2014
Volume 14, Issue 1

The Intermediary

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

From the Chair

By J. Anderson Little

NEWS FROM THE DRC

To Draft (Settlement Agreements) or Not To Draft; That is the Question!

For several years, the Commission's attention has centered on the question of whether mediators should draft settlement agreements for the parties at the conclusion of the mediation process.

The issue itself may seem odd to some of you, particularly those who frequently mediate the settlement of insured claims. What's the big deal, you may ask. Just fill in the form with the amount and terms securing any future payments, give it to the attorneys for review, get the appropriate signatures, and put it in the "settled" column! In most cases in superior court that approach may be quite reasonable; because in reality, mediators often take dictation from the attorneys and those same attorneys review the final draft with their clients and suggest changes before signing it.

However, with the NC Supreme Court's decision in Chappell v. Roth, 353 N.C. 690, 548 S.E.2d 499 (2001), even filling in the standard motor vehicle accident settlement form has become more complicated. The terms of any release required to settle the case are now deemed to be material to the settlement. So, the precise wording of the release has become a major topic at the end of the process.

What does a mediator do? Do you recess the mediation until the exact language of the release has been scrutinized and agreed upon? Do you work with the attorneys to hammer out that language, perhaps using a "go-by release"

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provided by you, so that you can get a final document that day? Drafting even a "simple" motor vehicle accident settlement agreement has become more than just filling in the blanks.

In cases that don't lend themselves to a "fill-in-a-form" settlement agreement, such as business cases or equitable distribution of marital property cases, the notion of drafting a settlement agreement becomes even more complicated. In fact, it is frequently the case that the parties reach apparent agreement but aren't able to draft the complex, written agreement that is required to seal the deal. This is another "drafting" issue for the mediator.

We learned in mediation training that it is helpful to have a written summary of the parties' "tentative" agreement in circumstances such as these, in order to ensure clarity about the terms and in order to provide a "go-by" for the attorney who is designated to draft the final agreement. Until recently, however, there has not been a form that would help out with this "drafting problem."

In the past several years, the issue of mediator drafting has taken a different turn. Specifically, In **2012 Formal Ethics Opinion 2**, the NC State Bar held that an attorney-mediator could not prepare a binding business contract for two **pro se** parties at the end of the mediation, because the attorney-mediator had a "non-consentable" conflict of interest and would be improperly practicing law if he drafted the contract requested by the parties.

N.C. Gen. Stat. §84-2.1 defines "practicing law" as "performing **any legal service** for any .other person, firm or corporation, with or without compensation" (emphasis added). In **2012 Formal Ethics Opinion 2**, the NC State Bar concluded that the preparation of binding agreements for **pro se** parties is indeed "practicing law." When the litigants appear **pro se**, mediators have additional drafting issues. For attorney-mediators, it raises the issue of the improper practice of law. For non-attorney-mediators, it raises the issue of the unauthorized practice of law.

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Fast forward to December 6, 2013. At its regular quarterly meeting, the Dispute Resolution Commission adopted **Advisory Opinion 13-28** which addresses some of the issues surrounding the drafting of settlement agreements for **pro se** litigants by mediators. In **AO 13-28**, a divorcing couple, both of whom were **pro se**, asked the attorney-mediator to prepare a binding agreement dealing with their property division.

Standard VI of the Standards of Conduct for Certified Mediators, "Separation of Mediation from Legal and Other Professional Advice," begins: "A mediator shall limit himself or herself solely to the role of mediator, and **shall not give legal or other professional advice during the mediation**." (emphasis added). Since the NC State Bar regards the drafting of agreements as the "practice of law" under **N.C. Gen Stat. §84-2.1** (i.e., performing "any legal service…"), the mediator who drafts agreements for **pro se** parties would be in violation of Standard VI, as "any legal service" most certainly includes giving "legal advice" as set out in the Standard. Under the facts presented in **AO 13-28**, facts that are strikingly similar to **2012 FEO 2**, the mediator would be "practicing law" if s/he prepared an agreement that the **pro se** parties intended to be binding.

For two different reasons, then, a certified mediator should not draft a binding settlement agreement for **pro se** parties. To do so would be a violation of either the NC State Bar's Rules of Professional Conduct or **N.C. Gen. Stat. §84-2.1**, and it would be a violation of Standard VI of The Standards of Conduct for Certified Mediators.

Additions to the Mediator's Toolbox

So, what is a mediator to do when an agreement is reached with **pro se** parties who want the mediator to prepare binding agreements to provide closure to their situation? **NC State Bar 2012 FEO 2** expressly states that it "does not prohibit a lawyer-mediator from assisting the parties in preparing a written summary reflecting the parties' mutually acceptable understanding of the issues….**as long as the lawyer-mediator does not represent to the pro se parties that the summary is being prepared as a legally enforceable document**." (emphasis added).

At its recent meeting on February 21, 2014, the Commission adopted a new form called a **"Mediation Summary"** to deal with the two problems outlined in this article. The mediation summary can be used when the attorneys cannot complete a written, binding agreement in the mediation session and would find a written summary helpful as a guide to the later drafting of a more formal agreement. It is clear from the wording of the new mediation summary form that it is not intended to be a binding agreement. This will be a handy tool for the parties to help them clarify the details of their discussion, understandings and tentative agreements.

The mediation summary is also useful in situations in which there are one or more **pro se** parties. The mediator may assist the parties in writing a summary of what they have discussed and tentatively agreed to, but does so with the aid of the mediation summary that clearly states that it is not intended to be a binding contract. At the conclusion of the mediation process, the mediator should advise the parties to take their mediation summary to an attorney who will draft a binding settlement agreement or to the court for the entry of a memorandum of judgment.

While the facts presented in both **NC State Bar 2012 FEO 2** and **AO 13-28** involved situations in which all parties are **pro se**, it is important to note that the Commission advises mediators to use the new Mediation Summary and not a Mediated Settlement Agreement when **any** party to an action is **pro se**. We believe that course of conduct will keep mediators from violating either the State Bar's rules or the Supreme Court's Standards of Conduct for Certified Mediators.

The Commission has also developed two **MSC settlement agreement forms and one FFS settlement agreement form**. These are not required or mandated by the Commission but can be used when the parties need a handy guide to memorialize their settlement agreement. The Commission advises that mediators have the parties and their attorneys complete the form and that mediators not sign it.

The new forms mentioned in this article, together with instructions for their use, will be posted soon on the Commission's website under the "**Toolbox**" section.

I urge you to become familiar with these forms and with **NC State Bar 2012 FEO 2** and **AO 13-28**, as both opinions have implications for your mediation practice. The Commission welcomes your questions, comments and thoughts about its advisory opinions.

