a last minute rush of certifications as that had been the norm for years. She said she would have the final report on renewals at the December meeting. Ms. Ratliff next called attention to the final budget report for FY 2016/17 (June 29, 2017). Collections for certifications and renewals totaled \$214,603.00. Expenditures totaled 259,319.44. As such, expenditures exceeded fees collected by \$44,716.44. She added that the FY 2015/16 carry forward amount, i.e., accumulated unspent revenue from previous fiscal years, was \$117,658. As such, if \$44,716.44 was subtracted from \$117,658, that left a carry forward for 2017/18 of \$72,941.56.

Ms. Ratliff next reported that Ms. Nesbitt had raised concerns with staff about the accuracy of the MSC and FFS caseload statistics. Ms. Nesbitt had heard from several court staff that mediators were not filing their Reports of Mediator. That, in turn, led Ms. Nesbitt to be concerned about statistical reports for the programs. Ms. Nesbitt asked staff to try and look into the matter. Staff developed a survey and

forwarded it to all district and superior court staff asking them to provide information on the reporting issue and mediator compliance. Ms. Ratliff called attention to the survey results (Tab 4) and said that they did not indicate that concerns were widespread, but staff in a few districts believed there was a problem. Ms. Ratliff noted that Ms. Nesbitt had a conflict and could not be present for the meeting. She had asked that everyone carefully review the survey and come to the December meeting prepared to discuss it. Ms. Ratliff next reported that Judge Webb had asked her to sit on a committee formed by Judge Warren at the request of the legislature. The legislature asked the AOC to explore the viability of housing a private, international arbitration project/program in the NC Business Court. Ms. Ratliff noted that similar efforts were already underway in three US cities -- New York, Miami, and Atlanta. She added that the legislature was particularly interested in Atlanta's approach. The committee was, she reported, just getting underway. Ms. Ratliff next reported that the AOC had completed its website design phase and was moving toward implementation. She said she was told that in the next few days the office would receive a spread sheet containing all URL addresses for DRC content. Staff will be expected to attend a course on "Writing for a Website" and to, thereafter, revise all content in keeping with the parameters taught in the class. Ms. Ratliff noted that this will be a major undertaking as the Commission has a lot of material posted. Ms. Ratliff added that the Commission is now operating with Twitter and LinkedIn, but that Mr. Clare would have a fuller report later.

Ms. Ratliff next noted that the DRC's Annual Report for FY 2016/17 had been drafted and submitted to Judge Webb for comments. Ms. Ratliff also indicated that the office planned to get the next edition of *The Intermediary* out quickly with the intent of publicizing Conflict Resolution Week. She added that the most recent edition of the State Bar's *Journal* had included an article written by Judge Cash on the 20th Anniversary of the DRC. Lastly, Ms. Ratliff noted that she and Ms. Dollar would be attending a meeting of ADR administrators and policy makers in Charleston in October and that Ms. Hopkins would be a presenter at Elon University School of Law also in October.

Judge Webb next called on Mr. Laney for his legislative report. Mr. Laney directed members to the documents under Tab 2. He reported amendments to G.S. § 7A-38.1(l), 7A-38.4A(j), 7A-38.3B(g), and 7A-38.3D (k) relating to inadmissibility had been passed by the legislature and signed by the Governor on July 21, 2017. Mr. Laney also noted that a number of revisions to G.S. § 7A-38.2, the Commission's enabling legislation, were also passed. He noted that language that would have permitted the Commission to fine those who requested a hearing and then failed to appear, had been removed. He suggested that if the Commission wants to pursue this provision, it will need to set a fine that reflects actual costs incurred and specify a cap. Ms. Ratliff was asked how often such situations have occurred. She could recall one case in which a complaining party failed to appear without good cause and one in which an applicant had failed to appear due to illness, but the matter had been reset. She was asked about the costs incurred and she noted costs associated with the court reporter, mileage, food, and possibly hotels for those hearing the matter, and possibly room rental if the hearing were in a hotel. The members felt it was a good idea to assess a fine in instances where complaining parties, respondents, or applicants fail to appear without good cause. Judge Webb asked Mr. Laney to draft some language imposing a fine and including a cap. He asked Commission staff to calculate an average cost for Mr. Laney. Lastly, Mr. Laney noted that proposed changes intended to coalesce various community mediation statutes into a single statute and to modify the enabling legislation for the District Criminal Court Mediation Program did not pass during the 2017 long legislative session.

Ms. Hopkins next reported on a number of revisions to rules and policies that had been approved at the May, 2017, Commission meeting and posted for comment and that were now before the Commission for final approval (Tab 3). She added that there was only one comment which related to the

amendments to FFS/MSC Rule 8. The commenter objected to the requirement that an applicant hold a college degree. The Commission gave final approval to the documents in question.

Judge Vincent next reported for the Grievance Committee (Tab 4). She first called attention to a proposed amendment to DRC Rule IX.E(14)(b) relating to publication of public sanctions imposed by the Commission. The change was approved. She also noted that the staff would soon be posting notice of a sanction imposed against an MSC mediator and called attention to the text. There were no objections. She next called attention to the survey results on mediator compliance with case management duties also posted under Tab 4 and referenced earlier by Ms. Ratliff. She noted that the survey had been jointly approved by the Grievance Committee and the Program Oversight Committee and she encouraged everyone to review the results.

Judge Vincent next gave her update on grievance matters. She noted that there had been only two matters this quarter. The first, she explained, involved a denial of an application for MSC certification. The applicant, she reported, was a Florida lawyer who had serious issues with the Florida State Bar. She noted there had been a great deal of material that the Committee had reviewed in the matter. She added that the lawyer had appealed the denial to the full Commission and the matter was scheduled to be heard on December 7, 2017. The second matter, she continued, involved another complaint in which a mediator had refused to provide service to a party claiming indigency. She added that her Committee had not yet received material on the complaint from staff, but it would be forwarded shortly and a meeting was already scheduled for October 4. She noted there had been some overlap here with the Standards and Advisory Opinions Committee which was working on an AO relating to indigency. She then asked Ms. Dollar to speak briefly. Ms. Dollar noted that there are a number of very poor communities in NC and that some citizens may not have access to mediators willing to serve indigents at no charge. She wondered whether a pilot program directed at encouraging mediators to volunteer their services might be a good idea. She also noted that it is important that court staff enforce deadlines, allow extensions sparingly and only for good cause, and keep cases moving. She suggested the Commission should do more to educate court staff as well as mediators relative to indigents. In sum, she thought the Commission may need to do more than issue an AO. Ms. Brown suggested that the DRC should be tough on mediators who do not fulfill their duty to serve indigents. She offered to connect Ms. Dollar with the Section's Pro Bono Panel. Mr. Long suggested there needed to be more emphasis on mediator education. Ms. Dollar noted that this issue would make a good CME project, particularly when coupled with a discussion of other case management duties. Judge McCullough agreed. Judge Webb added that this might also be a good PSA opportunity for him and Ms. Brown as Section chair.

