April 2015
Volume 15 Issue 1

The Intermediary

A Bridge between the Dispute Resolution Commission and North Carolina's Certified Mediators

From the Chair

By Judge Gary Cash

WE'RE ALL IN THIS TOGETHER

It has been a long winter! The last quarterly meeting of the Dispute Resolution Commission, which was to be held in Greensboro, had to be canceled in the wake of a snowfall that left roads icy and treacherous. We carried on as best we could with a telephone conference call, managing to complete most of our business. I for one am certainly looking forward to spring and to the sunshine and warm days that time of year brings.

My first few months as Chair of the Commission have been eventful and we have dealt – or in some cases begun to deal -- with an array of issues. Court staff who are having problems obtaining mediator reports have reached out to the Commission, and we have been challenged to communicate related concerns of court staff to mediators in a manner that is perceived to be helpful; a mediation participant filed a complaint against a Trial Court Coordinator, blaming her for the fact that his mediation was never held; an unpublished COA Opinion and subsequent conversations with State Bar staff have raised issues regarding the Commission's obligation to report lawyer mediators who fail to disclose required information on certification and certification renewal applications; and we continue to struggle with the drafting of agreements issue in mediations involving a pro se party or parties. If I have learned anything since becoming Chair, it is that our mediation programs involve a lot of moving parts and there is a large cast of characters. We're all in this together and it is essential that we all do our part if our programs are to successfully serve the people of North Carolina.

Continued on page 2

Commission Members

Continued from Page 1

What can we all do to make things flow?

- If you are a mediator, please do your very best to meet your deadlines for completion and to submit your Reports of Mediator timely and fully completed. This issue continues to arise, and Commission staff continue to field calls from court staff complaining that some mediators are not fulfilling their responsibilities. Please don't be one of those mediators. Also, review the Standards of Conduct and Advisory Opinions periodically. Being familiar with these documents is the best way to avoid a complaint regarding your conduct. Most of the third party complaints the Commission has addressed this quarter involved mediators who should have been more aware.
- If you are court staff, please continue to do your best to report your caseload statistics on time. Your numbers matter! This Commission has an ongoing obligation to demonstrate that our programs are working and meeting the goals established for them in enabling legislation. The legislature doesn't and shouldn't take such things for granted. Your numbers are the best evidence we have that these programs are both necessary and working
- If you are a judge, please encourage your staff to make caseload reporting a priority. Also, encourage the attorneys in your district to take mediation seriously and to cooperate with mediators when they call to schedule cases. Court-appointed mediators, in particular, report to Commission staff that their telephone calls and emails often go unreturned and they have to force the scheduling process. Also, encourage your district's mediators to meet their completion deadlines, unless there is some compelling reason for delay, and to submit their Reports of Mediator timely. It's all tied together. Mediators who don't report or are chronically tardy with their reporting make extra work for your staff and also,

Continued on page 3

N.C. Dispute
Resolution Commission
P.O. Box 2448
Raleigh, NC 27602-2448
Tele: (919) 890-1415
Web-Site: www.ncdrc.org

Commission Staff

Leslie Ratliff, J.D, M.P.A
Executive Director
Leslie.Ratliff@nccourts.org

Harriet S. Hopkins, J.D.
Deputy Director
Harriet.Hopkins@nccourts.org

Maureen M. Robinson
Administrative Assistant
Maureen.M.Robinson@nccourts.org

Table of Contents

Continued from page 2

make it harder for them to fulfill their reporting duties. Research indicates that many cases mediated are never re ported to court staff with the result that statistics suffer. Please remember that MSC/FFS Rule 6 specifically authorizes judges to sanction mediators who fail to fulfill their case management duties. Regulation is a responsibility necessarily shared by the courts and the Commission.

- If you are a lawyer, cooperate with your mediator in getting your case scheduled for mediation. Be positive about the mediation process with your client, prepare him/her ahead of time for the session, and encourage him/her to participate meaningfully. Take the process seriously and do your homework. Come to mediation with a checklist of all the issues that need to be resolved and have a good idea of what your client needs in order to settle.

What about the Commission? What has it been doing and what more could it do? While the Commission is principally charged with certification and regulation, it has been focused on education for the past several months and we are now beginning to see the fruits of our efforts:

- We participated in a joint project with the Dispute Resolution Section to create a video explaining the mediation process to participants in district criminal court mediation. Most often these participants are not represented and have little knowledge of the mediation process beforehand. This five minute film, which features judges and mediators, explains the mediation process, why it is being offered to participants, and how it can benefit them. The video has been distributed to all Chief District Court Judges, DA's, and community mediation centers in the State. A Spanish language version of the video is in the works and we hope to distribute it within the next few weeks.

- The Commission has also been developing Benchbooks on mediation and our mediation programs for judges and court staff. The MSC versions have been approved and are ready to go and FFS versions are nearing completion. The Commission undertook this project when it became aware of AOC statistics citing the numbers of judges and court staff eligible to retire over the next decade. The numbers are staggering! (See the chart on page 26 herein.) The Benchbooks are an effort to get nuts and bolts information about mediation into the hands of newly elected officials, appointees, and hires as they enter the system. In the coming months, Commission staff will also work with AOC and court staff to establish a mentoring program whereby experienced court staff will be paired with new staff in similar districts to facilitate their learning the ropes. The Commission will fund site visits if necessary to bring the new folks up to speed. The Commission is very much aware that judicial, court staff, and AOC staff are all stretched thin and that this is not likely to change anytime soon. We want to do our part to provide assistance and information.

- The Commission is working on two new advisory opinions on drafting with pro se parties. These opinions will specifically focus on situations where one party is pro se and the other represented, and will be posted on our website for review and comment in the months to come. The number of mediations involving pro se parties is growing, particularly in the family arena. Drafting with pro se parties has proved to be a particularly thorny issue and the Commission is doing its best to make solid, practical guidance available to mediators. Some information on this topic is already posted on the Commission's website at www.ncdrc.org. Click on the new nuts and bolts Toolbox icon and access the section on agreement drafting and forms, and stay turned for more information.

What else should the Commission be doing? In thinking about that question, I am reminded that, as I started this article, "We're all in this together". To be truly effective and improve our programs, the Commission needs to hear from you – the boots on the ground. So… please let me know your reactions to this article, any concerns you have about our programs, and your thoughts about how the Commission can help you do your job better – whether you are judge, court staff, a mediator, or a lawyer. For our part, the Commission promises to take your suggestions to heart. After all, as we leave behind the long months of winter and tap into the sense of renewal and energy that spring offers, it is a good time to take stock, do our spring cleaning, and start to plan for the future. I wish you a happy spring, and know that we here at the Commission look forward to working with you in the days ahead! ♦

DRC ISSUES PROPOSED GUIDELINES AND POLICIES

At its quarterly meeting on February 27, 2015, the DRC approved four new policies and guidelines, all of which are subject to comment pursuant to the DRC Comment Policy. (Comments can be sent by email to: DRCMediators@nccourts.org, or by mail to: Dispute Resolutiom Commission, P.O. Box 2448, Raleigh, NC 27602.) These are posted on the Commission's website, www.ndcrc.org. Click on "Commission Seeks Comment." A brief summary of each is below.

I. *Proposed:* "GUIDELINES FOR ISSUING PROVISIONAL PRE-TRAINING APPROVALS."

This policy formalizes procedures used by Commission staff to offer pre-approvals to potential applicants as to whether or not their credentials satisfy the threshold requirements of MSC Rule 8.B(2) or FFS Rule 8.A, or whether some ethical or fitness to practice concern would be an impediment to certification under MSC Rule 8.E or FFS Rule 8.F. Under the new Guidelines, Commission staff may issue or decline to issue a Provisional Pre-training Approval to such person pursuant to the proposed **Guidelines for Issuing Provisional Pre-Training Approvals.**

II. *Proposed:* "GUIDELINES FOR EVALUATING DATED AND OUT-OF-STATE TRAINING"

These proposed Guidelines update and clarify how the Commission will evaluate dated and out-of-state training of potential and actual applicants. This Policy is intended to ensure that all mediators certified by the Commission are current in their understanding of the mediation process and are familiar with their role as mediator, including understanding their case management responsibilities and ethical obligations as a mediator for the North Carolina courts.

III. *Proposed:* "POLICY ON INACTIVE STATUS"

This revised policy on inactive status seeks to encourage mediators who may sometimes be temporarily unable to mediate actively within the courts, but not wish to relinquish their certification(s), to elect inactive status rather than allowing their certifications to simply lapse. The policy provides than an inactive mediator need only call the Commission and pay the appropriate renewal fee in order to have his/her certification reinstated. A lapsed mediator must file a new application and comply with the Policy on Lapsed Status and Reinstatement, below, including completion of additional training, if required.

IV. *Proposed*: "POLICY ON LAPSED STATUS AND REINSTATEMENT"

This revised policy marks a departure from the former policy regarding lapsed status and reinstatement, and sets parameters for what is required to become reinstated after lapse of a certain number of years. A lapsed mediator must file a new application and may be required to complete additional training depending on the length of the lapsed status.

NEW DRC COMMISSION MEMBERS APPOINTED!