Commission Adopts New Advisory Opinion

Advisory Opinion 13-28

Advisory Opinion of the

NC Dispute Resolution Commission

Opinion Number 13-28
(Adopted and Issued by the Commission on December 6, 2013)

N.C. Gen. Stat. §7A-38.2(b) provides, "[t]he administration of mediator certification, regulation of mediator conduct, and certification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department." On August 28, 1998, the Commission adopted an Advisory Opinions Policy encouraging mediators to seek guidance on dilemmas that arise in the context of their mediation practices. In adopting the Policy and issuing opinions, the Commission seeks to educate mediators and to protect the public.

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Concern Raised

Certified mediator, who is a lawyer, is asked by a married couple to mediate an agreement to divide their property and to assign spousal support. The married couple has separated and intends to divorce, but the parties are not represented by legal counsel and have not filed pleadings with the court. They advise the mediator that they are not interested in retaining attorneys to assist them with the mediation. The mediator conducts the mediation and the parties reach an agreement on all issues. The couple then advises the mediator that they want him to prepare a binding agreement for their signatures. Mediator asks the following:

> (1) Whether he may ethically prepare the agreement for the couple under the circumstances described and, if so, what the ethical responsibilities and constraints are that he should consider in undertaking this task?

The parties also ask the mediator to help them file their agreement with the court. The mediator understands that because he has served as their mediator, he cannot now represent one of them in the action. (See Standard VII.C. and Advisory Opinion 04-06). However, he questions whether he can provide other assistance to them in finalizing their agreement and asks the following:

> (2) Whether he may file an action on their behalf for the sole purpose of having their agreement incorporated

Advisory Opinion

(1) Preparation of Agreement

This inquiry is based upon facts that occur with great frequency. A divorcing couple asks a mediator for assistance with the resolution of financial and other issues involved in the dissolution of their marriage. They do so with the intent of "one-stop shopping." They want to hire the mediator to help them discuss their issues and help them make decisions, and they want the mediator to prepare legal documents that will effectuate their agreement, whether by contracts, property settlement agreements, deeds, and/or consent orders. It is understandable that family mediators may be sympathetic to the desire of parties for an economical settlement and may find themselves in the position of being asked to draft binding and enforceable contracts of settlement.

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Standard VI, of The Standards of Professional Conduct for Mediators, which is entitled "Separation of Mediation from Legal and Other Professional Advice," begins as follows: "A mediator shall limit himself or herself solely to the role of mediator, and shall not give legal or other professional advice during the mediation." Accordingly, to answer the first question of this inquiry, it is necessary to decide whether the preparation of a binding agreement for unrepresented parties constitutes the practice of law. If it does, then the mediator would be in violation of Standard VI in preparing such a document.

N.C. Gen. Stat. §84-2.1 states that the phrase "practicing law" means "performing any legal service for any other person, firm or corporation, with or without compensation …". The Commission notes that the North Carolina State Bar is the agency responsible for regulating the practice of law in North Carolina, and therefore, of particular importance in this inquiry is how the State Bar interprets "practicing law" within the meaning of the statute. In response to the Commission's inquiry of the State Bar, the Commission was informed that persons who "draft" contracts for others are "practicing law."

It is clear from the facts presented in this inquiry that the parties have asked the mediator to draft a contract settling the issues of their divorce; therefore, if the mediator drafts such a contract, he or she would be, according to the State Bar, practicing law. Accordingly, the mediator would do so in violation of Standard VI.

The Commission also cautions certified mediators to review North Carolina State Bar 2012 Formal Ethics Opinion 2. In that opinion, a lawyer-mediator was asked by unrepresented business people to draft a business contract that would resolve the matters in dispute in the mediation. The State Bar opined that the attorney's conflict of interest in representing two adverse parties could not be waived because he had mediated their dispute. In other words, the attorney had a "non-consentable conflict of interest" and would improperly practice law if he drafts the contract requested by the parties. The facts of the present inquiry are similar, particularly given that the parties are not represented by legal counsel. Accordingly, when a certified mediator is presented with a fact situation as set forth in the present inquiry, the mediator should also consider the ramifications of his actions in light of the State Bar opinion.

The certified mediator may not draft the parties' settlement agreement in the circumstances presented. To do so would be in violation of Standard VI.

(2) Filing Action to Incorporate Agreement into Court Order

To answer the second question, the Commission must first look to whether the preparation and filing of an action in a court of law is the practice of law. If it is, then the analysis in answer to the first question above would apply, and the mediator should not file the action.

N.C. Gen. Stat. §84-2.1 states that the phrase "practicing law" means "performing any legal service for any other person, firm or corporation, with or without compensation …". Clearly the preparation and filing of a lawsuit is a legal service and, therefore, the practice of law. If the lawyer-mediator assists the divorcing couple by filing an action to incorporate the agreement into a court order, then he would be practicing law, and thus, mixing the roles of mediator and lawyer.

If the mediator performs this task, and mixes the roles of mediator and lawyer, he runs the risk of violating Standard VI, as discussed above. He would also be in violation of Standard VII, which provides in pertinent part that "[a] mediator who is a lawyer … shall not advise, counsel or represent any of the parties in future matters concerning the subject of the dispute, an action closely related to the dispute or an outgrowth of the dispute …". It is clear that the mediator would violate Standards VI and VII if he files an action to incorporate the agreement into a court order by consent under the facts of this inquiry.

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.

SPOTLIGHT ON DRC COMMISSION MEMBERS

THANK YOU FOR YOUR WILLINGNESS TO SERVE!

Judge Teresa Vincent

Judge Vincent has served on the district court bench in Greensboro since 2000. She is especially proud of the opportunity to preside over Drug Treatment Court, a program that has helped hundreds of people recover from alcohol and substance abuse and become more productive and responsible citizens. Judge Vincent also served as an assistant district attorney for seven years. She is a graduate of NCCU and NCCU School of Law. Judge Vincent received the Judge of Excellence award from Court Watch of NC in 2009 and a rating of "excellent" in the 2011 NC State Bar Judicial Evaluation survey. Judge Vincent is married to Dr. Drewry Vincent and they have one child. Judge Vincent was appointed to the DRC by the Chief Justice on October 1, 2012. She has been and is active in many community organizations including the Women's Professional Forum, NC State Bar Board of Legal Specialization, and Family Services of the Piedmont.

Commissioner Lorrie L. Dollar

Commissioner Dollar has served as Commissioner of Administration for the Department of Public Safety since January, 2013. Prior thereto, she practiced with Stephenson, Gray and Waters, PLLC, in Cary, NC. She also served as Chief Deputy State Auditor from 2006-2007, as a deputy commissioner at the NC Industrial Commission from 1993-2005, and as staff attorney and later chief legal counsel for the NC Department of Corrections from 1986-1992. Appointed by the Speaker of the NC House, she has served on the DRC since October 1, 2012. Ms. Dollar graduated from UNC Chapel Hill and NCCU School of Law. She is married to Nelson Dollar, a representative in the NC House, and they have one son. Ms. Dollar is active in many legal and community groups including the Worker's Compensation section and the Medico-Legal Liaison Committee of the NC Bar Association and the Occoneechee Council of Boy Scouts of America. She is an avid UNC basketball and Carolina Hurricanes hockey fan.