Judge Webb reported for the Executive Committee. He first called attention to proposed amendments to the DRC's Rules and asked staff to briefly summarize the changes. Ms. Hopkins noted that the process of revising these rules began during Judge Cash's term and had been ongoing over a 2-year period. She noted there were changes throughout the document, but the majority of them related to Rule VIII (Standards and Advisory Opinions Committee operations), Rule IX (Grievance Committee operations), and Rule X (Mediator Certification and Training Committee operations). Thereafter, Ms. Hopkins briefly summarized the more significant amendments to these rules. The Commission approved the changes and they will be posted for comment and scheduled for final approval at the December meeting. Ms. Ratliff asked Judge Webb whether, once they were finally approved, the Commission wanted the revisions to go to the Supreme Court. Mr. Laney added that in the past revisions and new rules had gone to the ADR Committee of the State Council, but he thought that Committee was now defunct. Judge Webb asked Ms. Dollar to check with the Court about how the Commission should proceed.

Judge Webb next reported that Ms. Hopkins's hours had been cut to ¾ time due to fiscal constraints effective August 1, 2017. Judge Cash said he was sorry this had happened, that the plan had been that Ms. Ratliff could train Ms. Hopkins between her hire date and Ms. Ratliff's retirement date so that Ms. Hopkins could move into Ms. Ratliff's position when she retired. Judge Webb responded that a search would be conducted when Ms. Ratliff retired and that Ms. Hopkins might have a "leg up" due to her experience, but that proper hiring procedures would be followed.

Judge McCullough reported for the Mediator Certification and Training Committee. He noted that he was extremely pleased with the trainer response to the CME requirement and noted the large number of offerings under tab 6. He next noted a couple of questions had arisen that he wished to bring to the Commission's attention. First, if a mediator had taken a particular CME this year and found it helpful, could s/he repeat it again next year? Some discussion followed and the members responded affirmatively. Judge Webb noted that since the idea behind the CME requirement was to provide a refresher on the Rules and Standards, he saw no impediment to repeating a course. Second, Judge McCullough asked whether staff could post costs of CME courses on-line. Ms. Brown noted she had no problem and said she thought the cost of all course should be posted. Others agreed and staff will post cost. Lastly, Judge McCullough noted that staff continues to get applications from individuals holding masters and PhD degrees in conflict resolution. He added that when these applicants are younger grads, they typically cannot meet the 10 year professional, management, or administrative work experience requirement. He reported that his Committee had asked staff to look into the matter and see how other states are treating such applicants.

Ms. Seigle reported for the Standards and Advisory Opinions Committee. She began with a discussion of proposed AO 34. She noted that the draft addresses a situation in which a mediator conducted two mediations simultaneously while charging his full hourly rate to both sets of parties. The Opinion, Ms. Seigle reported, characterizes this conduct as violating Standard VII.G in that a mediator is not to prolong a conference for his her financial gain and Standard III, Confidentiality. Ms. Brown asked that the language under Question 2 which states there is also a Standard VII, conflict of interest violation in the sense that the mediator appeared to be placing his own financial interests above those of the parties, be expanded and moved up under Question 1. Judge Webb asked that staff get together with Ms. Brown to address her concern. [Redrafting of AO 34 occurred after the meeting. The revised AO was subsequently distributed by email, approved by the Commission, and has been posted for comment.] Ms. Seigle next called attention to proposed AO 35 which address a situation where an attorney arrived at mediation without his client, told the mediator he wanted to proceed with discussions and, after an agreement was reached, signed the agreement on behalf of his client. Neither the mediator nor the opposing counsel questioned whether the attorney had authority. Thereafter, the client repudiated the agreement saying the attorney lacked authority to enter into it. Ms. Seigle reported that AO 35 interprets MSC Rule 4.A(1)(a)(ii) as placing an obligation on mediators to raise the issue of settlement authority with attorneys in the absence of their clients. AO 35 was approved as written and will be posted for comment.

Ms. Seigle next called attention to a proposed amendment to Standard III.D(6). The proposed change would permit mediators to reveal to court staff that safety is an issue when asking for space in the courthouse as long as they do not identify the parties involved or discuss their circumstances. The proposed revision was approved. Lastly, Ms. Seigle called attention to a proposed change to language in the DRC Advisory Opinion Policy that strikes the characterization of AOs as "non-binding". Mr. Little explained the language was purposeful because the Supreme Court does not approve AOs and they

serve only to interpret program rules and standards. Judge Vincent said she agreed. The Policy will remain as is.

Mr. Clare asked to revisit the AOs on agreement drafting – Nos. 28 and 31 (tab 7). Mr. Clare said that if the Commission wants to allow mediator drafting and to permit pro se parties to sign, he believed the matter must go back to the State Bar. Judge Webb said he agreed. Judge Cash noted that he does a summary of the agreement, gives it to the parties, and they can take it to an attorney or a judge to be formalized. He added that he clarifies this limitation to pro se parties in his engagement letter. He believes this has worked well. He added that Judge Robert Rader had told him about a program in Wake County which has recruited volunteer attorneys to handle family matters. Ms. Seigle responded that he was referring to CDSS' File-It-Yourself Legal Clinic which helps parties with custody, visitation, and other family matters. Services, she added, are offered on a sliding scale. Ms. Seigle added that it is difficult for poor people to obtain legal advice, that they often aren't in a position to take their summaries to attorneys to be formalized. She firmly believes this is an access issue. Mr. Long asked whether pro se parties could not take their agreement to a judge for approval. Ms. Dollar noted that the larger question is what can be done to facilitate access for those who are indigent and believes there needs to be a larger discussion on the topic. It was suggested that these issues could be resubmitted to the State Bar after being recast on the basis of access. The Standards and AO Committee will continue to consider the matter.

Mr. Clare reported for the New Media Committee. He echoed Ms. Ratliff's report noting that he Commission had launched Twitter and LinkedIn channels and had been using them effectively. He asked that all Commission members get on Twitter and re-tweet Commission tweets. He was asked about FaceBook and Ms. Ratliff responded that the Commission would piggy back on the AOC's FaceBook and YouTube channels. Mr. Clare reported that he was excited about plans for Conflict Resolution Week and called attention to the materials under Tab 9. He reported that mediation would be recognized in NC during the week of October 15-21, 2017. He added that the DRC and Section had submitted a proclamation to the Governor and a proclamation and press release had been prepared for the Chief Justice. He added that the week would kick off with a reception scheduled for Monday, October 16 at 10:00 AM at the NC Judicial Center. The Chief had been invited to attend the reception and staff hoped that he, Judge Webb, and Ms. Brown would all say a few words. Mr. Clare moved the Commission to approve a \$150.00 expenditure for pastries and coffee for the reception. Ms. Brown noted the Section had approved a like expenditure. The motion was approved. Lastly, Mr. Clare noted that three webinars had been scheduled for the week and staff had applied for CLE credit. The three webinar topics include: 1) a discussion of online ADR (with a nationally noted panel member thanks to Mr. Sutton), 2) a discussion of whether NC's mediation programs are effectively serving indigent and pro se parties, and 3) a discussion of whether mediation programs are addressing the needs of a growing elderly population.