THANK YOU FOR YOUR WILLINGNESS TO SERVE!

Thomas "Tom" W. Clare, Raleigh, appointed by the Chief Justice, for a three-year term.

W. Mark Spence, Manteo, appointed by the NC State Bar President, for a three-year term.

Judge William Webb, Raleigh, appointed by the Chief Justice, for a three-year term.

Judge Yvonne Mims Evans swears in new members Thomas "Tom" W. Clare (left) and W. Mark Spence

Judge Gary Cash swears in new member Judge William Webb (left).

MEMBERS APPOINTED TO ANOTHER TERM:

Judge Evans swears in Susan Hicks, Diann Seigle and Judge J. Douglas McCullough to another three-year term.

NEW EX-OFFICIO MEMBERS!

M. Ann Anderson, Mediator (Pilot Mountain)

Jacqueline Clare, Mediator (Raleigh)

J. Anderson Little, Chapel Hill, stands down as Chair, becomes ex-officio.

Tina Estle, Executive Director Cumberland County Dispute Resolution Center (Fayetteville)

Short Bios of New Commission Members

Thomas "Tom" M. Clare, Raleigh:

Thomas "Tom" M. Clare is a DRC certified mediator for the MSC program based in Raleigh. From 1987 to 2007, he practiced insurance defense law with Teague Campbell Dennis & Gorham LLP in Raleigh. From 2008 to 2011, Mr. Clare was the resident partner in the Raleigh office of Oxner Thomas & Permar, where he represented plaintiffs in workers' compensation cases. He received his B.A. degree from East Carolina University in 1975 and his J.D. degree from the University of North Carolina School of Law in 1982. He is a Board Certified Specialist in Workers' Compensation Law, and currently mediates full-time statewide, primarily in workers' compensation cases.

W. Mark Spence, Manteo:

W. Mark Spence was born and raised in Elizabeth City, NC. He attended Atlantic Christian College in Wilson, NC and earned his JD degree from Campbell University School of Law. Mr. Spence has been practicing since 1979, and focuses largely on criminal law, family law, and personal injury cases. He is admitted to practice in North Carolina, the federal district court for the eastern district of North Carolina, the Fourth Circuit Court of Appeals and the US Supreme Court. Mr. Spence is a past president of the First Judicial District Bar and a member of the NCBA and the NC Advocates for Justice. His community service includes service as past president of the Manteo Rotary, membership in the Outer Banks Chamber of Commerce, and Pro Bono General Counsel for NOAH, Inc. He has been a partner at Aldridge, Seawell, Spence and Hudspeth, LLP for 11 years.

Judge William A. Webb:

Judge William A. Webb is a Senior Advisor to the Shanahan Law Group where he shares his unique insight and subject matter expertise in the areas of employment law, federal regulations, appeals and white collar criminal defense. He has extensive appellate experience and is a certified North Carolina superior court mediator. He is also certified as a federal mediator in all three federal districts in North Carolina. Judge Webb helps shape and review litigation strategy for the Shanahan Law Group.

Judge Webb retired from the Eastern District of North Carolina where he served as a magistrate judge for fourteen years. Prior to that he served as the federal public defender for the Eastern District of North Carolina. He also served as deputy secretary and general counsel in the NC Department of Crime Control and Public Safety and has served in the US Attorney's office in Raleigh as the first chief of the organized crime and drug enforcement task force. Other notable experiences he held were as a homicide prosecutor in Pittsburgh, PA; senior staff counsel for the U.S. House of Representatives Select Committee on Assassinations; Assistant United States Attorney and as Deputy Attorney General of Pennsylvania; and Commissioner of the United States Equal Opportunity Commission in Washington, D.C.

The Commission congratulates Judge Webb on his recent election by the NC Senate to the UNC Board of Governors.

Mediation is not Vegas

By: Frank Laney, Esq.

Previously published in the NC Bar Association Dispute Resolution Section newsletter, The Peacemaker, Vol. 29, No. 1, 2014. Re-printed with permission.

"What happens in Vegas stays in Vegas" may be a great tag line for the brightly lit city in the desert. But it is not an apt description of the mediation process. To the chagrin of the Dispute Resolution Commission it seems that North Carolina mediators have been using this line as a shorthand way to try to comply with MSC and FFS Rule 6. B (1) (f) and (g). This colloquial statement is neither complete nor accurate and does not fulfill the mediator's duty under Rule 6. See Advisory Opinion 22 (2012).

Confidentiality is a bedrock principle in mediation. Everyone in the field agrees that mediations are and should be confidential. However that unanimity breaks down when asked to articulate in detail what that means. Some say that confidentiality applies to the entire mediation – to the process and all participants. By engaging in mediation everyone is agreeing not to talk to anyone about what is said or done. Others view that as too broad and apply the confidentiality only to the mediator. The parties remain free to discuss their own business as they see fit. Only the mediator is restricted by the rule of confidentiality. These are only two of the numerous facets to the issues around the question - What can be said and to whom about what happened in a mediation?

The "Vegas" rule broadly encompasses three different concepts – confidentiality, inadmissibility and privilege. Confidentiality is an ethical promise, sometimes legally enforceable, given by a professional not to reveal to others information shared in the course of fulfilling professional duties. Also this promise can arise from an agreement between parties to a communication to hold it in confidence. Inadmissibility is an exception to the rule of law that all relevant evidence can and should be submitted to the jury. In certain circumstances, society decides that certain information should not be revealed in trial due to the nature of the information or to preserve the relationship out of which the information arose. So to preserve either the neutrality of the jury or the sanctity of the relationship, by rule, the information cannot be admitted into court. Privilege is sort of a mid-point between confidentiality and inadmissibility. Privilege arises out of a professional/client relationship, such as with lawyers, doctors and clergy. But it does not address the professional's promise to tell no one about what is said, but rather is a bar to the professional giving evidence unless the client waives the privilege. A doctor, lawyer or minister is prohibited from revealing client information without permission. But if called by a client to the witness stand, the professional has no grounds to refuse to testify. Disclosure of otherwise privileged information may be compelled if in the judge's opinion "disclosure is necessary to the proper administration of justice." N.C.G.S. Section 8-53 et. seq. Privilege is the framework adopted by the drafters of the Uniform Mediation Act (see UMA, Sections 4, 5, 6 and 7), which postdates the North Carolina mediation statutes.

During the development of the court based mediation programs in North Carolina in the late 1980s and early 1990s, privilege was considered at length as a vehicle to protect the confidentiality of mediation and also to keep mediators from having to worry about being called to the witness stand months or years after doing their job. However, the drafters of the court-ordered programs decided that privilege did not cover the issue. For one thing, privilege belongs to the client, not the professional. Thus if the clients agreed to call the mediator to testify in court, the mediator had no recourse to prevent being so encumbered. Also, as noted above, privilege could be overcome by a simple ruling by the presiding judge that the testimony is "necessary to the proper administration of justice." Therefore the decision was to bind mediators with an ethical rule of confidentiality but to allow parties to handle their personal information in whatever way they saw fit, except that things said and done in mediation would not be admissible in court. The broad rules were set – mediators were bound by confidentiality and parties were free to use their information anywhere except in court.

Under the North Carolina rules, confidentiality applies only to the mediators. The parties are free to discuss what happened in the mediation with friends, other litigants, the press, the public or anyone else except in court proceedings. Just like most all other information about their case, information about the mediation belongs to the parties and they may do with it as they please. There was a situation some years ago where the school board in a county sued the county commissioners over the level of funding for the schools. The mediation was held in the county courthouse.

Continued on page 8

Continued from page 7

As the mediation was proceeding, the mediator eventually learned that as he was talking privately with one group, the other group was holding a press conference on the front steps of the courthouse, and then vice versa. The mediator convened both groups. He pointed out that what they were doing was legal and he could not stop them, but asked if it was working well for them. Did they think they had a better chance of settling by continuing this negotiation in the press, or did working in private hold better prospects? The parties agreed that talking to the press while trying to negotiate was counterproductive, so they reached an agreement to hold confidential, at least during the mediation, what was being discussed. Thus, if the general rule of no confidentiality does not work in a particular case, then the parties should notify the mediator and begin the mediation conference with negotiation of a confidentiality agreement.

But, even for mediators, in the rule of confidentiality there are exceptions. The exceptions to confidentiality for Dispute Resolution Commission certified mediators are found in Standard III. The general rule is that a mediator is not to disclose to anyone what was said or done in mediation. The mediator is also not to disclose to other participants what is said or done in a private caucus without the communicator's permission. (This is the only part of confidentiality where waiver comes into play.) This rule does not apply to the filing by the mediator of a copy of the agreement with the appropriate court, if required. This rule also does not apply to a mediator communicating about procedural matters with the court – specifically, this allows the mediator to request extensions of time and to discuss with the court matters related to the extension without running afoul of Standard III.

The first set of exceptions to the Standard relate to exceptions mandated by statute or rule. If a statute requires or permits the mediator to give evidence, then the mediator should comply. If under MSC or FFS Rule 5, a proceeding has been initiated against a party for failure to attend the mediation or to pay the mediator's fee, the mediator may, if subpoenaed, give evidence limited to those matters only.