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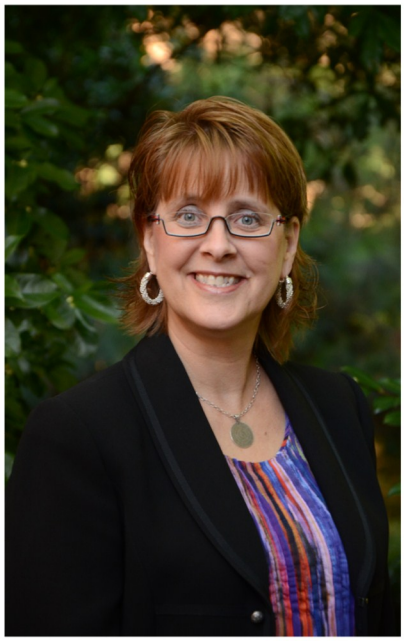
Diann Seigle is the Executive Director for Carolina Dispute Settlement Services, a community mediation center that provides alternative dispute resolution services for North Carolina. Ms. Seigle's areas of practice include mediation, arbitration, med-arb, mediation training and dispute resolution system design. She is an Advanced Family Practitioner member of the Association for Conflict Resolution and has mediated over six thousand cases in the family, Medicaid, employment, Superior Court and criminal arenas. Ms. Seigle has designed and implemented many of the current mediation programs operating in North Carolina, including the Office of Administrative Hearings' Medicaid Appeal Program, North Carolina Office of State Human Resources' Grievance Mediation Program, UNC HealthCare Mediation Program, and IACT, a medical error program. Ms. Seigle has presented at numerous American Bar Association meetings. She has served as a member of the NC Bar Association ADR Council and the Domestic Violence Task Force for Wake County. She has served as a Board Member of the Mediation Network of North Carolina and as a previous two-term Commissioner of the North Carolina Dispute Resolution Commission. Ms. Seigle was recently appointed by the Chief Justice to serve a third term.



Lucas Armeña

Mr. Armeña was recently appointed to the Commission by Governor Pat McCrory. He comes to the Commission with experience as a paralegal and a settlement coordinator at several law firms in New Jersey, South Carolina and North Carolina. Mr. Armeña also served as the Donor Coordinator for LifePoint, Inc., an Organ/Tissue Donation Program in Charleston, SC. He also has experience as an Emergency Medical Technician in New Jersey and in New York, and was a first responder at the World Trade Center on 9/11. A New Jersey native, Mr. Armeña graduated from Wagner College in NY with a degree in sociology, with a concentration in criminal justice. He is currently pursuing a master's degree in Emergency Management and Business Continuity from the NJ Institute of Technology. Mr. Armeña resides in Henderson County, NC, and serves as a board member of the Young Professionals of Asheville.

THE COMMISSION THANKS OUTGOING MEMBERS FOR THEIR SERVICE:

M. Ann Anderson, Attorney and Mediator, Pilot Mountain

Superior Court Judge Michael Morgan, 10th Judicial District, Raleigh

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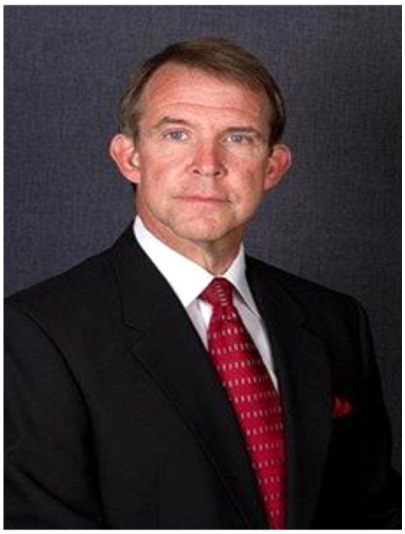
Richard G. Long, Jr.



Mr. Long grew up in Roxboro, NC, graduated from UNC-Chapel Hill in 1979, and obtained his law degree from Wake Forest Law School in 1982. He moved to Union County and began a general practice of law, including criminal, corporate, real estate, and family law matters. In 1995, Richard merged his practice with Perry and Bundy and became a general partner. Currently he serves as the Managing Partner at the firm, Perry, Bundy, Plyler, Long & Cox, LLP. The primary focus of Mr. Long's practice at present is dedicated to family law and mediation, although he continues to handle residential real estate and corporate matters. Richard is a certified FFS mediator (2001) and was Board Certified in Family Law in 2007. He was appointed to the DRC by the Chief Justice and has served since October, 2012. Richard is active in his community and his church. He enjoys spending time with his wife, Susan, and their three children.

Judge Yvonne Mims Evans

Judge Evans is a Resident Superior Court Judge for District 26, Mecklenburg County. She is a native of Hendersonville, NC, and attended Wellesley College, in Wellesley, MA, and Duke University School of Law. Judge Evans was elected to the district court bench in 1992, and served until 2003, when she was appointed to an unexpired term on the superior court bench where she has served since. Prior to her service on the bench, Judge Evans practiced with the firm of Chambers, Stein, Ferguson and Becton from 1976-1988, and with the Children's Law Center from 1989 until 1992. In addition to serving on the Dispute Resolution Commission, Judge Evans previously served on the Chief Justice's Commission on Professionalism and the State Drug Court Advisory Committee. Judge Evans is married with three children. She is active in the Charlotte community, in particular with the United Way, The Links, Inc., and Friendship Missionary Baptist Church.

SUPREME COURT ADOPTS COURT PROGRAMS RULE CHANGES

Effective April 1, 2014

I. Changes to Program Rules

A. Changes common to the Mediated Settlement Conference Program (MSC), Family Financial Settlement Conference (FFS) Program, Clerk Program and Farm Nuisance Program Rules.

1. Amendments to the annual certification renewal process for court appointments.

The new rules eliminate the requirement that mediators write letters to each senior resident superior court judge (MSC program,) or the district court (FFS program) of the districts in which they wish to accept court appointments and which are not contiguous to the county in which they reside and mail them to the Commission. The new rules will require all mediators ***on an annual basis to affirmatively designate on their renewal applications those judicial districts (MSC, FFS, Farm) or counties (Clerk) for which they are willing to accept court appointments.*** MSC Rule 2.C, FFS Rule 2.B, Clerk Rule 2.B, and Farm Rule 2.C. Included in these amendments is a provision whereby the mediator must certify that if appointed, s/he ***will*** accept said appointment, become familiar with any applicable local rules, and not seek payment for any costs of time and travel. Failure to accept an appointment may be grounds for removal from that district's or county's court appointed list.

2. Amendments to program rules regarding the location of the mediation.

The amendments eliminate inconsistencies between programs and simplify scheduling processes by directing that the mediation be held wherever the parties and the mediator agree, or in the absence of agreement, in the county where the action is pending, in the discretion of the mediator. See revised MSC Rule 3.A, FFS Rule 3.A, Clerk Rule 3.A, and Farm Rule 4.C.