Ms. Seigle reported for the District Criminal Court Mediation Committee that Mr. Minor had told staff that the Network would be considering the DCC Program Rules at its October meeting and would be making recommendations back to the Committee.

Judge Webb next called for ex-officio Reports. Ms. Leazer first reported for the NC Judicial Support Staff Conference that Judge Warren had sent her and other court staff to the annual NACM (National Association of Court Management) conference. She said she was very disappointed to see how far the NC courts were behind technologically. She also discussed an effort underway to merge the Judicial Support Staff and Trial Court Administrators Conferences. She said that it was hoped that merging the

two groups would lead to cost savings in terms of their annual meetings. Lastly, she told Commission staff that the chairs of both Conferences had agreed that she could proceed with the mentoring program that was designed as the second phase of the Benchbook project.

Ms. Brown reported for the Dispute Resolution Section that the Section is excited to be a co-sponsor with the DRC of Conflict Resolution Week. She noted that the Section's annual meeting was scheduled to be held on March 16, 2018, in Pinehurst, and she invited everyone to attend.

Mr. Laney reported for the US Court of Appeals for the Fourth Circuit's Mediation Program that the Circuit has an appellate mediator position open.

Ms. Estle reported for the Mediation Network of NC that Mr. Minor survived the hurricane in Florida. She added that the Network is grappling with some difficult issues right now, including whether the Network should continue to operate.

Ms. Hopkins reported for the AOC in Ms. Nesbitt's absence. She called attention to the new caseload statistics that Ms. Nesbitt had helped to compile (Tab 10). She noted that caseloads stats and settlement rates have remained remarkably consistent through the years for the MSC and FFS Programs. She added that 59% of MSC cases mediated had settled at mediation as well as 73% of FFS cases. When cases settled prior to mediation or during a recess were folded into the above percentages, she noted settlement rates rose even higher. Ms. Hopkins noted that Ms. Nesbitt would likely have more to say about the caseload statistics at the next meeting, especially in light of the survey on mediator compliance that had been discussed earlier.

Mr. Schafer reported that the Industrial Commission's Mediation Program had its best year ever with 9,885 cases referred and 73.8% of those cases settled.

Judge Stroud reported for the Court of Appeals Mediation Program that since his retirement, Judge McCullough had begun to mediate for the Program and Judge Arrowhead had become certified to mediate.

The ex-officio reports having concluded Judge Webb turned his attention to other business. He asked Ms. Hopkins to report on her memo regarding funding matters. Ms. Hopkins reported that she had suggested some ways that Commission funding could be increased, including: increasing certification fees, assessing a small per hour CME fee of mediators, requiring mandatory certification of FFS mediators, assessing a per capita student fee from trainers, charging an application fee, and seeking grant money or legislative funding. Ms. Hopkins noted that there had not been a certification fee increase in 16 years. Judge Webb said he liked the idea of charging a CME fee. He and others did not believe the GA was likely to provide funds. Judges Cash and Evans thought that, after 16 years, no one could really complain about an increase in certification fees. Ms. Seigle wondered whether it would be appropriate for the Commission to assess a fee for issuing Provisional Pre-training Approvals. Several members noted that they believe all FFS mediators should be certified. Judge Webb noted that this discussion on funding would be ongoing and that he had appointed a Committee comprised of Ms. Hicks (the chair), Mr. Long, and Mr. Marcilliat and charged it with looking into both funding and staff issues. Ms. Brown expressed concern that the budget was difficult to understand and asked if it could recast in a more user friendly format. Judge Evans asked to have numbers tracked over several years. Staff agreed to pull this materials together.

Bryan Thompson arrived at the meeting and reported for the Ad hoc Pilot Clerk Mediation Program Committee. He first introduced himself as an attorney from Winston-Salem who handled estate and guardianship matters and served as a member of the Clerk Committee. He reminded everyone that four counties were involved in the pilot: Ashe, Buncombe, Mecklenburg, and Wake. He reported that clerks in these pilot counties had given Commission staff lists of individuals they wished to invite to serve their counties as mediators during the pilot. Emails had recently gone out to these individuals inviting them to participate, but noting that they could not charge for their services during the first two hours of the conference. Ms. Hopkins noted that the vast majority of those invited to participate were already Clerk certified, but a handful were not. She said that the office was waiting to hear back from many who were contacted. Mr. Thompson noted that the Committee would be meeting next month to discuss training for those not certified and to prepare for the launch of the pilot. He was asked how long the pilot was scheduled to run and he said two years. Judge Webb thanked Mr. Thompson for coming, noting that he had to drive some distance. Judge Webb asked Ms. Hicks to get him a count of those contacted who were not certified.

Lastly, Judge Webb noted that he had appointed Ms. Dollar to chair a new Long Range Planning Committee on which Ms. Brown and Ms. Seigle would also serve. He added that he understood the Commission had never before focused on long range planning. He said Ms. Dollar would facilitate a discussion on that topic tomorrow morning beginning at 8:30 AM. The meeting was adjourned.

Saturday, September 16 at 8:30 AM

Ms. Dollar began by calling attention to the memo under Tab 11 which enumerated some proposals for expanding the Commission's footprint. She said the Commission would be only broadly discussing these proposals today. She noted that she is strong proponent of long range planning and strategic thinking. Ms. Dollar observed that there were big issues out there that the Commission needs to be mindful of in terms of its strategic planning, e.g., access issues, the growth in pro se and indigent parties, technology. She noted that the practices of law and mediation are in a state of flux, particularly with regard to technology, and she thinks that if the Commission does not get ahead of the curve, it may find itself obsolete at some point. She also encouraged Commission members to read the Report of the NC Chief Justice's Commission on the Administration of Law and Justice. She suggested that in planning for the Commission's future, it would be important to understand the Chief's vision, the recommendations in the Report, and where the courts might be headed.

Ms. Dollar said she believes there may be a role for the Commission to play in terms of arbitration – qualifying and regulating district, civil and possibly private arbitrators. She also noted the Commission may need to consider what additional data it should be generating to help judges and others make more effective case management decisions. The Commission may, she suggested, want to partner with a university to get help with research or data collection. With those comments, Ms. Dollar asked Commission members to chime in. What issues did they think the Commission should tackle long term?