The second set of exceptions relate to public safety. If the mediator believes that a serious threat or actual damage to person or property occurred in a mediation, then the mediator may report the assault or threat either to the threatened victim or appropriate authorities.

The third set of exceptions deals exclusively with attorneys' conduct. If an attorney in a mediation communicates a serious threat or commits an assault, as listed in the second set of exceptions above, then a mediator who is an attorney is required to report the conduct to the State Bar pursuant to Rule of Professional conduct 8.3 (e).

The fourth exception deals with use of knowledge gained in mediations for training of other mediators.

The last exception allows for a mediator who has had a complaint brought against him or her to reveal as a defense information that would otherwise be confidential.

So the general rule is that a mediator is not to reveal anything said or done in a mediation unless there is a specific rule or statute that allows the revelation. The exceptions in the Standards or program rules are:

- filing an agreement,

- sanctions proceedings

-public safety violations, by parties or attorneys, and

- defense of complaints.

Any other reasons to disclose information would have to be found in the explicit language of a statute, such as reporting child or elder abuse. No other testimony or affidavits are allowed. However, parties, judges and even mediators continue to try to get mediators to testify in court. Twice since 2012 the Commission has issued opinions reiterating what the Commission first articulated in 2001 in its third Advisory Opinion, that a mediator is not to give any evidence as to what occurred in the mediation beyond the exceptions contained in the Standard.

In its most recent opinion, AO 30 (2014), the Commission also required that a mediator who has been subpoenaed or otherwise called to testify seek to preserve confidentiality by calling to the court's attention the restrictions under rule and statute that limit a mediator's ability to testify. To fail to make reasonable efforts to resist a subpoena render the mediator's testimony voluntary and a violation of the Standards.

Continued on page 18

Spotlight on NCCU's Dispute Resolution Institute

The Commission was pleased recently to interview two individuals associated with NCCU Law School's Dispute Resolution Institute for this issue: Mark Morris, Director of the Institute, recently honored with the NCBA Dispute Resolution Section's Peace Award and Kathleen Wallace, former director of the DRI, now Athlete Ombudsman for the US Olympic Committee. Congratulations, Mark and Kacie!

Morris Receives Peace Award

Professor Mark W. Morris was honored this January as the 2015 recipient of the NC Bar Association's Dispute Resolution Section Peace Award. The award was presented by Frank Laney, an ex officio member of the DRC, at the section's annual meeting and CLE at The Carolina Hotel in Pinehurst.

Morris is a law professor at the North Carolina Central University School of Law and founding director of its Dispute Resolution Institute. He is also an active mediator and a former member of the Dispute Resolution Commission.

The Peace Award honors individuals who have made a special contribution or commitment to the peaceful resolution of disputes, including but not limited to the following: (a) Development of new or innovative programs; (b) Demonstrated improvements in service; (c) Demonstrated improvements in efficiency; (d) Research and writings in the area of dispute resolution; (e) Development of continuing education programs; and/or (f) Leadership with local, state and national boards and legislative bodies.

Past recipients of the Dispute Resolution Peace Award are Carmon Stuart (2002); Scott Bradley (2003); Frank Laney (2004); Jacqueline Clare (2005); J. Anderson Little (2006); Ralph Walker (2007); Charlotte Adams, Beth Okum and Tan Schwab (2008); Chief Justice James G. Exum (2009); Judge James Long (2010); John Schafer (2011); Judge Jim Gates (2012); George Walker (2013) and Ann Anderson (2014).

Commission staff spoke with Professor Morris about this important accomplishment and his work at the Dispute Resolution Institute:

DRC staff *– Congratulations, Mark!*

Professor Morris -- I am honored to be the 2015 recipient of the Peace Award and grateful that our work at the Dispute Resolution Institute (DRI) was recognized by the Section and its members.

Frank Laney (left) presents Mark Morris The Dispute Resolution Section's Peace Award.

DRC staff *-- How long have you been teaching dispute resolution courses and what got you interested in the first place?*

Professor Morris - I have been teaching dispute resolution courses for some 20 years. I initially got interested in the field back when I was in law school and I took a negotiations course taught by Roger Fisher.

DRC staff *– You have not only been teaching, but actively practicing in the field for a while.*

Professor Morris – Yes, I became certified as a superior court mediator back in 1994. I both mediate and arbitrate and enjoy it a great deal.

DRC staff *– Was the DRI your brainchild and if so, what gave you the inspiration?*

Professor Morris – It was a concept that I promoted and, with the help of NCCU Law School Dean Raymond Spring, we were able to establish the DRI. My inspiration for the DRI came from the fact that I had come to believe that the practice of law was starting to change. There was beginning to be more interest in negotiation, mediation, and other alternatives to trial. The notion that everything had to be adversarial seemed to be giving way to the idea that lawyers could and should be more cooperative and even collaborate in looking for solutions short of trial. I thought that it was time that we began to prepare law students to practice in this evolving environment and I wanted NCCU Law to lead the way in North

Continued on page 10

Continued from page 9

Carolina. I was also very much aware that Hamline University School of Law was operating its Dispute Resolution Institute and that Pepperdine Law School had its Straus Institute for Dispute Resolution. I drew from these programs in envisioning and developing the DRI.

DRC staff *– NCCU Law School's website sets out the DRI's mission statement. Has that mission statement set out below changed over time?*

"The Mission of the Dispute Resolution Institute is to advance the theory and practice of dispute resolution in the pursuit of justice and reconciliation between individuals and groups in conflict. The Institute is especially mindful of NCCU School of Law's unique history and record of achievement and will be committed to ensuring that evolving methods for resolving conflict do not undermine justice for economically disadvantaged, minority and marginalized individuals and communities. The Institute will critically examine how these methods affect the interests of these groups. The Institute is also committed to its goal of increasing the participation of minorities in the field."

Professor Morris – No, that statement has never been modified or revised and still reflects our focus.

DRC staff *– Can you tell our readers about the Institute, what it offers and how it operates?*

Professor Morris – Certainly. The Institute offers an array of courses in dispute resolution. Core courses include: negotiation, mediation, superior court mediation, and arbitration. Elective courses cover the following topics: client interviewing and counseling, decision tree analysis for lawyers and mediators, lawyer as problem solver, mediation advocacy, and plea bargaining. We also offer a selected topics course which looks at ADR systems design, family mediation, collaborative divorce, and ADR in the workplace. You can see from this list of courses that the DRI offers a comprehensive dispute resolution curriculum. Our program also has a strong hands-on component in the form of our ADR Clinic and our DRI externships. Students enrolled in an externship propose their placement in some venue where they will have an opportunity to experience and practice dispute resolution applications and skills and they work under the auspices of an individual experienced in some facet of dispute resolution.

Our students can take just one or two classes to give themselves some exposure to dispute resolution concepts and processes or they can seek a certificate in dispute resolution. Each year we admit a small number of students, 8-12, to our certificate program. To be selected for inclusion, students must demonstrate a real interest in dispute resolution. The certificate requires a minimum of ten hours of academic credit in dispute resolution related coursework completed over a two year period.

DRC staff *– Can you say more about the ADR Clinic?*

Professor Morris - Our ADR Clinic actually predates the DRI. The Clinic was founded in 1999, as a partnership between the law school and Carolina Dispute Settlement Services (CDSS). Diann Seigle, CDSS' Executive Director, was instrumental in the Clinic's establishment. CDSS is a community mediation center which works with the district courts to mediate misdemeanor criminal matters. In joining forces with CDSS, the DRI created an opportunity for its students to observe actual mediations and even to conduct them under the supervision of Clinic staff and CDSS mediators. Though CDSS is no longer involved, we now have a similar partnership with the Elna B. Spaulding Conflict Resolution Center (Center) in Durham. Like Diann before her, Grace Marsh, the Center's Executive Director, has been very helpful. Without the consistent supply of cases that CDSS and the Center have afforded, we could not provide our students with the hands-on, real world experience which, I believe, is critical to a quality education in dispute resolution.

DRC staff *-- What do you see as the Institute's biggest accomplishment to date?*

Professor Morris - Getting our certificate program in place has been the Institute's biggest achievement from my perspective. Like most law schools, NCCU started with an introductory ADR class. Over time, we have built on that single class to create a comprehensive curriculum fortified with hands-on, practical learning opportunities through externships and the

ADR Clinic. I believe we are helping to truly and meaningfully educate the next generation of lawyers

Continued on page 11

Continued from Page 10

and dispute resolution practitioners in ADR concepts and practices.

DRC staff *-- Are a lot of law students taking advantage of the DRI and its certificate program?*

Professor Morris -- There is a lot of interest and we have good turn-out for our classes. As I mentioned earlier, some students, will take only a class or two through the DRI. They are primarily interested in learning how to effectively represent their clients in mediation or arbitration proceedings and do not necessarily plan to become dispute resolution practitioners themselves. Those students frequently take our negotiation, mediation, or mediation advocacy courses. Again, we take only 8-12 students a year in our certificate program. These are student who demonstrate a genuine interest in dispute resolution and are willing to immerse themselves in the program. Most, if not all these students, are particularly interested in working in the field. Because the certificate program has a strong hands-on component, it wouldn't be practicable to funnel larger numbers through, even if we wanted to take that approach, which we don't.