B. Amendments to the observation requirements for certification under the MSC and FFS programs.

It has become increasingly difficult for applicants to schedule and observe the number of mediations required for certification. Amendments to the rules are intended to broaden the pool of cases eligible for observations. MSC Rule 8.C and FFS Rule 8.D. Mediators are encouraged to permit observers. MSC Rule 8.J and FFS Rule 8.K.

C. Changes to certification requirements under FFS Rule 8.A.

Changes were made to the FFS Rules to eliminate inconsistencies between the certification requirements for the FFS and MSC programs, set forth in Rule 8 of both program rules.

D. When an FFS agreement must be properly acknowledged.

N.C. Gen. Stat § 50-20(d) requires the parties to acknowledge any agreement reached as to the distribution of property. However, as a practical matter, it can be difficult to have access to a notary public at the mediation. In many cases, the parties intend to submit and do submit their agreement to the court for approval. The amendment to FFS Rule 4.B clarifies that agreements reached at mediation or thereafter need not be formally acknowledged where the parties intend to submit their agreement to the Court. Any property settlement agreement not submitted to a court for approval will not be enforceable unless it is properly acknowledged as required by N.C. Gen. Stat. §50-20(d).

II. Changes to the Standards of Professional Conduct for Mediators

A. Standard III, Confidentiality.

Amendments to Standard III allow the mediator to disclose to the court certain procedural matters if the mediator believes that communicating such matters will aid the mediation process and is with the consent of the parties. Such disclosures

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are in addition to those allowed under the former language of the Standard: e.g., the filing of the Report of Mediator and the disclosure of correspondence or communications from a participant relating to the fees of the mediator where the mediator is seeking payment of his/her fee.

Please note that the confidentiality provisions set out in Standard III apply ONLY to the mediator and not to the participants at the mediated settlement conference.

B. Standard VII, Conflicts of Interest.

Standard VII has been amended to clarify mediator giving and receiving of gifts. It provides that a mediator shall not give or receive any commission, rebate or other monetary or non-monetary form of consideration from a party or representative of a party in return for referral or expectation of referral of clients for mediation services. A mediator may, however, give or receive *de minimis* offerings such as sodas, cookies, snacks or lunches served to those attending mediations conducted by the mediator and intended to further those mediations or intended to show respect for cultural norms.

III. Changes to the Rules of the North Carolina Supreme Court for the Dispute Resolution Commission

A. Committee restructure.

Commission committees have been restructured, renamed, and duties enumerated in the revised Rules. DRC Rules VIII – XI.

AMENDMENTS TO PROGRAM RULES AND STANDARDS EFFECTIVEAPRIL 1, 2014.

The Commission urges mediators to read and familiarize themselves with all amended program rules prior to their effective date. Find them at

http://nccourts.org/Courts/CRS/Councils/DRC/NARules.asp

Remember You Are The Case Manager!

Certified mediators often tell Commission staff just how much they enjoy mediating. They say they like the give and take involved in the process and the sense of accomplishment they feel when the parties engage and an agreement results. Meeting with the parties and conducting the conference is important work and it's great to hear that mediators enjoy it! Sometimes, though, it seems that mediators can be so focused on that facet of their work that they tend to give their corresponding role as case manager short shrift. No doubt we can all agree that scheduling conferences and filling out reports will never be as fulfilling as sitting down with the parties to help them work things out. However, that does not mean that case management is somehow less important to the operations and success of our courts' mediated settlement conference programs than the time spent at the table with the parties. **In fact, it is just as important to be a good case manager as a good mediator!**

Enabling legislation for the MSC Program (G.S. 7A-38.1(a)) charges the program with making civil litigation more **economical, efficient, and satisfactory to litigants and the State**. G.S. 7A-38.4A(a)) sets similar goals for the Family Financial Settlement Program. To conserve tax dollars, program Rules charge mediators, and not court staff, with the responsibility for case management of these programs. MSC Rule 6.B(5) provides that it is the mediator's duty to schedule and conduct the conference before the deadline set by the court. MSC Rule 6.B(4) provides for the mediator to report the result of the conference to the court within 10 days of the conclusion of the conference or within 10 days of being notified the case has settled. These duties are considered so important that subsection (d) of that same rule provides that

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*(**YOU ARE THE CASE MANAGER,** Continued from page 10)*

mediators who fail to report in accordance with the rule shall be subject to sanctions. The FFS Rules mirror these requirements.

When mediators fail to manage, it creates harm on two levels:

Caseload Statistics Fall Short -- When Reports of Mediator aren't filed, court staff cannot accurately report caseload statistics for mediated settlement conference programs. Staff may not know whether mediation occurred in those cases, or if it did, whether the process was successful. Moreover, information on tardy reports that arrive after a case is closed may never make it into the system with the result that the program receives no credit for those mediations or settlements .

Caseload statistics can be particularly problematic for the FFS Program since at least some of the mediators serving that Program are not trained or certified. Please help your fellow FFS mediators who are not filing reports to understand their case management responsibilities and the importance of complying.

Finally, when Reports aren't filed, the AOC and Commission are hampered in their efforts to document the programs' successes; and, it makes it difficult to advocate for the continuation of the programs if actual outcomes are not being reported and reviewed by the Judicial Department.

The Courts Lose Some Efficiency -- When court staff doesn't hear from a mediator by the deadline for completion, they must often spend time tracking mediators or parties down to inquire about the case. In addition, more consistent and timely mediator reporting leads to firmer dockets and frees court staff and judges to focus their attention on cases that did not settle or on other court matters.

Recent conversations with court staff revealed that some mediators still fall short in managing the cases assigned to them for mediation. Staff offers mediators the following hints:

Don't let uncooperative parties deter you. If your calls and emails are not being returned or you can't get the parties to agree on a date for the conference, most judicial districts want mediators to take the bull by the horns and schedule the matter, notifying the parties of the date, time, and location of the conference.

Actively encourage parties to meet their deadline for completion. Sometimes there are good reasons for an extension of the deadline for completion, but many court staff report being overwhelmed with these requests. If you doubt the necessity of an extension, try pushing the parties forward.

Timely File Reports of Mediator. Court staff report that some mediators are under the impression they are required to file a report only if a conference is actually held. As noted above, mediators must report not only on conferences conducted, but cases that settle prior to mediation. In addition, some court staff note that mediators assume they are aware of everything that happens in court, which isn't always true. For example, a judge may grant a dismissal on a summary judgment motion and that information not filter down to staff who are still waiting to hear from the mediator. So, when a case is assigned to you as mediator, always file a report, no matter what happens with the case.

Fully complete your Reports of Mediator. Don't leave off information requested on the Report and if you are using a pen to complete your Report, please write legibly.

File only one Report per case. Court staff notes that mediators will sometimes file more than one report in cases that are recessed. That can be confusing for court staff who need a Report only on the final outcome.

The Commission strongly encourages all mediators to take their case management responsibilities seriously. The Commission will appreciate your efforts in that regard and sincerely hopes that you will find just as much satisfaction in helping our courts run efficiently as you do in helping parties reach agreement.