Mr. Long asked why the Commission only promoted mediation and not other forms of dispute resolution? He thinks arbitration could be used more effectively. Mr. Little noted that program enabling legislation and rules already focus on access. Mr. Schafer responded that the Commission needs to do a better job of reminding mediators of their obligations. Judge McCullough noted that he thinks the Clerk pilot and the fact that pilot mediators will be donating their time, is an example of an opportunity to let the public know that the Commission is concerned about access. Judge McCullough added that he thinks FFS mediators ought to all be certified even if it means grandfathering some

mediators. Ms. Hicks agreed, noting that we have a unified court system and the emphasis should always be on uniformity, otherwise access and services can be compromised.

Ms. Dollar noted that there has been a proliferation of ADR providers and processes the last few years. She notes that some are hybrids that straddle the practice of law and serving as a neutral. She added that it might be helpful to create a list of all these new processes and providers and reflect on whether they are covered by the State Bar, Judicial Standards Commission, DRC, or are, in fact, entirely unregulated. Ms. Brown noted that collaborative law and arbitration are both processes where the Commission might have a role to play. It was suggested that the Commission could reach out to the Unauthorized Practice of Law Committee in that it is already grappling intensely with internet provider issues. Ms. Brown understands the Committee is getting calls about providers that don't really fall under anyone's jurisdiction. Ms. Brown is also very concerned about the Commission getting a handle on computer assisted dispute resolution. Judge Webb suggested that staff begin to gather information on what is out there relative to ADR in North Carolina.

There followed some discussion on the FFS certification issue. It was noted that the family bar was very powerful. Mr. Little noted that the Commission tried to mandate certification of all FFS mediators in 2004 with no success. Mr. Schafer suggested that the IC plowed forward in the face of what it thought would be resistance to mandatory certification, but for the most part IC mediators got on board and complied. He thought it was doable. He added that their mediators were given lots of notice, but were not grandfathered. Other suggested that things have moved on since 2004 and the family bar is much more supportive of mediation. Mr. Little noted that the previous opposition had come through the ADR Committee of the State Judicial Council and that body may no longer exist. Ms. Dollar suggested this is really a protection of the public issue and needs to be framed as such. Mr. Long agreed to take the pulse of family bar on the matter and report back. Judge McCullough and Ms. Brown noted that the General Assembly seems to be taking a dim view of licensing boards – believing they are too restrictive. They suggested the Commission will need to keep that in mind.

At this point Ms. Dollar closed the discussion and noted that her Committee would digest this feedback and continue to discuss the memo and other ideas and suggestions. She asked Commission members to get any additional thoughts to staff. With that, Judge Webb thanked everyone for coming and adjourned the 2017 retreat.

Dispute Resolution Commission

MINUTES

Friday, May 12, 2017

Nexsen Pruet Law Offices, Greensboro, NC

Members present: Webb, Brown, Caldwell, Cash, Clare, Dollar, Hicks, Long, Marcilliat, McCullough, Ponton, Vincent, and Wood. Ex-officio members and staff present: Igou (representing Patricia Holland), Hopkins, Laney, Leazer, Nesbitt, Ratliff, Sutton, and Tolbert. Guests present: Cole, Estle, and Little. Regrets sent: Almond (for Jody Minor), Evans, Schafer, Seigle, and Stroud.

Judge Webb welcomed everyone and called for approval of the February 24, 2017, minutes. The minutes were approved as submitted. Judge Webb next asked Ms. Ratliff for her office report. Ms. Ratliff reported that the office is now prepared for the 2017/18 renewal period and notices would be sent on June 30. She noted there would be some significant changes this year, including: this is the first year that continuing mediator education (CME) hours must be reported, that renewal applications will be emailed to mediators rather than being sent by U.S. Mail, and mediators will be printing a renewal certificate at the conclusion of the renewal process rather than having a letter and sticker mailed to them. Ms. Ratliff noted that to date only 307 mediators had completed their CME hours. She also reported that the office had received several calls from mediators complaining about the CME requirement. As such, she said she was concerned that the Commission may see attrition in the mediator ranks this year. Ms. Ratliff next gave a short budget update, noting that collections to date were \$214,373.00 with expenditures of \$215,288.17. Further expenses for the fiscal year, she said, would come out of the \$117,000.00 accumulated, unspent revenue amount carried forward from previous fiscal years. She added that she would have a full budget report for FY 2016/17 at the September meeting. Next, Ms. Ratliff reported that staff had reviewed and completed initial processing of 42 district criminal court mediator certification applications. She noted that more information/clarification was needed relative to most of these applications, but that matters were moving forward. Ms. Ratliff also noted that staff had spent a significant amount of time this quarter compiling notebooks for the members of the Ad hoc Clerk Mediation Program Committee. She noted that the notebooks were very similar to the superior and district court benchbooks and she hoped they could eventually be used in the larger program, assuming the pilot program proved viable. Lastly, Ms. Ratliff noted that she and Ms. Hopkins attended the JSSC annual meeting in Cherokee and thanked Ms. Leazer for the invitation.

Next, Judge Webb noted that he is asking that Committees begin to meet using WebEx for their meetings. He added that he had asked the AOC's Lori Cole to attend today and give a presentation on WebEx. Ms. Cole walked those in attendance through a PowerPoint on the use of the communications tool and answered questions. She also gave those in attendance an opportunity to explore WebEx for themselves. Ms. Cole assured Ms. Ratliff that she or other

AOC staff will be available to assist Committee members with their initial efforts to use WebEx. Judge Webb thanked Ms. Cole for her presentation.

Judge Webb asked Mr. Laney for a legislative report. Mr. Laney noted there had been some misunderstandings about some of the language in the proposed legislation and he believed that he had addressed all the concerns raised. He noted that there had been some concern about domestic violence language that had been removed from the statute, but that neither he nor the Ad Hoc District Criminal Court Mediation Program Committee had removed it and he was not sure when or why that change had occurred. Mr. Laney said that he had talked with the AOC's Tom Murry and understood the proposed legislation could still be introduced. Judge Webb added that there had also been some concern about whether everyone had been consulted about the legislation and how to best introduce it. He believes these concerns have now largely been resolved and he hopes that matters would soon begin to move forward.

