

The Intermediary

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



From the Chair
By Judge Gary Cash



Here in the mountains of North Carolina, spring has arrived. The days are gradually warming, the crocuses and violets are omnipresent, and the sound of a bat on a ball is beginning to float through the cool early evenings. Evidence of new beginnings is everywhere. Spring invites us to enter a period of growth and renewal. The Commission accepts this invitation to tackle its work with renewed energy and commitment.

This spring the Commission is fleshing out the details of the mandatory Continuing Mediator Education (CME) Policy it adopted after much discussion and thought last winter. Although we did not time it this way, it does somehow seem fitting that the new CME Policy should be finalized during this season of activity and renewal. The new Policy, in effect, asks mediators to grow professionally, to renew their commitment to their work and to our programs, and to be fully aware of and to follow through on all of their ethical and case management duties. With increased commitment and awareness, the Commission anticipates that mediators will be more effective. In turn, our programs should be more successful. Conferences will be scheduled in a more timely manner, deadlines better met, and settlement further expedited. Mediators will be more mindful of fulfilling their ethical responsibilities as set forth in the Standards and Advisory Opinions, which we believe will result in fewer complaints filed with the Commission regarding mediator conduct.

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The great majority of attorneys do not, I believe, begrudge the requirement that they complete CLE hours. They understand that they work in a complex, changing environment where their clients depend on them for expert guidance. The stakes are high for those that they represent. The stakes are high for lawyers as well. Our reputations are important to us and the last thing we want is to receive a State Bar complaint or to be the subject of a malpractice action. We realize that we need to continue to improve our skills to be successful. CLE hours are integral to our performance; they are necessary to keeping us at the top of our game.

I do not think that these feelings and concerns are significantly different for certified mediators. Certainly, from the parties' perspective, the stakes are no different in mediation than they are in trial. They and their lawyers typically expect a great deal from their mediator – that he or she will motivate them to communicate more clearly, help them to brainstorm options for settlement and, in fact, facilitate their hammering out an agreement. Most mediators that I know are deeply invested in the mediation process and truly want to help parties meet these goals. They earnestly desire to be good facilitators. They are also concerned about their reputations and are usually very interested in building their mediation practices. Certainly, none of them wants to receive a letter from the Commission advising them that a complaint has been filed against them, or that a party, or an attorney, or court staff or a judge believes they failed to fulfill their case management duties or to meet their ethical responsibilities. It seems to me that CME is no

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less integral to a mediator's success than CLE is to an attorney's success. Indeed, I would suggest that CME might be more integral to the success of mediators in that many of us do not mediate as often as we might like. Since we are often not as immersed in our mediation practices as we are in our day-to-day legal practices, program rules and Standards of Conduct may not always be on our minds in the same way that we are focused on the Rules of Civil Procedure or on the case law in the areas in which we practice. It may be easier to forget what the mediation rules require, easier to make a mistake. The same is true for certified, non-attorney mediators, who often juggle their mediation work with the demands of another profession or with the operations of a business.

In adopting a mandatory CME policy, the Commission is requiring every certified mediator, effective with his/her certification renewal for fiscal year 2017/18, to spend two hours every year refreshing his or understanding of program enabling legislation, program rules, case law relating to mediation, Standards of Conduct, and advisory opinions. More importantly, though, we are inviting every certified mediator to advance his/her professionalism, and to renew his or her commitment to serve our programs with the highest ethical standards. This renewed commitment will help ensure that the goals for our programs set by the General Assembly are met. Those goals include facilitating the settlement of cases, making our courts more efficient, helping conserve taxpayer dollars, and making the litigation process more palatable for the parties.

This spring, we at the DRC intend to do our part to support your CME efforts in the 2017-2018 fiscal year. We are beginning to work now with the NCBA to develop easily accessible and affordable CME opportunities, both live and on-line. We are in a dialogue with the AOC to develop a simple electronic means to report CME hours. And, importantly, we are about the process of considering how we can better educate the public that we serve in appreciating the fact that DRC certified mediators are among the most professional, best trained and educated, and have the highest ethical standards of those who hold themselves out as mediators and neutrals in our state.

It has been written that a deeper understanding of the progression and change of seasons helps us to grow and to improve. Spring is in full swing here at the Commission and we have renewed our commitment to serve our mediators, mediation programs, and the citizens of North Carolina. I am confident that our certified mediators will do the same.