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 May 19-23, 2014, 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 April 14 - 18, 2014, in Raleigh, NC, and August 12-16, 2014, in Charlotte, NC. 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 April 16-18, 2014, 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, July 21-25, 2014, in Raleigh, NC.

Mediation, Inc.: 16-hour supplemental course, July 23-25, 2014. 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 April 25, 2014, in Raleigh, NC.

Mediation Inc.: 6-hour training course on May 3, 2014, in Raleigh, NC. See above for contact information.

The ADR Center (Wilmington): 6-hour course on March 28, 2014, in Wilmington. 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 ADR Center (Wilmington) is presenting the following programs. 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.**

"Basic Mediation Training in the District Criminal Court Program" on June 11 - 13, 2014, and September 24-26, 2014.

"Advanced Mediation Training in Dealing with Difficult People," on April 11, 2014.

"Advanced Mediation Training on Activity Based Parenting," on June 10, 2014.

"Advanced Mediation Training on Having Difficult Conversations," on September 12, 2014.

"Conflict Management and Critical Communications for Supervisors," on June 20, 2014.

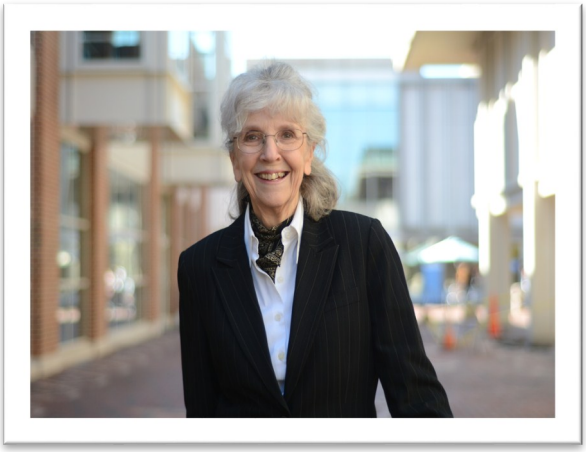
Lunch and Learn Series: "Domestic Violence," on March 21, 2014.

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.**

INTERVIEW WITH DOTTIE BERNHOLZ



On January 15, 2014, I had the great honor of interviewing Dottie Bernholz about her career, her passions, and her plans for the future. Ms. Bernholz is a former member of the Commission and Chair of its Ethics Committee.

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Dottie, Thank you for sitting down and talking with me. You've had a superb and distinguished career. What has been the highlight for you?

I have had the good fortune of helping to bring student legal services to UNC Chapel Hill in 1976 and to represent students for almost 40 years!

Tell us how Student Legal Services came to be.

In the mid-70s a group of students decided to establish a legal services program for students and hired me to run the program. I had just graduated from law school. Problem was, the State Bar would not approve it, so we sued in federal court and argued that students are entitled to have meaningful access to the courts. This was ground-breaking—we were one of the first student legal services programs in the country. It was a very exciting time!

And you've been representing students ever since!

Yes, we've served over 80,000 students in a wide range of cases, from run of the mill misdemeanor cases and expungements, to housing issues to torts, such as the intentional infliction of emotional distress. It is never boring!

I happen to know that your legacy to the students is far more than just having represented them.

Well, years ago we set up an externship program for one law student per semester. I take every chance I get to speak to student groups—I call it preventive outreach. I don't necessarily caution them against drinking, for instance; instead I try to educate them about what to do if they do get arrested. I also try to work on the root of a problem that may be impacting a large number of students. Most importantly, I've learned how to deal with the inevitable interface between town regulations and student behavior.

What are some examples of that?

We see a lot of alcohol arrests. We educate students on how to negotiate pro se in those cases, often resulting in a deferred prosecution and then seek an expungement from the student's record. However, we were finding that local employers on applications for employment, and some colleges and universities in applications for admission, were asking the question, "Have you ever had a deferred prosecution?" I worked with Ellie Kinnaird, our former State Senator from our District, to introduce legislation which made it illegal to ask that question. That was a big win; unfortunately, almost anything can be dug up on the internet, including the fact of the arrest.

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Another problem in Chapel Hill and Carrboro is the issue of "ghost renters." Zoning laws prohibit more than 4 unrelated people from residing in one single family residence. Landlords and their agents often just ignore the ordinance. What was happening was that when the zoning department cracked down on this practice, extra students had to vacate immediately, and fines and costs were assessed against them. We are pleased that the town changed its policy and elected to assess the fines and costs against the landlords, not the tenants.

Have you had the opportunity to use mediation in any of the student disputes?

Some years ago UNC Student Services did intake for civil cases to be referred to mediation and we participated in that when appropriate. However, in student to student disputes, which many of our cases are, we were conflicted out. After the program at Student Affairs, the Chancellor set up an ombudsman program for faculty and staff but not for students, and the use of mediation in student disputes ended. At SLS, we have not had the person power to set up a mediation program in addition to representation of our students. However, I do feel that mediation could be a valuable addition to the program.

Do you have any particular philosophy about your work with SLS?

I love that it originated as a student vision; that the majority of our Board members are students; our chair is a law student. This program is owned and implemented by the students. Each year the student body votes as to what the student assessment should be for the program. Right now, it's $13/per student/per semester. It's a bargain! My philosophy is, I am here to serve. I have the opportunity to represent them, encourage them as leaders, and promote activism to work to change what might be offensive laws rather than break them. I bring my own life experience and philosophy to describe how to work inside the system. I take any opportunity to promote peaceful engagement as an avenue to change.

To what do you attribute your passion for activism?

Probably the most important early influence on me was my mother. My father died in World War II when I was quite young. She moved us (my brother and me) to Fayetteville, NC, to be closer to members of her family. We were relatively poor; I recall that my mother didn't have a car until I was in college. I ate subsidized school lunches almost every day. We joined a church; I became very, very engaged in the youth group at the church, and the church community was a cornerstone of our lives. One day, my mother told us we were leaving the church. I was devastated. She took this action because the congregation had refused to allow a black family to attend and become members of the church. That was a courageous act back then, and a real eye-opener for me. I have never forgotten that example.

Are there experiences as a young adult that also had a profound and lasting effect on you?

When Terry Sanford was Governor of North Carolina, he obtained a $14 million grant from the Ford Foundation to develop prototype programs for the VISTA program. This was done by the NC Fund, and I had the great opportunity of working for Governor Sanford on that initiative. I also worked in the UNC School of Social Work under a grant from the EEOC with the mission of training social workers in community activism.

That was then, and this is now!

Exactly. Not likely that such a program would be funded today!

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DRC ANNUAL RETREAT SEPTEMBER 15-16, 2014

District Criminal Court Video on the Way

The DRC and representatives from several community mediation centers have joined together to launch a project to create an introductory video for showing to participants in the District Criminal Court mediation program. Diann Siegle, Director of Carolina Dispute Settlement Services in Raleigh, says, "Our committee is excited about this project-- we are confident it will be an invaluable resource to the public and the courts for use across North Carolina in our district criminal courts."