In Ms. Seigle's absence, Mr. Laney gave the report for the Standards and Advisory Opinions Committee. He first called attention to the matter of AO 32 (2016) on the use of court interpreters in mediation. He noted that the AOC had expressed concerns about the AO in that it suggested that mediation participants with limited or no proficiency in English could bring a family member or friend to serve as their interpreter in mediation. He said the Committee had submitted a list of questions to AOC Assistant Legal Counsel Amy Funderburke asking for clarification on requirements established under the Americans with Disabilities Act and Title VI of the 1964 Civil Rights Act relative to interpreters and mediation. Mr. Laney added that AOC Legal Counsel had contacted Ms. Ratliff and explained they needed more time to respond. Judge Webb added that there was not a lot of case law providing clarity in the matter. At this point, Judge Webb suggested simply waiting for the AOC to respond. Ms. Ratliff asked whether AO 32 should remain posted and was directed to leave matters as they were. Mr. Laney next called attention to a recent matter before the Grievance and Disciplinary Committee in which a mediator had been disciplined for refusing to conduct a scheduled mediation because he had learned a party was claiming indigency (violations of MSC Rules 7.D and 8.H). He added that the Commission's Advisory Opinion Policy requires that an AO be issued when a mediator is disciplined and noted that a proposed AO had been drafted in the matter. He reported that the AO was intended both to educate mediators about the disciplinary matter and about the Mediation of Public Records Disputes Act, G.S. 7A-38.3E, pursuant to which the mediation in question had been scheduled. He added that he understood the matter and proposed AO had also raised some concerns for court staff who were concerned about increasing numbers of indigent parties and mediators not getting paid for their work. They wanted to know early if a party intended to claim indigency, so they could do a better job of spreading cases involving indigents among a wider number of mediators. Ms. Hicks noted that the Civil Subcommittee of the Program Oversight Committee was also looking at the situation. She said that she understood there had been much discussion about the matter at the last Commission meeting with some members expressing concern that the indigent party had manipulated the mediator into believing he would be paid not only for his services but also for 3 hours of travel to and from the mediation site. Judge Webb asked the Committees to collaborate in the matter and the proposed AO.

Mr. Laney also gave the report for the Ad Hoc District Criminal Court Mediation Program Committee and walked the group through some proposed, relatively minor changes, to the District Criminal Court Program Rules. The proposed revisions were adopted with one change suggested by Ms. Brown, providing that the Network not be notified of a probable cause finding when the center the mediator serves is not a member of the Network.

Ms. Hopkins reported on matters that had been posted for comment: MSC Rule 8.E, FFS 8.F, DCC Rule 7, Standard II, and several Commission policies. She noted no comments had been received and the matters were given final approval.

Judge Vincent reported for the GDC Committee. She described the Committee as very busy. She began by noting that the Committee recommended revising the *DRC Policy for Reviewing Matters Relevant to Good Moral Character* to provide for staff review of requests for provisional pre-training approvals in accordance with the DRC Guidelines for Issuing Provisional Pre-training Approvals. The proposed changes to that document were approved. Next, Judge Vincent recounted a number of conduct matters that had been addressed this quarter and the previous quarter (in the interest of time the Committee gave only an abbreviated report last quarter). In particular, she noted one matter processed this quarter in which a certified mediator whose license to practice law had been suspended after the State Bar determined she had committed forgery and encouraged a notary to notarize the forged signature. Due to many extenuating circumstances the Bar stayed the suspension. The mediator had not reported either the pending grievance or the suspension to the Commission, including overtly failing to report the matter on her most recent certification renewal application. The Committee determined to issue a public admonishment to the mediator. Judge Vincent noted that the Committee was looking for guidance on whether the Commission should publicly post such discipline and, if so, where it should be posted. Judge Webb noted clarification was important and asked staff to contact the AG and seek guidance. Mr. Sutton noted that the Commission is charged with serving as a regulator and that the public has an expectation that the Commission will protect it. As such, he said he has concerns about not posting such information publicly.

Judge McCullough reported for the Mediator Certification and Training Committee. He drew attention to a number of proposed changes to MSC and FFS Rule 8. The changes, he noted, were largely intended to clarify certification requirements. They were approved. He next noted the creation of a new stand-alone policy on completion of self-study by out-of-state attorneys on the topics of NC court structure and civil procedure. He next called attention to the *Dated and Out-of-State Training Policy* and noted that proposed revisions were intended to include the Clerk Mediation Program. Those revisions were approved. Lastly, he called attention to a proposed revision to the Inactive Status Policy which provides for a \$25 flat fee to be assessed inactive mediators who wish to return to active status. This fee is in lieu of a prorated certification fee (inactive mediators already pay a \$70.00 annual renewal fee.) This change was approved as well. Judge McCullough noted that in the next quarter the Committee would be looking at non-attorney applicants holding advanced degrees in conflict resolution and whether a path to certification should be developed for such applicants who might not

otherwise meet certification criteria. For example, such applicants may have an advanced degree, but not have the 10 years relatively high level work experience required by MSC Rule 8. Lastly, Judge McCullough noted that the Committee was continuing to think about the CME process in light of comments that were coming in from mediators. He noted there had been requests to expand the scope of the CME requirement to include skills based offerings and to allow excess CME hours completed in any given year to be carried forward. Ms. Brown suggested that the Commission should keep the CME Policy as it is until such time as the number of complaints begins to fall off. Mr. Long asked whether a mediator had to complete CME in the first year s/he is certified. Ms. Ratliff and Ms. Hopkins said, "no".

Ms. Hicks next reported for the Civil Subcommittee of the Program Oversight Committee. She noted her subcommittee had had a good discussion of the indigency matter touched on earlier by Mr. Laney in his report. She noted that court staff were genuinely concerned about the increase in the number of cases involving indigents. Ms. Hicks explained that to have filing fees waived a party had merely to file a form with the clerk claiming to be indigent. Court staff, she reported, found these individuals too often believed that since filing fees were waived, mediator fees would likewise be waived. Court staff she added had expressed an interest in knowing early on if a party was intending to claim indigency, so they could more effectively apportion such cases among their district's court-appointed mediators. At the same time, Ms. Hicks noted that the indigency rule had been crafted as it was for an important reason -- if a mediator did not know until the conclusion of mediation that a party was seeking indigency, s/he could not rush the mediation, refuse to hold it, or otherwise display bias against a party or parties claiming indigency. Ms. Hicks suggested these were important competing interests and there needed to be more discussion of the matter. Judge Vincent suggested exploring ways to let court staff and only court staff know earlier.

Tom Clare reported for the Ad hoc New Media Committee and called attention to a proposed Social Media Policy. He indicated once the Policy was adopted the Commission could begin to create and post on LinkedIn and Twitter accounts and to use the AOC's FaceBook and YouTube accounts, as appropriate. The Social Media Policy was adopted with no changes.

Stephane Nesbitt next reported for the Ad hoc Clerk Mediation Program Committee. She noted the Committee had met and tentatively determined to launch the pilot on October 1, 2017, and to operate it for two years. She added that the Court had agreed to waive Clerk Rules 2 and 7 to permit clerks to create their own, trusted lists of mediators and to permit waiver of the first two hours of mediator fees. She added that the Clerk members of the Committee had agreed to each submit their list of mediators by July 31, 2017. She noted there would need to be some training for those on the list not certified as Clerk Program mediators. Mr. Little voiced concern that the Commission had not voted on whether to seek a waiver of Clerk Rules 2 and 7.