DRC staff *-- Do you hear good things back from your students? Do they find the DRI courses they took beneficial in their practice of law? Are the certificate holders finding work in the field?*

Professor Morris -- What I hear back is positive. Most importantly, many of my students tell me that exposure to dispute resolution concepts and processes has changed the way they think about the law and their role as attorneys. That changed perspective certainly affects the way they will or do, in fact, practice law. While the early momentum that was present in the dispute resolution movement may have cooled a bit, it is still a growing field and I have no doubt from what I hear, that our former students are making contributions and creating opportunities for themselves.

DRC staff *– These days do law students entering NCCU already have some awareness of dispute resolution concepts and processes?*

Professor Morris – Oh yes, we are seeing a difference. Twenty years ago when I first started to teach, my students knew virtually nothing about dispute resolution. They might have heard the terms "mediation" and "arbitration" somewhere, but that was it. It is entirely different today. Most of them have some awareness of dispute resolution concepts though the media or popular culture. Sometimes that level of awareness can be pretty sophisticated. Most exciting to me is the number coming in who have actually participated in peer mediations or even conducted peer mediations during their school years. Already, these students don't see the courts as the first line of defense.

DRC staff *– Staff are also curious how your students may be looking at issues of technology and dispute resolution?*

Professor Morris -- Our students and younger attorneys are clearly open to finding ways to incorporate the latest technologies in everything they do. We certainly talk about technology issues and there is interest in mediating "virtually" using Skpye, Apple's FaceTime, or video conferencing. These technologies are getting very sophisticated and it is almost like everyone is in the room together.

DRC staff *– Is the Institute involved in any dispute resolution research?*

Professor Morris – Not at this time, but that is something I would be interested in involving our students in.

DRC staff *-- What is your vision for the future of the Institute?*

Professor Morris -- I want the Institute to be on solid academic and financial footing in preparation for handing the reins over to a successor down the road. I don't think it's any secret that money is in short supply for universities these days and I want to insure that the Institute's future is secure.

DRC staff *– Again, congratulations, Mark—both to you and the Institute. The Peace Award was well deserved and we hope the Institute will have a long and bright future.*

Professor Morris – Thanks, Leslie, and please give The Intermediary's readers my best.

Continued on page 12

INTERVIEW WITH KATHLEEN C. "KACIE" WALLACE

Going for the Gold in Dispute Resolution

Kathleen "Kacie" Wallace,
Athlete Ombudsman, USOC

The Commission is excited that one of its certified mediators, Kathleen C. "Kacie" Wallace, has accepted a position as the Athlete Ombudsman with the US Olympic Committee (USOC). This position was created by Congress in 1998 to serve as an adviser to athletes and to assist in mediating disputes involving their rights to participate in sport. Kacie, who was formerly on the faculty at NCCU School of Law and Director of the Dispute Resolution Institute, commenced her new position in Colorado Springs on January 5th. Kacie graciously agreed to speak Commission staff about her work as the USOC's new Athlete Ombudsman.

***DRC** -- Kacie, you must be so excited?*

Ms. Wallace – I am. I will miss North Carolina, but this was a once in a lifetime opportunity. As an athlete and as a dispute resolution professional who is strongly committed to international cooperation and collaboration, it was a chance to combine these two long-term interests of mine. And more importantly, it is an opportunity to work with the athletes who excel in sport and with an organization committed to supporting the individual pursuits of those athletes as well the overarching values of the Olympics and building peace through sport.

***DRC** – So, you are an athlete yourself. How important was that to the USOC?*

Ms. Wallace -- I swam competitively through college, and competed at the international level in open water swimming after college. Currently, I participate both in swimming and paddle boarding. I compete in endurance standup paddle, am a team rider for YOLO Board, and firmly believe in their motto, "You Only Live Once." It was important both to the Athletes' Advisory Council, which nominates a candidate for the Athlete Ombudsman position, and the USOC that the position be held by someone who has an understanding of the athletes' perspective.

***DRC** – Can you tell our readers a little about your dispute resolution experience, particularly as it relates to your new position?*

Ms. Wallace – I hold a J.D. from NCCU and an LL.M. in Dispute Resolution from Pepperdine (2005) and have more than 20 years of experience as a crisis intervention counselor, arbitrator, negotiator, and mediator. I have taught conflict resolution courses at NCCU and Duke Schools of Law, at the Duke-UNC Rotary Center for International Studies in Peace, and at the Rotary Peace Center at Chulalongkorn University in Bangkok. I completed an externship with the USOC Athlete Ombudsman while at Pepperdine and following that externship, mediated athlete conflicts for the USOC for about 10 years. I also served as the USOC Ombudsman for the 2011 Parapan American Games in Guadalajara, Mexico, and the 2012 Paralympic Game in London; and served as a crisis intervention specialist at the Sochi 2014 Paralympic Games. My experience teaching internationally and the work I have done in international collaboration and conflict resolution were certainly of interest to the USOC as well. That experience, combined with the fact that I grew up as a competitive swimmer gave me a set of perspectives and skills the USOC thought would be helpful in this position.

***DRC** – Would you say that the USOC has made a strong commitment to dispute resolution?*

Ms. Wallace – Yes. Legislation that initially established the USOC provided important legal protections for athletes, including due process and appeal rights in eligibility disputes. Later, revisions to that legislation provided for dispute resolution to be used as a tool to address disputes relating to athlete participation. President Jimmy Carter signed the Amateur Sports Act into law in 1978. That Act established the USOC and provided for the USOC to charter national governing bodies (NGBs) for each Olympic sport, for example USA Swimming or USA Track and Field. Each of these NGBs serves as the

Continued on page 13

Continued from page 12

coordinating body for that sport's amateur athletic activity in the US and recommends individuals and teams to represent the US in the Olympic Games, Paralympic Games, and other competitions. In 1998, the Amateur Sports Act was significantly revised and renamed in honor of one of its sponsors, Senator Ted Stevens of Alaska, as The Ted Stevens Olympic and Amateur Sports Act (36 U.S.C. § 220501 *et seq.* of the United States Code). Section 220509 of the Ted Stevens Act specifically addresses dispute resolution and provides for the USOC to hire an ombudsman. In 1999, John Ruger, my predecessor, was appointed as the first Athlete Ombudsman for the USOC. He held the position for 15 years until retiring. During his tenure, John was involved in 8,000+ cases.

DRC *-- What is the role of the Athlete Ombudsman?*

The Athlete Ombudsman is charged with providing free advice to athletes with respect to the resolution of any disputes involving their opportunities to participate in the Olympic Games, the Paralympic Games, the Pan-American Games, world championships, and other protected competitions. The criteria for participation are set out in the Ted Stevens Act, the USOC's policies and regulations, and the internal regulations of each of the NGBs established under the USOC. The ombudsperson helps athletes understand and interpret these provisions.

DRC *– So, in other words, you work as the Athlete Ombudsman for the USOC, but represent the athletes. Does that pose any conflict of interest for you?*

Ms. Wallace -- It is a unique position. I don't represent athletes individually because a resolution in favor of one may come at the expense of another. I do, however, represent athletes' interests in general, and give independent and confidential advice to athletes. At the same time, I serve on the executive team of the USOC. I also advise athletes on how to move forward in getting their disputes addressed. I work with athletes and the staff of the NGBs and USOC to resolve issues at the earliest stage possible. My challenge and opportunity is to build trust among each of these constituencies and do my best to improve communication between them.

DRC— *-- Did the athletes have any say in your hire?*

Ms. Wallace – The Ted Stevens Act requires that the Athletes' Advisory Council (AAC) submit their nomination to the USOC for consideration and Board approval. *(The Athletes' Advisory Council's website says that the Council is, "responsible for broadening communication between the United States Olympic Committee and active athletes, and serves as a source of input and advice to the USOC Board of Directors.")* I feel a strong committment to this group. The AAC is comprised of elite athletes from each sport and as their representative and voice at the USOC, I was humbled by their nomination and am committed to serving their interests.

DRC *– I understand the Ted Stevens Act also permits the Athlete Ombudsman to mediate disputes.*

Ms. Wallace – I find myself mediating disputes every day, but the process is typically not as formal as you see in the MSC Program. Attempts to resolve an issue often begin with the first call, rather than once a formal complaint is filed. Time is such a critical issue for athletes as they are trying to focus on training for competition that is to occur in the next few days or weeks. So my goal is to try to figure out how to get the issue resolved as soon as possible. These efforts may include phone calls back and forth, face-to-face meetings, Skype or emails. Seldom are all the parties in one location, so I have become very accustomed to call-in numbers, access codes, and specifying the appropriate time zones.