NC Court of Appeals Chief Judge Linda McGee and Gary Cash at the NCBA Dispute Resolution Section meeting on February 20, 2016, in Charlotte.

DRC THANKS DEPARTING MEMBERS FOR THEIR SERVICE

W. Mark Spence, Commission member, Manteo, NC

Tueresa Hayden, ex officio member, Trial Court Administrator for Iredell County

Rick Igou, ex officio member, outgoing Chair of the NCBA Dispute Resolution Section

Ellen Rose, ex officio member, former Family Court Coordinator for Wake County

Each of you has contributed greatly to the Commission's work in promoting NC's mandatory mediation programs, and in certifying and regulating mediators and mediator training programs.

The Commission wishes you all the best in your future endeavors.

Proposed Amendments to DRC Advertising Guidelines

Adopted by the Dispute Resolution Commission on May 16, 2003;

Revised and adopted on May 16, 2014; and February 26, 2016, (subject to comment)

1. REPRESENTATION OF MEDIATOR CERTIFICATION(S)

When advertising that s/he is certified by this Commission, a mediator shall specify certification by the NC Dispute Resolution Commission, Dispute Resolution Commission, NCDRC or DRC. A mediator should not identify him/herself as certified by the Administrative Office of the Courts or the Courts. Because of the number of mediation programs now operating in the North Carolina courts, it could be misleading to the public and the bar for a mediator simply to offer him/herself as “certified” without specifying the program or the type of mediation to which the certification pertains. Thus, a mediator shall also identify that s/he is certified to conduct superior court mediations, family financial mediations, district criminal court mediations and/or mediations of estate and guardianship cases. A family financial mediator certified by the Dispute Resolution Commission shall not hold him or herself out as certified to mediate custody or visitation matters.

Although both the Superior Court and Family Financial Settlement Program Rules provide a menu of dispute resolution processes, certification pertains only to the mediated settlement conference option. Because the DRC does not certify neutral evaluators, arbitrators, or presiding officers, a mediator shall not hold him/herself out as certified by the Commission to serve in these capacities.

If a mediator allows his/her certification to lapse, *i.e.*, the mediator does not renew prior to August 31st of any given fiscal year, the mediator shall immediately remove any certification designation from his/her letterhead, business cards, website and/or other advertising. If a mediator voluntarily relinquishes his/her certification and notifies this Commission or if this Commission revokes a mediator’s certification, the mediator shall immediately remove the certification designation from his/her letterhead, stationery and/or other advertising.

APPROVED EXAMPLES:

NCDRC Certified Mediator – Superior Court & Family Financial, Clerk of Court, Special Proceedings, Estates & Guardianship, District Criminal Court

NCDRC Certified Superior Court Mediator, Clerk of Court, Special Proceedings, Estates & Guardianship, District Criminal Court

DRC Certified Mediator – Superior Court, Clerk of Court, Special Proceedings, Estates & Guardianship, District Criminal Court

DRC – Certified Family Financial Mediator, Clerk of Court, Special Proceedings, Estates & Guardianship, District Criminal Court

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2. REPRESENTATION OF OTHER QUALIFICATIONS, INCLUDING DEGREES HELD ON THE COMMISSION'S WEBSITE

When advertising or marketing his/her mediation practice to the public, a mediator shall avoid making any false or potentially misleading representations regarding his/her education, work experience, training, or other qualifications to serve as a mediator.

~~The Commission is particularly concerned about the number of unaccredited or self-accredited institutions, including on-line institutions, now awarding undergraduate and advanced degrees. The Commission requires that undergraduate or graduate level degrees submitted for purposes of certification, be awarded by institutions which have been accredited by accrediting authorities recognized by either the Council for Higher Education (CHEA) or the U.S. Department of Education. Moreover, the institution must have been so accredited or provisionally accredited at the time the applicant attended and graduated. The Commission requires that professional degrees submitted by applicants for purposes of certification, be awarded by institutions of higher learning that were recognized by the appropriate licensing authorities operating that were both accredited or provisionally accredited by nationally recognized accrediting authorities and that were recognized by the appropriate licensing authorities operating in North Carolina during the time the applicant attended and graduated.~~

The Commission affords mediators an opportunity to post biographical information on the Commission's website at www.ncdrc.org as a way to market their practices and to acquaint attorneys and the public with their qualifications and experience. ~~The Commission has determined that m-~~ Mediators shall not identify themselves in their postings as holding degrees from or as completing course work at institutions that were not accredited or provisionally accredited during the period of their attendance as noted in the paragraph above or, if professional schools, were not recognized by North Carolina licensing authorities during the time the applicant attended and/or graduated.