Judge Webb next called for Liaison reports. Tina Estle reported for Mr. Minor that he had relocated to Florida and that Janice Almond would be handling legislative matters for the Network. Ms. Leazer reported for Judicial Support Staff Conference. She thanked Ms. Ratliff and Ms. Hopkins for presenting at their annual conference. Mr. Igou reported for the Dispute

Resolution Section noting they had a successful annual meeting and that Ms. Brown had been elected the Section's new chair.

Judge Webb called for new business. There being none, he reminded everyone that the retreat was scheduled for September 14-15, 2017, in Morehead City with the next meeting scheduled for December 8, 2017, in Raleigh.

Dispute Resolution Commission

MINUTES

Friday, February 24, 2017

NCJC Raleigh, NC

Members present: Webb, Brown, Caldwell, Cash, Clare, Dollar, Evans, Long, Marcilliat, McCullough, Seigle, and Wood. Ex-officio members and staff present: Estle; Igou, representing Patricia Holland; Laney; Leazer; Schafer; Stroud; Tolbert; Ratliff; Hopkins; and Robinson. Guests present: Crozier, Funderburk, Little, and Spearman. Regrets sent: Hicks, Ponton and Vincent.

Judge Webb welcomed all and thanked Judge Cash for conducting the November meeting. He acknowledged the contributions of former members Lucas Armeña and Judge Anderson and said they were mailed plaques. He introduced new Commission members LeAnn Nease Brown (appointed by Chief Justice Martin as a mediator member), Kevin Marcilliat (appointed by the Governor as a knowledgeable citizen) and Charlot Wood (appointed by the State Bar President as a lawyer who is not a certified mediator). He asked Judge McCullough to administer the oaths. Oaths were administered to Judge Webb as the new chair and to the new members.

Judge Webb called for approval of the November 18, 2016, minutes. They were approved as submitted. He then asked for nominations for Vice-Chair. Judge McCullough nominated Lorrie Dollar and Judge Cash seconded. The motion was approved unanimously.

Judge Webb asked for Ms. Ratliff's report. Ms. Ratliff reported that this quarter staff had devoted a significant amount of time to completing the review of Commission Rules and Policies initiated during Judge Cash's term. These documents, she noted, were now before the Commission. She added that this project involved both significant research and redrafting. She also noted that staff was also gearing up for the 2017/18 renewal period. She said it would be difficult to reimburse a mediator who paid by credit card and then was determined ineligible to be recertified. For that reason, she indicated a decision had been made, in consultation with AOC Technology staff, to block mediators who had not already completed CME from accessing the renewal application. She added that Ms. Robinson had been sending out reminders explaining that CME must be completed prior to renewal and reminders would be ramped up as renewal due closer. Ms. Ratliff added that as a cost savings measure, the office had also determined to eliminate sending renewal stickers in favor of enabling mediators to print a renewal certificate themselves. Ms. Ratliff added that the office was continuing to receive applications from CME sponsors and to approve offerings. She said that so far, 129 mediators had satisfied the requirement and 88 had completed one hour of CME. Next, Ms. Ratliff reported that she had joined Ms. Hopkins and Ms. Nesbitt in making regional presentations to clerks regarding the new Clerk Mediation Pilot Program.

Next, Ms. Ratliff noted that staff had met with Atlantic BT, the vendor designing the courts/AOC's new website and been assured of a 12-18 month rollout. Staff shared the Commission's proposed reorganization of its materials with the vendor. Judge Webb added that he had told Judge Warren that the Commission had its materials ready for posting. As such, Judge Warren had agreed that since the

Commission was prepared, he would ask the vendor to get to the Commission's materials quickly. Judge Webb noted that new/social media was a pet project of his and he wants the New Media Committee to work on some public service announcements, videos, etc. Ms. Ratliff added that Scott Sutton, the intern who studied the Commission's website and its interest in new media this summer, had agreed to serve as an ex-officio member and she thought he would be a valuable resource going forward. She next gave a brief budget report, noting that collections to date were on track at just over \$212,000.00. She cautioned that, given staff raises last year, expenditures may go up but will be somewhat offset by cuts by cuts, e.g., the reduction in the number of ex-officio members. Lastly, she noted that staff participated in a Carolina Dispute Settlement Services training and was scheduled to speak to the NC Judicial Support Staff Conference in early April. Ms. Ratliff thanked Ms. Seigle and Ms. Leazer for these invitations.

Judge Webb next addressed an issue that Judge Warren had raised with him, that of interpreters at mediation. He added that AOC staff Amy Funderburk, Brooke Crozier, and Mildred Spearman were in attendance to make a presentation on court interpreters and translators and to discuss some concerns the AOC had about Advisory Opinion 32 (2016) on interpreters and mediation. Ms. Funderburk noted that a complaint had been filed by the US Justice Department some 5 years ago alleging that the courts were not providing sufficient support to those with limited English proficiency (LEPs). The courts and AOC, she reported, had responded by forming a committee to look at services provided and to determine where deficiencies existed. Services had, she added, expanded significantly during the past few years and interpreters were available now in custody and visitation disputes. She indicated that the Justice Department is now inquiring about expanded coverage relative to mediation. Ms. Funderburk explained that since Commission certified mediators are independent contractors, the AOC has not traditionally provided interpreters for these mediations. She said that the DOJ has issued guidelines for determining whether the courts would be required to provide interpreters. Those guidelines look at a number of factors, including how many people will be impacted by the lack of interpreter services, to what degree access to justice may be compromised, what resources are available to meet the demand, and the cost of providing services.

Ms. Funderburk suggested that while the AOC may not be able to make interpreters available in mediations conducted by independent contractor mediators, it can make technical assistance available to the DRC, e.g., help with revising AO 32 and information on contracting for mediator services, including telephonic services. Judge Webb asked about the cost of interpreter services and Ms. Crozier said around \$40-50 an hour for a certified Spanish interpreter with a two hour minimum. She added that the cost of telephone interpreter services was \$.82 per minute. Judge Webb asked Ms. Funderburk to work with Ms. Seigle and the SDAO Committee to address concerns with AO 32. He also asked Ms. Funderburk to provide a legal opinion as to what the Commission's obligations are relative to providing interpreters. Judge Webb also asked about interpreter availability and Ms. Crozier responded that there are 77 AOC approved interpreters of Spanish available for hire. She said they typically ask for 10 days' notice and there are charges for last minute cancellations. Mr. Laney asked Ms. Funderburk what obligation individual mediators had, if any, relative to providing interpreters for indigent parties. She responded that Title VI of the Civil Rights Act places obligations only on providers who receive federal funds, which, she thought, would not typically apply to most attorney mediators. She suggested, however, that additional duties and responsibilities may come into play when the party is covered by the Americans with Disabilities Act, e.g., a hearing impaired participant.