There are other differences from the typical MSC or court-based mediation. The mediation may address issues that could impact numerous other athletes. When trying to resolve a selection or eligibility issue, we always need to consider other athletes who may have been affected by the selection criteria in question, or those who may be affected by a potential resolution. Discussions about money or issues of restitution or punishment that are so integral to most court-based mediations are often entirely absent. Success in sports depends on relationships. Whatever form the mediation takes, I try to get those involved in a dispute focused on their relationship –

Continued on page 23

Mandatory Retirement for Judges

Judicial age limits have gotten attention over the last six months amid the flurry of interest in US Supreme Court Justice Ruth Bader Ginsburg, who at 82, has indicated that she has no intention of stepping down, for political or other reasons. There is no mandatory retirement age for federal judges. Justice John Paul Stevens retired at 90.

In North Carolina of course, judges do face a mandatory age of retirement. The recent mandatory retirement of Chief Justice Sarah Parker at age 72 last August brought this issue into the minds of many North Carolinians.

North Carolina's Constitution, Article IV, Section 8 does not set an age at which a judge must mandatorily retire, but rather Section 8 authorizes the General Assembly to set a mandatory retirement age. Gen. Stat. 7A-4.20 provides that a judge may not continue to serve beyond the last day of the month in which s/he attains the age of 72.

Thirty-two states have a mandatory retirement age for judges. The retirement age in twenty-one states is 70; in four states, 74; in six states, 76. Vermont sets its mandatory retirement age at 90. Eighteen states do not have mandatory retirement of judges at any age.

In 2000, the US Supreme Court upheld the right of states to set mandatory retirement ages for judges. Concerns about arbitrary, mandatory retirement ages for state court judges has been on the rise in many states over the last several years. Despite renewed efforts (constitutional amendment, legislation, litigation) in many states to increase the age of mandatory retirement, most have failed to gain traction and have failed.

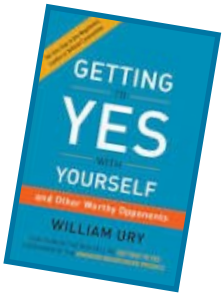
For instance, in Pennsylvania, a few years ago a group of county judges challenged the mandatory retirement age of 70, arguing the provision violated PA's constitutional ban on age discrimination. A unanimous court disagreed. A second suit, filed in federal district court on the grounds that the mandatory retirement age of 70 violated the equal protection clause of the US Constitution also failed. The Third Circuit Court of Appeals upheld that decision. And, ballot initiatives to amend state Constitutions in Ohio, Hawaii, New York, Pennsylvania and Louisiana to increase the mandatory retirement age in those states have been defeated by the voters.

Back home in North Carolina, no bill is pending that would increase North Carolina's mandatory retirement age of 72. However, House Bill 50, if enacted, would allow a judge to remain on the bench until the end of the year in which s/he turns 72, rather than only to the end of the month. North Carolina may well lose a significant number of judges in the district and superior courts over the next 10 years as they hit their eligibility date to retire, (see chart on page 26 herein), as well as due to mandatory retirement, (see chart below).

Title (as of 3/2015)	1 year	3 Yrs	5 Yrs	7 Yrs	10 Yrs
Associate Justice Supreme Court	0	0	0	1	1
Chief Judge Court of Appeals	0	0	0	1	0
Chief Judge District Court	0	3	1	3	6
Judge Court of Appeals	0	1	2	2	1
Judge District Court	1	6	8	9	16
Senior Res. Superior Court Judge	0	4	4	8	7
Special Judge	0	1	3	1	0
Superior Court Judge	1	2	3	5	4
TOTAL	2	17	21	30	35

Future Attrition of Judges Due to Mandatory Retirement (AOC)

NEW BOOK!!!



"Getting to Yes With Yourself (and Other Worthy Opponents)" by William Ury

For many of us mediators, Getting to Yes was the first book on negotiation that we read. Getting to Yes coauthored by Roger Fisher and Bruce Patton, helped shift the focus in negotiations from a win-lose model to the win-win model that is now widely embraced as the most effective approach to resolving conflict. Now, William Ury has written a new book which he characterizes as a prequel to *Getting to Yes* entitled, Getting to Yes With Yourself (and Other Worthy Opponents). This book focuses attention on the challenges in understanding our internal dialogue and conflicts as a necessary precursor to understanding and influencing others. He poses the question, "How can you expect to get to Yes with others if you haven't gotten to Yes with yourself?" Ury suggests that the biggest obstacle actually is ourselves—our natural tendency to react in ways that do not serve our true interests.

In this book, Mr. Ury offers a step by step road map to help you understand what drives you and reach agreement within yourself first. These effective and practical steps suggest strategies to uncover inner obstacles, reach positive agreements and develop healthy relationships with others, make your business or work life more productive, and ultimately, live a more satisfying life. The book was published in January, 2015, and Mr. Ury has spoken widely about the book since its release.

Getting to Yes, the best-selling book in the world on negotiation, has sold 12 million copies and has been translated into 37 languages. Mr. Ury is co-founder of the Program on Negotiation at Harvard Business School and is one of the world's best known and most influential experts on negotiation. He has helped resolve or avoid conflicts around the world including in the Middle East, the Balkans, Indonesia, Venezuela, and in America.

On its website, the Commission posts a lengthy list of excellent books and resources on dispute resolution recommended by the Commission. Go to www.ncdrc.org, click on Ethics/Continuing Education, then Continuing Education, then Suggested Reading, or Click Here. There is also a link to additional resources from other reputable sources. Any reading done can be reported on your annual renewal application as eligible CME hours.

If you come across a book about mediation that is not listed on the Commission's approved CME list, and would like to review it for *The Intermediary*, please contact Commission staff by email to: DRCMeditors@nccourts.org, or call Leslie Ratliff or Harriet Hopkins, 919-890-1415.

CME REQUIREMENTS

It is important for certified mediators to be current in their understanding of program rules, Standards of Conduct and advisory opinions issued by the Commission. Therefore, the Commission recommends that all certified mediators engage in at least three hours of CME activities annually. This can be self-study, reading books or articles about mediation, attending courses or talks such as are described on page 22 herein.

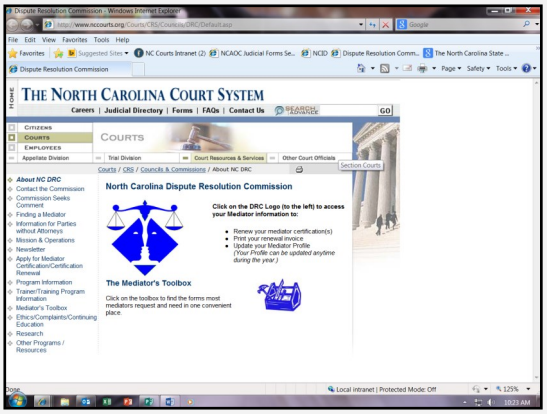
While the Commission does not currently require mediators to complete CME hours, it DOES require all certified mediators to report on an annual basis as part of the renewal process whether or not CME has been completed If CME has been taken, the mediator must indicate the nature of the CME.

And, good news! Allowing an observer at your mediations or observing a mediation conducted by another certified mediator counts as CME! Some applicants for mediator certification report great difficulty in finding mediations to observe. Allowing an observer satisfies your obligation under MSC Rule 8.J to "make reasonable efforts to assist mediator certification applicants in completing their observation requirements," and gives you CME credit that you can report. A win-win!!!

ANNUAL RENEWAL DATE CHANGES

Effective FY 15-16,
Annual Renewal Begins on July 1

Renewal packets will be mailed out on July 1, 2015. To access your On-line Renewal Application, visit the Commission's website and click on the logo; enter your email address; then enter your security password. If you can't access your Application, or the email address listed on your profile has changed, please contact Commission staff.



The Commission has a list of Approved Continuing Education materials available on it's website. To access the list, visit the Commission's website at www.ncdrc.org; from the Menu on the left, click on Ethics/Complaints/ Continuing Education; click on Continuing Education, or click here.

TEST YOUR KNOWLEDGE: TRUE OR FALSE?

(Answers on page 24)

1. **The mediator may allow a person to attend a conference by telephone if all parties and the mediator agree.**

2. **If the Local Rules require it, the mediator should attach the mediated settlement agreement to his/her Report of Mediator.**

3. **If the plaintiff takes a voluntary dismissal after the case is ordered to mediation but before scheduling the mediated settlement conference, the mediator need not file a Report of Mediator.**

4. **The mediator's fees must be paid in equal shares by all parties to the action.**

5. **A mediator may discuss the conduct of an attorney at a mediation if asked by an investigator at the NC State Bar during the course of an investigation of the attorney's conduct.**

6. **Everything that is said and done at mediation is confidential.**

7. **A mediator may disclose certain procedural matters with the court if the mediator feels it will aid in the mediation process.**

8. **A mediator appointed by the court can charge for mileage if s/he has to travel out of his/her county for the mediated settlement conference.**

9. **An observation of a mediation of a case by a DRC certified mediator that has not yet been filed qualifies as an eligible observation for certification under the MSC and FFS Program Rules.**

10. **For good cause shown, a mediator may postpone a mediated settlement conference with the consent of the parties.**

11. **A mediator must report any disciplinary actions, judgments, tax liens, and criminal charges to the DRC within 30 days of the action taken.**

12. **A mediator should seek the guidance of the court if a party or a party's attorney is not responsive to multiple contacts to try to schedule the mediation.**

13. **At the end of a mediation involving *pro se* parties, if the parties request it, the mediator may prepare a summary of their agreement and have the parties sign it as a binding agreement.**

14. **Upon renewal each year, the districts chosen by a mediator in which s/he will accept court appointments will "roll-over" to the next fiscal year, unless changed by the mediator on his/her profile.**

15. **Where parties choose to substitute a mediator for the mediator appointed by the court, the parties must pay the court assigned mediator the $150 administrative fee prior to or at the time the substitution is filed.**

Continued from page 8

In seeking to quash a subpoena, the mediator does not look to the confidentiality rules, as they are simply ethical promises made to the client and not binding on a court. Instead, the mediator looks to the statutes which provide that things said and done in a mediation are inadmissible and that generally a mediator may not be compelled to testify.