M. Ann Anderson, former DRC member and Dispute Resolution Section Council member of the NC Bar Association, has done the lion's share of the work to launch this project. Despite the expiration of her term, Ann continues to move the process forward. Thanks to Ann, the production team at the NC Bar Association graciously offered its time to film, edit and produce the video, designed to be short and to the point, at approximately five minutes.

The video will focus on mediation in district criminal court through interviews with a district court judge, prosecutor, and mediator. Thousands of cases are mediated through the DCC program each year thanks to the efforts of a wide array of volunteers and staff at community based mediation centers across the state. Grace Marsh, Director of the Elna B. Spaulding Conflict Resolution Center in Durham, NC, also a member of the video committee, predicts, "An informational video will hopefully help litigants in difficult and often emotional situations understand the mediation process and the value of its use in their cases."

N.C.Gen. Stat. §7A-38.3D, the enabling legislation for the DCC program, provides that in any district the court may encourage the parties to agree to participate in the voluntary mediation of any pending criminal district court action. The chief district court judge, the district attorney, and the community mediation center shall determine whether to establish a DCC program in that district. The program is implemented in cases involving person-to-person complaints or warrants.

The DRC commends and thanks all of the staff and volunteers at these centers for their dedication to and hard work for this program. Thanks to them, thousands of litigants resolve their conflicts through voluntary mediation, and the number of cases sent to trial is significantly reduced.

THE NUMBERS DON'T LIE! THE EFFECT OF

RETIRING COURT PERSONNEL ON COURT PROGRAMS

North Carolina judges and court staff, like the rest of our population, are aging. DRC staff recently asked HR at the AOC to compile retirement eligibility statistics for court personnel involved with the statewide implementation of mediated settlement conference programs. We were interested in getting a sense of what to expect in terms of future turnover in court staff and judges. Transitions in staff and judges create both a challenge to maintain the integrity of court programs and an opportunity for expanding the training and mentoring of the folks who manage the day-to-day operations of those programs. Since a large segment of the general population (baby boomers) is aging, staff suspected that this might be reflected in the AOC numbers. And, it is. See chart below.

Of considerable interest, with respect to the trial court judges, the statistics indicate that within one year, 42% of sitting senior resident superior court judges are eligible to retire! At year three the percentage jumps to 60, year five, 72, year seven, 74, and after ten years, 82%! With respect to the 42 chief district court judges, 35.7% will be eligible to retire after one year, 54.8% after three years,64.3% after five years, 78.6% after seven years and 88% after ten years. And, 46.9% of district court judges and 78.7% of superior court judges will be eligible to retire in ten years.

If one looks at court staff, 20.8% of superior court trial court coordinators can retire in one (1) year, 31.3% in three years, 47.9% in five years, 50% in seven years and 56.3 % in ten years. The figures for district court trial court coordinators are 12.1% after one year, 18.2% after three years, 27.3% after five years, 42.4% after seven years, and 45.5% after ten years.

Given the realities of the changing demographics of those charged with implementing mediated settlement conference programs, the Commission is considering strategies to address the needs for education and training of personnel as they come on board.

Retirement Eligibility for Current Court Personnel Over 10 Year Period as of January, 2014

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	%
District Court Judicial Assistant I	24	0	0.0%	0	0.0%	5	20.8%	5	20.8%	8	33.3%
District Court Judicial Assistant II	32	1	3.1%	4	12.5%	5	15.6%	5	15.6%	7	21.9%
District Court 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%
Superior Court Judicial Assistant I	12	3	25.0%	3	25.0%	4	33.3%	4	33.3%	5	41.7%
Superior Court Judicial Assistant II	21	1	4.8%	3	14.3%	3	14.3%	7	33.3%	8	38.1%
Superior Court Trial Court Coordinator	48	10	20.8%	15	31.3%	23	47.9%	24	50.0%	27	56.3%
Trial Court Administrator	10	3	30.0%	4	40.0%	6	60.0%	7	70.0%	7	70.0%
Chief District Court Judge	42	15	35.7%	23	54.8%	27	64.3%	33	78.6%	37	88.1%
District Court Judge	226	27	11.9%	47	20.8%	63	27.9%	75	33.2%	106	46.9%
Senior Resident Superior Court Judge	50	21	42.0%	30	60.0%	36	72.0%	37	74.0%	41	82.0%
Superior Court Judge	47	13	27.7%	20	42.6%	26	55.3%	33	70.2%	37	78.7%

Mediation in the News: Beyond Our Borders

Medical Liability: Early Discussion and Resolution in Oregon

The Oregon Legislature recently passed Senate Bill 483 in March, 2013, creating Early Discussion and Resolution—an innovative approach to medical liability reform. EDR is a confidential, voluntary and structured process for healthcare providers and patients to notify, discuss, and mediate serious adverse events as an alternative to litigation. EDR allows patients and their families to have an open conversation with healthcare facilities and/or providers when a patient unexpectedly experiences serious physical injury or death as a result of their medical care rather than their illness. Upon the occurrence of an adverse health care incident, the health care facility, health care provider, or the patient can contact the Oregon Patient Safety Commission to initiate the EDR program. The statute prohibits insurers from taking certain actions based on notice of adverse health care incident and establishes a Task Force on Resolution of Adverse Health Care Incidents. The hope is that the program will increase communication between patients and providers, reduce litigation, encourage more effective outcomes for patients, and prevent harm to patients in the future.

(*See also the IACT program of Carolina Dispute Resolution Services.)*

Legal Aid Ontario pilots independent legal advice for mediation clients

Under a new pilot program in Ontario, Canada, Legal Aid Ontario (LAO) will cover the cost of a family lawyer to support unrepresented clients who choose mediation for the resolution of their family law disputes. LAO believes that by providing legal advice before, during or after a mediation, including preparing legally binding agreements based upon the results of the mediation, families are more likely to achieve sustainable outcomes that meet their needs. Clients can receive advice from a lawyer about the mediation process, obtain assistance in preparing for the mediation, and develop a better understanding of their options. The lawyer can also assist with obtaining a court order or binding agreement to enforce the terms of the mediation agreement. By offering legal assistance in conjunction with the mediation process, the parties, if the case is settled, can be assured that the end result is legally binding.

Mandatory Mediation in Manhattan?

The Supreme Court of NY recently recommended the creation of a pilot mandatory mediation program in commercial disputes in the Commercial Judicial Division in Manhattan. The program would apply to "every 5th case" assigned to judges. Cases would be assigned to a particular Justice and mediation be completed within 180 days of the case assignment. Although touted as "mandatory" the proposed pilot includes an "opt-out" provision. Public comment ended on February 11, 2014.