Judge Webb summarized by noting that there were two issues: 1) what rules/guidelines cover court annexed mediated settlement conferences and should be reflected in the Commission's rules/AOs and 2) what obligations do private mediators have and how does the DRC help them understand those

obligations. Ms. Funderburk underscored that the AOC does have problems with AO 32 -- it is not acceptable for a family member or friend to serve as an interpreter in a court proceeding since both the ADA and Title VI speak in terms of "qualified" interpreters. She asked the SDAO Committee for a list of questions to which to respond for purposes of her opinion.

Judge Webb next called on Mr. Laney for his legislative report, noting that he and the AOC's Tom Murry would be spearheading the Commission's legislative effort. Mr. Laney began with proposed G.S. § 7A-38.5, noting this was an effort to combine all the various statutes relating to community mediation in a single statute. Since so many centers have now determined to participate in the District Criminal Court Mediation (DCC) Program, he said that G.S. § 7A-38.3D, the DCC enabling legislation, was incorporated as well. At this point, Mr. Laney walked members through proposed, revised G.S. § 7A-38.5. He noted that district court judges can order cases generated by a citizen initiated warrant to mediation. In other matters, judges can only encourage voluntary mediation. He noted that the statute provides that all mediators conducting DCC mediations be DRC certified. He added that if the DRC and courts want mediation in district criminal court, it is imperative that centers be compensated for their services. In the revised statute, subsection (f)(ix) pegs the cost to one-half the "General Court of Justice Fee". That fee, he explained, is defined as the sum of the fees set forth in in G.S. § 7A-304A, 2, 2a, 3, 3a, 3b, 4 and 9. That total amount is around \$180, so the fee charged a defendant would be around \$90. He said the intent was to save centers and the DRC from returning to the GA for adjustments in the fee amount. Much discussion followed and several members, Judges Webb and Cash, Ms. Dollar, and Mr. Long, stressed that they thought clerks would want a concrete number rather than a reference to the "General Court of Justice Fee." Judge Cash noted that he had spoken with Ms. Hicks and she felt strongly that the fee should be a concrete number. Following discussion, it was agreed that the reference to "General Court of Justice Fee" would be replaced by a concrete \$90.00. It was recognized this would necessitate the Commission returning to the legislature periodically for increases in that amount.

Mr. Laney also noted that the Clerk would pay fees collected in a given county to the Network and the Network would retain 5% of the total and forward the remainder to the center. Ms. Brown expressed concern about clerks transferring money to a private, not for profit organization (the Network) for distribution to other private, not for profit entities (individual centers). Judge McCullough suggested some language to permit centers to receive funds from the Clerk directly and not through the Network. That language appeared to address Ms. Brown's concern. Mr. Laney also noted that the revisions prohibited a mediator from collecting any fee directly from a mediation participant. Centers could, however, he added, collect restitution in the form of a check, money order, or other non-cash instrument to be transferred to the party owed the restitution. Judge Evans asked if the opt out provision allowed a district to opt out entirely. Mr. Laney responded that if a DA wants to opt out entirely, s/he may. There followed discussion about subsection (g)(iv), relating to written agreements. Mr. Long and Ms. Brown expressed some concern this provision might run afoul State Bar opinions on non-attorney drafting. Ms. Brown also suggested there may be enforceability issues in that agreements drafted by non-attorneys in civil matters are non-binding. Mr. Laney noted that provision was not an add-on and had been there a while.

Judge Cash thanked Mr. Laney for his hard work in consolidating the various provisions. Judge Cash then observed that he felt that the earlier framework appeared to suggest that district criminal court mediation was to operate by consensus of the CDCJ, DA, and center. The new revisions, he suggested, appeared to put the DA in control. After some discussion, additional changes to subsection (c) were approved that further revised it to read that, "Any prosecutorial district may opt out of mandatory

mediation under subsection (e) if the chief district court judge and/or the district attorney files a statement with the AOC and the DRC declaring that the subsection shall not apply within the district”.

Mr. Little noted that some districts do not have centers serving them. Mr. Laney responded that the Network has provided assurances that services will be available in every district. Mr. Little asked if new centers would be established and Mr. Laney responded, “no”, that he understood existing centers were planning to expand regionally. Ms. Brown asked about domestic violence cases and why they were no longer exempted from referral to mediation. She did not think referral of domestic violence cases should be mandatory. Mr. Laney said he was not certain what had happened to that language. Ms. Seigle added that such cases can be successfully mediated, so she would not want to have them excluded entirely.

Mr. Laney next addressed proposed changes to existing G.S. § 7A-38.2, the Commission’s enabling legislation. Mr. Little was uncertain what the term “sitting” judge meant. After some discussion the word “sitting” was replaced by “active”. Mr. Laney noted that the revisions add a DA seat to the Commission and create a seat for the executive director of the MNNC or a center director. Judge Cash noted that he is concerned about adding new members in light of the additional cost. Following some discussion, the members agreed that adding a DA seat alone should be sufficient at this point. Judge Webb asked Mr. Laney to add “his/her designee” to subsection (f)(3). Mr. Laney stated that a subsection (f)(4) had been added to allow the Commission to collect an administrative fee on appeals or petitions for reinstatement when the applicant or petitioner fails to appear without good cause.

Mr. Laney noted that subsection (h) had been revised to provide that all initial applications for certification, but not renewals of certifications, would be treated confidentially, even when ethical conduct concerns surfaced during the certification process. However, language was added to permit Commission staff to notify the MNNC’s Executive Director and the center director when concerns arise in connection with a district criminal court certification application. With regard to complaints, Mr. Laney reported that the confidentiality provision was also revised to permit Commission staff to notify other agencies which use its list of mediators when a complaint is filed regarding a mediation conducted under the aegis of one of these other agencies. Discussion followed and Mr. Laney was asked to tweak that provision to provide that notification would occur only after a probable cause finding.

Mr. Laney said he would modify both the statutes in accordance with the comments noted above and then circulate them to members. Judge Webb said that he contemplates an email vote, but that, if necessary, a conference call will be scheduled.

The New Media Committee report was delivered by Tom Clare. He began by acknowledging Mr. Armeña’s hard work. He indicated that the Committee had reviewed a draft Social Media Policy and made several revisions. He indicated he will have the policy for the May meeting.