N.C.G.S. Section 7A-38.1(l) provides for a fairly broad exclusion of mediation information from admission into court, but there are some limitations that mediators and litigators should know. (This statue applies to the MSC program. A similar statute, N.C.G.S. Section 7A-38.4A, governing the FFS program has identical language.) The initial rule is broad – statements or conduct of any participant in a mediation is inadmissible. This is where many practitioners stop the recitation, but it leaves off important qualifiers. This inadmissibility is limited to the action or any civil action on the same claim. Therefore, the otherwise inadmissible information can be used in another civil action on an unrelated claim. How far the second action would have to be removed to be unrelated is open to question. The Commission in AO6 (2004) interpreted similar language to restrict a mediator's role in any and all cases arising out a divorce. Therefore, the Commission seemingly would deem divorce, child custody, equitable distribution and enforcement claims as all civil actions arising out of the same claim. How a court would interpret the restriction is unknown. Would a claim by a second injured party arising out of the same traffic accident be "on the same claim"? What about a second injured person arising out of a toxic tort action from poor construction of the same building? What about a second person alleging a pattern of improper mortgage lending practices by a bank? Until the courts clarify the issue, the best precaution for litigants with concerns about these boundaries would be to require confidentiality agreements. While it is possible that a court could pierce such agreements and require the evidence to be presented, they would at least provide some defense.

Second, the otherwise inadmissible information can be used in *any* criminal action, whether arising out of the same claim or not. As cited above, the limitation is for use in "the action or any other civil action on the same claim". Therefore, there is no protection from having information revealed in a mediation from later being used in a criminal proceeding. In the last paragraph of N.C.G.S. Section 7A-38.1(l), even the mediator is not protected from being called to testify in criminal proceedings, as the limitation is once again to "any civil proceeding", not criminal proceedings. It is unlikely that any confidentiality agreement would keep an inquiring criminal court from the things said and done in a mediation. Therefore, as chilling as it may be to the mediation process, the best practice for an attorney or client who is worried about mediation information being used in a subsequent criminal proceeding would be for that attorney or client to watch carefully what is said in the mediation. For further discussion, see AO 29 (2014) and the newly proposed Standard III that the Commission has circulated for comment.

Even within the somewhat limited scope of inadmissibility, there are exceptions. These exceptions are rather well-known, are relatively benign and are logical to the operation of any court-ordered mediation program. The first exception allows mediation evidence into proceedings for sanctions arising out of the mediation. This would generally be a motion for sanctions for a violation of the duties of the parties to a mediation, primarily violating the attendance rule or failure to pay the mediator's fee. Information from the parties related to sanctions is admissible, but the statute also allows that the mediator may be called to testify. However, Standard III. D. requires the mediator to limit that testimony strictly to the issue at hand and not reveal the substance of any settlement discussions.

The second exception allows mediation information and conduct to be admitted in proceedings to enforce or rescind a settlement. If the outcome of a mediation is to be an enforceable agreement, then there must be a mechanism to allow enforcement, which would by its nature delve into how the agreement was reached. Thus, under the statute, the parties may reveal to the court in an enforcement action the settlement process that led to the agreement. However, the mediator may not be called to testify as to the negotiation process, only to attest to the signing of the agreement.

The third exception allows for mediation information and conduct to be admitted in proceedings to enforce standards of conduct for lawyers or mediators. If the lawyer or mediator acts badly, or is accused of acting badly, then the tribunal charged with investigating the allegations must be able to gather evidence as to what did or did

Continued on page 19

Continued from page 18

not occur in the mediation. Otherwise either bad acts would go unable to the punished, or the tribunal would be left merely guessing at the proper outcome. Thus, where a professional is charged with misconduct, the complainant and the defendant both may present evidence of what occurred in the mediation. The mediator may be called as a witness, but Standard III. F. requires the mediator to make every effort to protect confidential information of the non-complaining party and should consult with that party prior to testifying. See also AO 23 (2012).

The fourth exception is one that applies in most all mediation programs and has since the earliest mediation in North Carolina – that mediation information may be revealed in proceedings related to child or elder abuse. Both the parties and the mediator may be compelled to testify in abuse proceedings.

Although it is a separate paragraph in the statute, there are similar statutory restrictions on the mediator giving evidence. As is interwoven into the preceding paragraphs, the mediator has a blanket prohibition against testifying in any civil matter (not just related civil proceedings) except:

-to attest to the signing of an agreement

-at sanctions proceedings

-at disciplinary hearings before the State Bar or the Dispute Resolution Commission, or

-at child or elder abuse proceedings.

Other than these limited and narrow exceptions, a mediator may not be compelled to testify or produce evidence in a civil proceeding. If called, under Standard III and AO 30 (2014) the mediator is required to make every effort to keep from testifying and to inform the court of the mediator's duty of confidentiality and the statutory prohibition against testifying.

One other exception to inadmissibility is that otherwise discoverable evidence is not inadmissible just because it was discussed or presented in mediation. The reasoning is that mediation is meant to be a settlement process, and therefore needs a certain amount of confidentiality so that parties can feel comfortable entering into frank and open discussions of the issues and possible solutions. However, the mediation process should not become a black hole into which otherwise valid evidence is thrown to be hidden forever.

The rules of confidentiality and inadmissibility are complex, as they are designed to deal with a wide variety of situations and circumstances. But it is incumbent upon mediators and attorneys who represent clients in mediation to be aware of the rules and their implications for the cases being mediated. Crafting this body into a short, concise statement that does not raise in litigants unwarranted fears is a challenging task for mediators, but one that each mediator has a duty to undertake. ♦

Frank C. Laney *has served as Circuit Mediator for the US Court of Appeals for the Fourth Circuit for over 17 years, mediating in excess of 3500 cases. He is also an adjunct professor at Campbell School of Law, an ex-officio member of the NC Dispute Resolution Commission and is Chair of the ADR Committee of the NC State Judicial Council.*

The Commission's Advisory Opinions can be found on the Commission's website at www.ncdrc.org. From the Menu on the left, click on "Ethics/Complaints/ Continuing Education"; click on "Mediator Ethics"; click on "Advisory Opinions Adopted to Date"; or click here. You can also find the Standards of Professional Conduct for Mediators, The Advisory Opinion Policy, and Advertising Guidelines for Mediators on the Commission's website.

Upcoming Mediator Certification Training

Upcoming Mediator Certification Training

(Certified by DRC)

Superior Court Training

40-Hour and 16-Hour Supplemental

Carolina Dispute Settlement Services: 40-hour superior court mediator training course, on April 20th - 24th, 2015, in Raleigh, NC. For more information or to register, Contact Diann Seigle at (919) 755-4646, or visit their web site: **www.notrials.com**.

Mediation, Inc.: 40-hour superior court mediator training course on May 16th-20th, 2015, in Raleigh, NC, and For more information or to register, contact Andy Little at (919) 967-6611 or (888) 842-6157, or visit their web site at **www.mediationincnc.com**.

Mediation, Inc.: 16-hour supplemental training on May 18th-20th, in Raleigh, NC, and August 14-16, 2014 in Charlotte, NC.

Family Financial Training

40-Hour and 16-Hour Supplemental

Mediation, Inc.: 40-hour family mediation training course. See above for contact information.

Mediation, Inc.: 16-hour supplemental course. See above for contact information.

Success Consulting and Mediation, 42-hour "Divorce and Mediation Training for Professionals." For more information, contact Melissa Heard at (770) 778-7618 or visit their web site at **www.mediationtraining.net**.

6-Hour Training

Carolina Dispute Settlement services: 6-hour training course. See above for contact information.

Mediation Inc.: 6-hour training course. See above for contact information.

The ADR Center (Wilmington): 6-hour course. For more information or to register, contact John J. Murphy at (910) 362-8000 or email johnm@theADRcenter.org, or visit their web site at **www.theADRcenter.org**.

More CME and Training Opportunities

The Mediation Center in Asheville, is hosting a "Speak for Peace" with featured speaker, **Ken Feinberg**. The luncheon is on Monday, May 11, 2015, from 12pm - 1:30pm at the DoubleTree Biltmore Village. Ken Feinberg, a nationally known mediator, managed the victim compensation disputes for the September 11th Fund, the BP Deepwater Bombing Victim Fund, and the Boston Marathon Bombing Victim Fund, among others. Tickets are $50.00. For more information contact the Mediation Center at (828) 251-6089.