E-Mediation of e-discovery

Since almost every case has at least some form of electronic evidence, be it e-mails, text messages, social media postings, Excel spreadsheets, etc., E-discovery has become one of the most contentious and costly aspects of litigation. The parties agree to the use of a mediator to develop a mediated discovery plan. The process typically starts with the creation of an e-mediation statement in which both parties provide comprehensive position statements including such detailed information as: who is available to participate in the e-mediation; all applicable or relevant discovery requests, objections, responses, protective and discovery orders; any identifiable issues with spoliation; any cost and timing parameters or restrictions; any accessibility issues; and any privilege issues or concerns. In many cases, the use of a mediator early in the case can save significant time and money for the clients. Of course, e-mediation will only be successful if all parties are honest with their confidential disclosure of information to the e-mediator.

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And that was before you went to law school!

Yes, I know! It was an exciting, heady time! That work was also a big part of my inspiration to go to law school.

What is it that has kept you and continues to keep you excited about and engaged in the law?

I absolutely love my work. I am married to an amazing man who is also an attorney. Our family loved having engaging conversations at the dinner table about events, ideas, cases, etc. I stay active in the Bar, serve on committees, that sort of thing.

The Commission had the good fortune to have you serve as a Commission member and as its Chair of the Ethics Committee. How did you feel about that work?

I valued my time on the Commission and the Ethics Committee was an excellent fit for me. I'm a real policy wonk and I loved the big and small ethical dilemmas and the thoughtful analysis that was required. It was a pleasure working with Commission members, each of whom possesses strong intellect and caliber.

Any critical issues that came up during your tenure as Chair?

Every issue that came before the Committee was interesting. I remember one of the biggest discussions was around the issue of mediator drafting of agreements….and, as I understand it, this has been under discussion since! I note that the Commission recently adopted Advisory Opinion 13-28 which addresses drafting involving pro se litigants. It is a complicated issue.

Having served on the Ethics Committee, what advice would you have for mediators in their mediation practices?

The most important thing is to stay current in your craft. Know the Rules, review the Standards and Advisory Opinions often, and use Commission staff to help when issues come up.

Have you also been certified by the Commission as a mediator?

Yes, I was certified for a number of years and enjoyed it very much. It was difficult to mediate extensively since I had a full-time plus job!

Did your experience as a mediator inform your work on the Ethics Committee?

Absolutely. I recall complaints coming before the Committee involving mediator impartiality. When I was mediating, I often mediated cases with pro se litigants. In cases that did not settle, it happened more than a few times that one of the litigants would thereafter ask me to represent him/her. I took this to mean that I had failed to convey complete impartiality!

How did you become interested in mediation?

In 1979, shortly after law school, I had the opportunity to accept a fellowship at Harvard Law School to study under Jerry Auerbach, a leading pioneer in the mediation movement. It was excellent, and another one of those life changing opportunities you asked about before!

I understand that you are a State Bar Councilor for District 15B.

Yes, I'm in my 7th year. I serve on the Ethics Committee. I love this work. I love the politics, the great lawyers on the Council, the policy considerations, the process, the discussions. I'm a "big picture" person so this service suits me.

You've also served on other bar councils and commissions.

I've also served on the NCBA Board of Governors, NCBA Dispute Resolution Section Council and as Chair

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of the Council, and on the NCBA Commission on the Status of Women and as its Chair.

Have you had any particular experiences as a woman in these activities that are noteworthy?

That's an interesting question. You may be aware that it was not until recently that the State Bar even tracked the gender of its members.

I do remember taking up that issue with the State Bar in the 90s when I was involved with the NC Association of Women Attorneys. We wanted to send newsletters to the licensed women attorneys.

Yes, it was a long time coming. Bonnie Weyher, when she was President of the State Bar just a few years ago, and I worked together on that, and she pushed it through. It's hard to address issues affecting women attorneys if we don't have basic data about who they are.

The female State Bar Councilors have also set up a list-serve and a monthly luncheon. We've gotten a little push-back on that!

What do you see as strengths of the mediation programs in North Carolina?

Having an independent Commission oversee the programs is very important. The fact that our programs work on a party-pay model helps to protect the Commission from budgetary issues with the General Assembly. The manner in which Commission members are appointed is very effective in establishing geographical, political, and other diversity. But, in my opinion, the Commission is only as strong as its staff, and the Commission has been blessed with excellent staff since its beginning, especially Leslie.

Tell us a little bit about your children.

Our son, Adam, earned a law degree and an MBA from UNC. Interestingly, he hated law school! He's in South Carolina, working as an entrepreneur promoting green building practices and the green building industry with his company. Our daughter, Blair Berk, a graduate of Harvard Law School, practices in Los Angeles and represents high profile people in the entertainment industry including those facing criminal prosecution. We are so proud of each of them!

When I was at Harvard for the fellowship that I mentioned before, Blair was 12. It was that summer that she decided she was going to attend Harvard Law School, and she did!

I understand that you're retiring in June. What do you hope to do with your time?

First of all, I'm calling it "repurposing" and not "retiring." That fits me better! I've still got a lot of energy and enthusiasm for life. I want to take up neuroscience! I want to enjoy my granddaughter. My husband and I have a flat in Charleston; I hope to spend time there and learn all I can about the history of that building and of that part of Charleston. I'll continue my State Bar work. I'll follow my heart and my conscience; life is never boring!

Can you tell us one thing about yourself that most people do not know and would be very surprised to learn?

My favorite ancestor was Lord Cochrane, the fifth earl of Dundonald, who served in the House of Lords and the Royal Navy only to be convicted of fraud on the British stock exchange and dismissed from the Royal Navy in 1814. Pardoned in 1882 he was reinstated in the Royal Navy with the rank of Rear Admiral. His exploits as "The Sea Wolf" were the inspiration for the fictional characters in *Horatio Hornblower* and of the protagonist Jack Aubrey. This may have "inspired" my penchant for rehabilitation of my student-clients who run afoul of the law but redeem themselves in later life after given a second chance! —*Harriet S. Hopkins*

The Olive Branch -- A Symbol of Peace

During a difficult mediation, have you ever thought about saying or even said to a party, "*Why don't you try extending an olive branch to the other side?*". Essentially, you were asking that person to make some sort of concession, no matter how small, just to get things rolling. Where did the phrase, "*extending an olive branch*" come from? How did the olive branch become synonymous with outreach, reconciliation, and peace in Western culture?

Scientific research indicates that olive trees were first cultivated in the Eastern Mediterranean as many as 8,000 years ago. Many scholars believe that the earliest associations between the olive branch and ideas of peace and prosperity are ironically rooted in the warring practices of ancient armies. They suggest that armies bent upon conquest made the destruction of olive groves a priority. Those armies knew how dependent ancient peoples were upon their groves. The oil produced by the trees not only served as an important ingredient in their diet, but was essential for cooking. Olive oil also served as the electricity of the day, torches were soaked in oil prior to lighting and oil served as fuel for lamps. Olive oil was also used both for medicinal and cosmetic purposes – helping to keep skin moist and to keep dirt and grime out of wounds. Equally importantly, olive oil was sometimes the only product a community had to trade with the outside world and, for all intents and purposes, was their currency.