Judge McCullough reported for the Mediator Certification and Training Committee and began with revisions to the Inactive and Lapsed Status Policies. He noted with regard to the Inactive Status Policy that the Committee was recommending that if a person is inactive for five or more years, s/he should be required to complete 2.0 hours of approved CME within the year prior to return to active status. Ms. Ratliff mentioned the need to grandfather in those who were already inactive prior to the date of the revised Policy. The Inactive Status Policy was adopted as submitted and staff was asked to make the new requirement for completion of CME before return to active practice effective February 24, 2017. Judge McCullough next called attention to proposed revisions to the Lapsed Status Policy. Revisions

would require a mediator whose certification has been lapsed less than three years to complete 2.0 hours of approved CME within one year of the mediator's application for reinstatement. This proposed change was approved. Judge McCullough called attention to a new document entitled "Administrative Procedures Relating to CME Requirement" He reported that the committee had approved these procedures for staff use in implementing CME Policy and offered them for information only as Commission approval was not necessary. Judge McCullough next called attention to MSC Rule 8.B(1)(a)(ii) and summarized the history of the proposed amendments. He noted that the Commission had approved the existing language in 2016, but had not yet submitted it to the Supreme Court. In the meantime, the State Bar further amended its rules to provide that a graduate of a non-ABA accredited law school who was licensed in a state other than NC, could apply for licensure in NC. The Commission approved the proposed amendments in order to be consistent with the eligibility requirements of the State Bar for licensure of out of state attorneys. Ms. Seigle expressed concern, saying she felt ABA accreditation was an important measure of quality. This change was adopted by the Commission, with Ms. Seigle voting no. Judge McCullough also reported that his committee was recommending that a \$30 late fee be assessed inactive mediators who file their renewal applications outside of the renewal period. This change would parallel the late fee charged active mediators. The motion passed.

Judge Webb reported for the Executive Committee. He first called attention to revisions to the Recusal Policy. Judge Caldwell asked whether members would be notified of respondents and petitioners ahead of time. It was noted that hearing packets are always mailed out at least two weeks prior. The DRC Recusal Policy was approved. Next, Judge Webb called attention to revisions to the Comment Policy. The revisions were adopted. Judge Webb indicated he will err on the side of revisions being substantive when it comes to posting. However, he would not require posting in situations such as where a document was merely retitled.

Ms. Hopkins gave the GDC report in the absence of Judge Vincent. She noted that a hearing had been scheduled for yesterday, but the respondent mediator had withdrawn his appeal and agreed to accept the private letter of warning issued by the GDC. She reported that the complaint involved the Mediation of Public Records Disputes Act and the Committee was recommending an AO be issued in the matter given that mediators may be unfamiliar with the statute and the fact that it incorporates the MSC Rules by reference. Ms. Hopkins said there had been a second complaint filed against the same respondent which was currently under review. Judge Evans asked if there is a deadline by which indigency must be asserted. Ms. Ratliff responded no and reported that the mediator in question had requested that a deadline be inserted in the Rules. Ms. Hopkins said that she was keeping the report on complaints short given that the meeting was running long. She next called attention to the Policy for Reviewing Matters Relevant to Good Moral Character. She noted that revisions to the Policy were largely intended to incorporate provisional pre-training approvals. The revisions were adopted. She next called attention to minor revisions to the DRC Guidelines for Issuing Provisional Pre-training Approvals and those changes were approved. She next focused attention on amendments to MSC Rule 8.E, FFS Rule 8.F, and DCC Rule 7.E. These revisions were, she said, intended to provide more clarity. All were approved. Lastly, Ms. Hopkins noted that the Committee had reviewed the very extensive changes to DRC Rule IX, which sets out complaint and hearing procedures when moral character, conduct, and fitness issues are before the Committee/Commission due to an application or complaint. She added that the Committee had approved them and was recommending them to the Executive Committee for review.

Ms. Seigle next reported for the Standards, Discipline and Advisory Opinions Committee. She noted that after the discussion this morning, this Committee would likely be involved with interpreter issues for a

while. She next drew attention to proposed changes to Standard III to permit mediators a little more flexibility in discussing scheduling and procedural matters with court staff. Mr. Clare expressed concern that the proposed changes might unnecessarily erode confidentiality protections. Judge Webb asked the SDAO Committee to take another look at the Standard. Ms. Seigle also called attention to DRC Rule VIII which provides the framework for the SDAO Committee's operation. She said the Committee approved the recommended changes and was now asking the Executive Committee to review them.

Ms. Dollar suggested that perhaps the Commission should look at other forms of dispute resolution that are springing up. Judge Caldwell suggested E-mediation as a possibility.

Ms. Nesbitt reported for the Ad Hoc Pilot Clerk Mediation Program Committee. She said Judge Webb had sent a letter to the Chief Justice asking for a waiver of Clerk Rules 2 and 7.B during the pilot period to give clerks more flexibility in assembling lists of mediators. Stephanie reported that she, Ms. Ratliff and Ms. Hopkins had attended regional clerk meetings to spread the word about the pilot and ask clerks for input. She added the pilot will be rolled out in four counties: Ashe, Buncombe, Mecklenburg and Wake. She noted that the clerks in these counties and Ms. Hicks serve on the Ad hoc Committee. She said that during one of the regional meetings a concern had been raised that the DRC was trying to make the program mandatory and remove clerk discretion relative to referrals. Judge Webb said that he would make an effort to reassure clerks there was no such intention. Ms. Nesbitt added that the Committee has agreed it would ask mediators to waive the first two hours of their fees as a condition of being included on pilot site mediator lists. She summed up the effort so far by saying that she was, "cautiously optimistic". Lastly, Ms. Nesbitt reported that there is an effort underway to propose some revisions to District Court Arbitration Rules and she would like to present Arbitration Rules to the Commission for their input. The Commission agreed.

Judge Webb reported on the Chief Justice's Commission on the Administration of Law and Justice. He noted that Commission members had reached a consensus that the age at which children are tried as adults in NC should be raised from 16 to 18 in all but the most serious violent felonies. He noted they had the support of DAs, sheriffs, and the police in going forward. He said they had also gotten the Bail Bonds Association to agree to look at different tools for pre-trial release. He added that the Commission's full report was available online.

Judge Webb next called for ex-officio reports. Amanda Leazer reported for the JSSC that their conference is scheduled for the first week of April in Cherokee. She added that the mentoring program proposed by DRC staff would be a topic of discussion. Brandi Tolbert noted that the TCA's conference would be held on March 22. Rick Igou reported that the Section's Annual meeting is scheduled for March 17 in Pinehurst and that Ms. Brown was incoming chair. It was noted that the Section would have a session on collaborative law this year. John Schafer reported that the IC's mediation numbers were strong. Judge Stroud said the COA Mediation Program would be working to get more judges trained this spring.

Judge Webb noted that upcoming Commission meeting dates were May 12 in Greensboro and September 15-16 in Morehead City. He asked for further business and Ms. Ratliff asked to read the SEI reports for Ms. Brown, Mr. Marcilliat, and Ms. Wood into the record. All were cleared to serve. There being no further business, Judge Webb adjourned the meeting.