The N.C. State Bar Association is presenting the following programs. For more information or to register, contact the NCBA (800) 662-7407, or visit their website at www.ncbar.org.

Dispute Resolution Annual Section Meeting, Video Replays on April 9th, 2015, in Cary; April 17, 2015, in Asheville; and April 24, 2015, in Greensboro.

Trusts and Estates: Fiduciary Litigation and Dispute Resolution, on April 9th, 2015 in Winston-Salem.

THE PTSD Effect: Post-Traumatic Stress Disorder in Warzone Veterans Featuring John Mundt, PhD., on April 10, 2015 in Charlotte.

Dispute Resolution Section Meeting, on April 24, 2015 in Cary.

Clerk Training

Mediation, Inc.: 10-hour Clerk mediator training course available on DVD. For more information or to register, contact Andy Little at (919) 967-6611 or (888) 842-6157, or visit their web site at **www.mediationincnc.com**.

The ADR Center (Wilmington): 10-hour live Clerk mediator training course. For more information or to register, contact John J. Murphy at (910) 362-8000 or email johnm@theADRcenter.org, or visit their web site at **www.theADRcenter.org.**

DO YOU HAVE AN ETHICAL OR BEST PRACTICE CONCERN?

The Commission encourages all mediators who are facing an ethical dilemma or who have a question about rule interpretation to contact the Commission's office and request guidance. If time is of the essence, mediators may seek immediate assistance from Commission staff over the telephone or by e-mail. If time is not a factor, mediators may request a written opinion from the Commission. Written Advisory Opinions carry the full weight of the Commission and are issued when the Commission believes that a question and the Commission's response may be of interest to the wider mediator community. To view the **Advisory Opinions Policy**, go to www.ncdrc.org and click on "Mediator Ethics" and then click on "Advisory Opinions Policy". **Previously adopted Opinions** are archived on the web and may be searched using your keyboard's "Ctrl + F" function.

"For we are made for co-operation, like feet, like hands, like eyelids, like the rows of the upper and lower teeth. To act against one another then is contrary to nature."

— Marcus Aurelius

Commission Calendar

May 15, 2015	**Commission Meeting, Greensboro, NC**
July 1, 2015	**Certification Renewal Notices Sent out**
June 30, 2015	**2014/2015 Certification Expires**
August 14-15, 2015	**Annual Retreat, Asheville, NC**
September 30, 2015	**2015-2016 Renewal Period Closes**

All mediators are reminded that Commission meetings are open to the public. If you wish to be present, please let Commission staff know so that seating is assured. Information about Commission meetings and minutes are regularly posted on the Commission's website. www.ncdrc.org.

Continued from page 13

how to come to a mutual understanding of expectations and how to move forward with a common goal of success in competition.

***DRC** – Can you give me some idea of the kinds of disputes in which the USOC's Athlete Ombudsman might be likely to get involved?*

Ms. Wallace – As I mentioned earlier, my predecessor, John Ruger, was involved in a wide range of athlete rights issues, including eligibility to compete disputes, commercial and sponsorship disputes, code of conduct matters, disputes between athletes and coaches, and doping matters. Eligibility issues are interesting. The NGBs each establish criteria for athlete eligibility to compete in competitions or be chosen for teams that ultimately represent the U.S. at international events. The NGBs have an obligation to make it clear what an athlete has to do to make such a team. Some have established point systems, with the points weighted depending on the level of competition at an event. Others have a trial or play off kind of system. Sometimes athletes can be confused by the criteria or perhaps the criteria are not as clear as they should be. My role with selection procedures often involves working with the NGBs to encourage them to establish and adhere to clearly articulated procedures. I also work with athletes to understand these procedures and how to address any question or conflict that may arise relating to the application of these procedures. To add a layer of complication to this, the International Federations of each sport often modify the rules or alter the international competition schedule and the NGBs, in turn, have to modify their process and notify all athletes of each change. Things happen at a fast pace here, and as we get closer to an Olympic or Paralympic Games, the competition and urgency for these coveted spots get more intense.

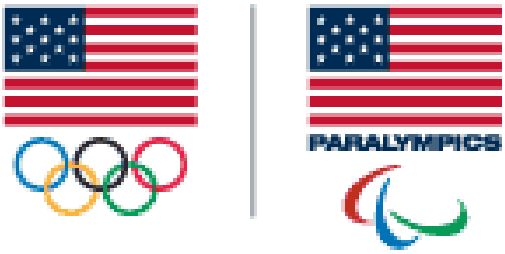
DRC -- We know you have been with the USOC for only a few short months, but can you give us any idea of how you hope to shape your position in the future?

Ms. Wallace – I hope to build on the successes of my predecessor and the relationships that have been created prior to my arrival. I am committed to the notion that dispute resolution furthers the values and goals of the Olympic Movement in the U.S. The use of dispute resolution can help lead to healthier environments; can enable athletes, with the help of their coaches, to maximize their potential and compete successfully; and be an integral part of the values of the international community in promoting a culture of peace through sport. Sport has such a far-reaching impact on youth empowerment, women's empowerment, international peace-building, health, accessibility, and environmental sustainability, and the success of each of these depend on collaboration and dialogue. I believe dispute resolution is the best tool we have to promote this collaboration and dialogue, whether it be at an individual level between a coach and an athlete, or at an international level when athletes from all nations come together safely to compete in the world's greatest sporting event.

DRC -- Thanks, Kacie, and please know that the Commission wishes you every success in your new position.

****

While she was a LLM candidate at the Straus Institute for Dispute Resolution at Pepperdine, Ms. Wallace authored an article for the *Marquette Sports Law Review* on the use of mediation in Olympic sport. To access the article click here.



THE COMMISSION THANKS OUTGOING MEMBERS FOR THEIR SERVICE:

The Commission sends its thanks and best wishes to N. Victor Farah, who recently completed his term on the Commission.

The Commission sends its thanks and best wishes to J. Anderson Little, Jaqueline Clare and N. Victor Farah who recently completed their terms on the Commission. Mr. Little served as the Chair of the Commission; Ms. Clare served as the Chair of the Commissions Stands and Advisory Opinions Committee; and Mr. Farah served on the Standards and Advisory Opinions Committee. Mr. Little and Ms. Clare have agreed to serve as Ex-Officio members of the Commission, as mentioned on page 5. Judge Cash thanked Mr. Farah at the November Commission meeting for his contributions to the Commission and said that he'd be missed.

Test Your Knowledge Answer Key:

1. True

2. False (Disclosing the terms of the agreement violates Standard III.)

3. False (A Report must be filed in EVERY case ordered to mediation.)

4. False (If two parties are represented by one attorney, they are deemed to owe one share, not two.)

5. False (See AO 23 (2012))

6. False (the mediator has the duty of confidentiality, but absent agreement, the parties do not)

7. False (only with the consent of the parties.)

8. False (A court-appointed mediator may not charge for mileage.)

9. True

10.True

11.True

12.False (The mediator should go ahead and schedule the conference.)

13.False (See AO 28 (2013))

14.False (You must re-designate your districts for court appointments every year at renewal.)

15.True

HOW'D YOU DO?

14-15 correct: You're on top of your game!

10-13 correct: A little refresher seems necessary!

Less than 10: Re-read program rules, standards, advisory opinions– before your next mediation!

Judicial Retirement Chart

Title	Number of Current Employees	Employees Eligible to Retire in One Year	%	Employees Eligible to Retire in Three Years	%	Employees Eligible to Retire in Five Years	%	Employees Eligible to Retire in Seven Years	%	Employees Eligible to Retire in Ten Years	%
DC Judicial Assistant I	24	0	0.0%	0	0.0%	5	20.8%	5	20.8%	8	33.3%
DC Judicial Assistant II	32	1	3.1%	4	12.5%	5	15.6%	5	15.6%	7	21.9%
DC Trial Court Coordinator	33	4	12.1%	6	18.2%	9	27.3%	14	42.4%	15	45.5%
Family Court Administrator	9	1	11.1%	2	22.2%	3	33.3%	5	55.6%	5	55.6%
Family Court Case Coordinator	34	1	2.9%	4	11.8%	4	11.8%	6	17.6%	10	29.4
Family Court Coordinator II	2	0	0.0%	0	0.0%	0	0.0%	1	50.0%	2	100.0
SC Judicial Assistant I	12	3	25.0%	3	25.0%	4	33.3%	4	33.3%	5	41.7
SC Judicial Assistant II	21	1	4.8%	3	14.3%	3	14.3%	7	33.3%	8	38.1
SC Trial Court Coordinator	48	10	20.8%	15	31.3%	23	47.9%	24	50%	27	56.3%
Trial Court Administrator	10	3	30.0%	4	40.0%	6	60.0%	7	70.0%	7	70.0%
Chief DC Judge	42	15	35.7%	23	54.8%	27	64.3%	33	78.6%	37	88.1%
DC Judge	226	27	11.9%	47	20.8%	63	27.9%	75	33.2%	106	46.9%
Senior Resident SC Judge	50	21	42.0%	30	60.0%	36	72.0%	37	74.0%	41	82.0%
SC Judge	47	13	27.7%	20	42.6%	26	26%	33	70.2%	37	78.7%