Destruction of a community's olive groves was a sure way to bring that population to its knees -- and to keep them there for the long haul. Olive trees are slow growing and it can take years for a tree to bear a full crop of olives or for a grove to become commercially viable. Ancient travelers who found themselves crossing areas of the Mediterranean, Spain, or parts of the Middle East where groves were mature, wrote that they were visiting lands that had been untouched by war. Over time, the very existence of mature olive groves came to be equated with the absence of war and the presence of peace and prosperity.

The ancient Greeks furthered the association between the olive branch and notions of reconciliation, peace, and prosperity. The Greek goddess, Eirene (or Irene), was the patron and guardian of peace, plenty, and springtime. Why associate peace with springtime? Since late spring was the usual time for military campaigns in Greece, it was considered the time when peace was most at risk. Eirene was frequently depicted by the ancient Greeks in art and on coinage as holding a cornucopia with one arm, symbolizing plenty and wealth, and as carrying in her other hand an olive branch, a symbol of peace.

Eirene was not the only Greek goddess associated with the olive tree and the ancient Greeks believed that no less than Athena herself, Zeus's favorite child, had bestowed the olive tree on the Greeks as her special gift to them. Strong willed and confident, Athena, goddess of wisdom, war, and crafts, is often depicted wearing armor and a golden helmet and carrying a shield and spear. She frequently appears in the company of an owl, symbolizing wisdom, and an olive tree or branches, symbolizing peace. At first blush, her role as goddess of war and her close association with the olive tree may seem at odds. However, Athena was considered to be the perfect blend both between power and wisdom and between male and female, as suggested by her beauty and martial attire. Far from being a warmonger, she was believed to derive more pleasure from peaceful resolutions of disputes than from battle. Athena was variously described by the Greeks as a mediator, protector and wise counselor who worked to prevent war and encourage peace. In Greek mythology, she is often called upon to settle disputes between gods and between gods

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and mortals. Athena stands in stark contrast to her blood thirsty half-brother, Ares, god of war, who was associated with aggression and the savagery of war. To their credit, the Greeks were somewhat ambivalent toward Ares and he never inspired the devotion they showered upon his more temperate sister.

The Romans borrowed heavily from Greek mythology and carried the connection between the olive branch and peace forward. The Greek goddess Eirene's equivalent in the Roman Pantheon was Pax (Latin for Peace). Pax, the goddess of peace, was the daughter of Jupiter, the king of the gods, and Iustitia (or Justitia), goddess of justice. Pax is typically depicted as a young woman wearing white robes and a crown of laurel. She holds a cornucopia overflowing with abundance and carries an olive branch or staff in her other hand. She bestows contentment and joy and the ancients invoked Pax's name and sought her assistance during barters and negotiations.

Rome, more than any other, was a civilization built on conquest, so it is not surprising that Mars, the Roman god of war, transcended his Greek equivalent, Ares. Though the Romans were bent on conquest and embraced Mars, they were not simplistic in their view of war. Their grasp of the complexities of war can be seen in the many aspects or alter egos they ascribed to Mars and in which he was variously depicted in their art and coinage, including as Mars the Victor, Avenger, Defender, or Peacemaker. Mars as Peacemaker (Mars Pacifer) typically appeared on coins carrying a spear in one hand. Though the tip of the spear is clearly sharp, it points downward at the ground. In the other hand, he carries an olive branch. The message was clear. Though prepared and ready for war, Mars Pacifer offered reconciliation and peace.

It is during the period of "Pax Romana", an extended time of relative peace and minimal expansion of the Roman Empire (27 BC – 180 AD), that you see mere mortals bearing olive branches as tokens of outreach and peace. During the period, envoys traveling to the far-flung reaches of the Empire presented olive branches as tokens of peace to those they encountered. The gesture was intended to allay fears and to reassure wary locals that the envoy and the mighty Empire he served came in peace.

Early Jews and Christians also recognized a connection between the olive branch and peace. Perhaps most notable in that regard is the story of Noah found in Genesis Chapter 8. After the flood waters began to recede, Noah opened a window in the Ark and released a dove. When the dove returned, it brought no sign that it was safe for Noah and his family to leave the Ark. Seven days later Noah released the dove again. This time she returned carrying a freshly plucked olive leaf in her beak. Biblical scholars suggest that the arrival of the olive leaf serves to announce that God's wrath has been assuaged. The period of turmoil leading up to the rains and the death and destruction brought by the flood waters is over and God had reconciled with humanity. The evergreen olive leaf and the hardy and prolific tree from which it was plucked serve to promise that the small group aboard the Ark would flourish.

The connection the ancients drew between the olive branch and notions of peace and reconciliation is very much alive and well in America today and one need not look far to see evidence of this. Not only do we talk about "extending an olive branch" to those we may have angered or alienated, but our ubiquitous $1.00 bills, like the Greek and Roman coins of old featuring Athena and Mars Pacifer, incorporate the olive branch. The back side of our $1.00 bill features both the front and back of the Great Seal of the United States. In the center of the front of the Seal, an eagle grasps an olive branch in its right talons. In its left talons it holds a bundle of thirteen arrows, symbolizing the original thirteen states. The eagle looks in the direction of the talons holding the olive branch and away from the talons holding the arrows, symbolizing America's readiness for war, but its preference for peace.

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So...the next time you are stuck in a mediation that is not moving forward, feel free, in the tradition of the ancients and all who have come after, to suggest to the parties that they consider offering an olive branch. Invoking that most ancient, and perhaps even first symbol of peace, may do the trick and move the parties to think more seriously about settlement and even reconciliation. Of course, if that doesn't get things rolling, you could also silently consider invoking Athena and Eirene and asking them for a little help.

COMMISSION CALENDAR

May 16, 2014	**Commission Meeting, Raleigh, NC**
June 1, 2014	**Certification Renewal Notices Sent Out**
June 30, 2014	**2013/2014 Certification Expires**
August 8-9, 2014	**Annual Retreat, Asheville, NC**
August 31, 2014	**Certification Renewal Applications and Fees Due**

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.

IT'S ALMOST FUNNY.....

A Florida mediator was recently disciplined for advertising that a course he designed and offered had been approved for CME credit in Florida. In actuality, Florida has no formal approval process for CME and the Mediator Qualifications Board (which reviews ethical complaints and has disciplinary authority) found that the course "did not enhance a participant's professional competence as a mediator, nor did it constitute an organized program of learning directly related to the practice of mediation."

Here's why. The course was called "Personal Safety and Family Protection" and "offered" 7 hours of CME credit to train mediators in self-defense, gun target practice, and to qualify the participants for a concealed firearms permit! The Board also said that such subject matter also "demeaned the dignity of the mediation process."

He was sanctioned for what the Board called a failure "to engage in forthright business practices supporting the advancement of mediation" and for "false and misleading advertising."

Perhaps Florida's "stand your ground" law was a course topic? Rather ironic, isn't it, to have a course regarding gun use and self-defense offered by and for mediators?