STATISTICS

FY 2013-2014 - MSC Program

		Cases entering MSC				Cases exiting MSC process						
District	Begin Pending (07/01/2013)	Ordered or Sent to Mediated Settlement Conference	Voluntarily Submitted to Mediation Settlement Conference	Ordered or Submitted to Other Settlement Procedure	Total Caseload for FY 2013-14	Ordered Exempted from ADR	Settled Prior To or During ADR Recess	All Issues Resolved at ADR	No issues resolved at ADR	Disposed Without ADR Session	Cases Completing Process during FY 2013-14	End Pending (06/30/2014)
D1 Total	111	57	8	1	177	3	0	35	27	14	79	98
D2 Total	128	71	0	0	199	0	0	25	24	12	61	138
D3A Total	82	142	15	0	239	0	28	52	62	23	165	74
D3B Total	446	90	0	0	536	0	0	24	35	8	67	469
D4A Total	27	45	1	0	73	0	0	13	15	30	58	15
D4B Total	115	108	3	0	226	0	0	21	20	79	120	106
D5 Total	945	115	0	0	1,060	0	21	68	47	224	360	700
D6A Total	22	44	0	0	66	0	1	10	5	2	18	48
D6B Total	79	6	0	0	85	0	0	1	4	5	10	75
D7A Total	14	34	0	0	48	0	3	4	6	0	13	35
D7BC Total	184	159	1	0	344	2	20	78	38	21	159	185
D8A Total	62	36	0	0	98	4	1	16	10	16	47	51
D8B Total	209	153	0	1	363	8	9	23	19	106	165	198
D9 Total	113	103	3	3	222	2	0	49	22	36	109	113
D9A Total	72	28	0	0	100	1	3	6	9	0	19	81
D10 Total	163	994	8	0	1,165	8	188	308	153	66	723	442
D11A Total	237	129	4	1	371	1	12	23	22	21	79	292
D11B Total	272	290	0	0	562	8	0	32	34	12	86	476
D12 Total	115	354	0	0	469	37	102	123	93	0	355	114
D13A Total	229	84	0	0	313	0	1	29	20	49	99	214
D13B Total	72	102	0	1	175	0	2	33	31	45	111	64
D14 Total	522	294	0	0	816	0	1	89	43	30	163	653
D15A Total	110	112	0	1	223	2	34	34	26	7	103	120
D15B Total	249	189	1	13	452	5	26	34	27	62	154	298
D16A Total	7	58	1	0	66	0	1	18	21	6	46	20
D16B Total	6	56	0	0	62	0	2	35	25	0	62	0
D17A Total	26	48	0	0	74	0	2	0	0	0	2	72
D17B Total	365	58	1	0	424	0	1	18	21	6	46	378
D18 Total	136	536	0	0	672	0	0	169	124	117	410	262
D19A Total	76	125	11	0	212	1	24	38	62	27	152	60

Continued on page 27

FY 2013-2014 - MSC Program

		Cases entering MSC				Cases exiting MSC process						
District	Begin Pending (07/01/2013)	Ordered or Sent to Mediated Settlement Conference	Voluntarily Submitted to Mediation Settlement Conference	Ordered or Submitted to Other Settlement Procedure	Total Caseload for FY 2013-14	Ordered Exempted from ADR	Settled Prior To or During ADR Recess	All Issues Resolved at ADR	No issues resolved at ADR	Disposed Without ADR Session	Cases Completing Process during FY 2013-14	End Pending (06/30/2014)
D19B Total	55	101	2	0	158	3	4	30	48	14	99	59
D19C Total	71	130	1	0	202	1	14	30	44	37	126	76
D19D Total	392	130	1	0	523	1	14	30	44	37	126	397
D20A Total	36	53	14	0	103	0	2	19	20	15	56	47
D20B Total	72	155	0	1	228	2	0	43	36	36	117	111
D21 Total	1,634	530	4	9	2,177	1	0	87	82	39	209	1,968
D22A Total	217	151	0	16	384	2	17	59	50	42	170	214
D22B Total	334	76	12	0	422	0	5	22	19	7	53	369
D23 Total	79	84	6	0	169	3	14	19	24	13	73	96
D24 Total	133	91	10	0	234	3	4	36	30	34	107	127
D25A Total	248	80	0	46	374	0	0	19	21	0	40	334
D25B Total	234	109	0	0	343	0	0	0	0	56	56	287
D26 Total	639	1,129	81	12	1,861	29	168	343	333	45	918	943
D27A Total	248	119	0	0	367	0	0	42	36	14	92	275
D27B Total	2	76	8	0	86	0	0	29	16	10	55	31
D28 Total	333	98	1	1	433	0	1	4	17	7	29	404
D29A Total	196	55	10	1	262	0	3	21	5	24	53	209
D29B Total	228	83	10	0	321	1	28	36	29	3	97	224
D30A Total	138	111	0	2	251	2	0	23	18	84	127	124
D30B Total	240	118	0	0	358	2	0	26	20	11	59	299
FY 13-14 MSC TOTAL	**10,723**	**8,099**	**217**	**109**	**19,148**	**132**	**756**	**2,326**	**1,937**	**1,552**	**6,703**	**12,445**

Statistics FY 2013-2014 - FFS PROGRAM

		Cases entering alternative dispute resolution (ADR)					Cases exiting from ADR process							
District	Begin Pending (07/01/2013)	Ordered to Mediation Settlement Conference	Voluntarily Submitted to Mediation Settlement Conference	Ordered to Judicial Settlement Conference	Submitted to Other Settlement Procedure	Total Caseload for FY 2013-14	Ordered Exempted from ADR	Settled Prior to or During ADR Recess	All Issues Resolved at ADR	Partially Resolved at ADR	No issues resolved at ADR	Disposed Without ADR Session	Cases Completing Process During FY 2013-14	End Pending (06/30/2014)
D2 Total	22	20	0	0	0	42	1	0	3	2	1	0	7	35
D3A Total	14	43	0	0	0	57	0	0	24	0	9	11	44	13
D3B Total	1,155	329	0	0	0	1,484	1	0	32	9	11	4	57	1,427
D4 Total	50	0	35	0	1	86	1	2	16	1	3	0	23	63
D5 Total	302	241	0	0	0	543	0	0	49	0	16	174	239	304
D6A Total	5	6	0	3	0	14	0	0	8	1	2	3	14	0
D7 Total	3	0	0	0	0	3	0	0	2	0	0	0	2	1
D8 Total	15	35	0	0	0	50	4	0	5	0	18	6	33	17
D9A Total	1	0	0	0	0	0	0	0	0	0	1	0	1	0
D10 Total	175	253	6	6	12	452	0	1	61	7	39	163	271	181
D11 Total	252	29	5	0	0	286	15	6	28	2	27	15	93	193
D12 Total	116	338	0	53	0	507	34	0	33	14	31	180	292	215
D13 Total	1	0	0	0	0	1	0	0	0	0	0	0	0	1
D14 Total	4	59	0	0	0	63	0	0	3	2	2	0	7	56
D16A Total	12	0	0	0	0	12	0	0	0	0	1	0	1	11
D16B Total	0	59	0	0	0	59	0	0	3	2	2	0	7	52
D17A Total	24	37	2	0	0	63	0	2	11	4	11	14	42	21
D8 Total	501	257	0	0	0	758	1	3	43	6	16	192	261	497
D19A Total	5	61	0	0	0	66	0	0	22	6	20	18	66	0
D19B Total	60	57	6	37	0	160	8	40	43	4	21	6	122	38
D19C Total	1	38	1	0	0	40	0	0	16	2	8	9	35	5
D20A Total	13	48	0	0	0	61	1	2	30	0	6	10	49	12
D20B Total	94	136	0	0	0	230	0	0	52	0	0	34	86	144
D21 Total	312	34	0	0	12	358	0	0	32	101	43	136	312	46
D22A Total	0	0	41	0	0	41	0	0	17	9	15	0	41	0
D22B Total	1	0	87	0	0	88	0	0	21	5	13	0	39	49
D23 Total	0	51	3	0	0	54	3	1	9	2	11	20	46	8
D24 Total	48	56	13	0	0	117	0	1	11	0	6	14	32	85
D25 Total	221	165	30	0	0	416	13	2	32	7	33	72	159	257
D26 Total	740	64	0	134	0	938	7	0	63	0	100	14	184	754
D27A Total	102	12	7	0	0	121	0	0	2	0	4	4	10	111
D27B Total	29	77	6	3	0	115	0	0	8	0	0	67	75	40
D28 Total	71	123	0	0	0	194	0	0	39	12	21	79	151	43
D29A Total	44	52	0	0	0	96	0	2	5	2	11	28	48	48
D29B Total	91	10	1	0	0	102	0	0	1	1	1	10	13	89
D30 Total	50	20	0	2	0	72	2	11	19	5	14	4	55	17
FY13-14	**4,534**	**2,710**	**243**	**238**	**25**	**7,749**	**91**	**73**	**743**	**206**	**517**	**1,287**	**2,917**	**4,833**

Some begin pending numbers changed by local audit