The Commission ~~strongly discourages~~ encourages mediators and mediation trainers working with in Commission certified programs to refrain from coupling notice of DRC mediator or training program certification with representations in documents, including but not limited to, letterhead, business cards, brochures, or other advertising materials, that the mediator/trainer holds certain, specified degrees when those degrees were awarded by ~~unaccredited or self-accredited institutions~~ or institutions not recognized by North Carolina licensing authorities during the time the mediator or mediation trainer attended and/or graduated.

If a mediator has questions about whether an institution s/he attended is recognized as ~~accredited or is recognized~~ by North Carolina licensing authorities, s/he may contact the Commission's office.



Revised CME Policy Adopted

The Dispute Resolution Commission has been concerned both about the increase in the number of matters relating to mediator conduct coming before its Grievance and Disciplinary Committee and reports of court staff suggesting that mediators are not fulfilling their case management duties consistent with program rules. To address these concerns the Commission proposed a mandatory CME Policy which was posted on the website for comment. Having considered all the comments received and concerns raised, the Commission has formally adopted its “DRC Policy on Continuing Mediator Education.” Please see page 8 of this newsletter for the complete Policy. This policy replaces the prior policy which recommended voluntary completion of three hours of eligible CME annually and required reporting of CME on the mediator’s annual certification renewal application.

Any CME eligible credit must also be eligible for CLE credit. Efforts will be made to ensure that CME be accessible both financially and geographically, through webinars as well as live proceedings.

Commission Members Present CME at Section Meeting

Commission members Judge Gary Cash, Judge Charles Anderson, Lynn Gullick, and ex-officio member, Andy Little, presented two one-hour sessions on program rules, Standards of Conduct, concepts of inadmissibility and confidentiality in program enabling legislation, and policies and procedures of the Grievance and Disciplinary Committee, at the recent Section annual meeting on February, 19, 2016, in Charlotte, NC. These sessions were offered to update mediators on topics related to ethics and mediator conduct, and will be eligible for CME credit for the mediator certification period for FY 2017-18 when the mandatory CME policy becomes effective.



From left to right: Judge Charles Anderson, Judge Gary Cash, Lynn Gullick, and Andy Little. Former Commission member Ann Anderson introduced the panel.

DRC NEWS AND UPDATES, Continued....

Interpreter and Translator Issues

The AOC offers interpreter and translator services in certain court cases across North Carolina by providing trained and qualified translators and/or interpreters at AOC expense. These services do not extend to cases ordered to mediated settlement conferences. With the increase in the number of non-English speaking, hearing impaired, and visually impaired parties in North Carolina's courts and mandatory mediation programs, the need for accommodation is growing.

Because this is a critical issue that potentially affects some parties' ability to participate fully in the mediation process, the Commission's Standards and Advisory Opinions Committee has prepared a survey to all certified mediators to help assess the scope of the problem. You, as mediators, are the "boots on the ground" on this; how you have addressed the need for accommodation in your mediations is important and helpful information. You should have received or will receive an email from the



Commission with a link to an online survey posted on the AOC's website. If you have not yet completed the survey, the Commission asks you to please do so promptly. It should take less than few minutes of your time. The Commission thanks you for completing the survey.

In addition to the survey, the Committee is gathering additional information about these issues, and anticipates the issuance of one or more advisory opinions which will provide guidance to mediators about their duties and responsibilities to accommodate non-English speaking, hearing impaired, and visually impaired parties in the cases that they mediate.

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Mediator Certification Renewal Just Around the Corner

The mediator certification renewal period for fiscal year 2016/17 will begin July 1, 2016, and continue through September 30, 2016. Annual FFS and MSC certification fees are unchanged at \$140 for certification in one program and \$200 for dual certification. Certification renewal is not complete until the Commission has received BOTH your online renewal application and your payment. The online renewal process now includes the option to pay by credit card, or you can send in payment by check. Renewals completed after September 30, 2016, shall be assessed a \$30 late fee. A small processing fee will be charged by the online credit card payment vendor if you choose to pay by credit card.

Social Media/New Media Ad Hoc Committee Appointed by Chair

This Committee has been charged by the Chair to explore the development and implementation of a DRC policy on social media and its possible use in the Commission's educational outreach and communication needs. The Commission is researching the use of social media in other states' ADR programs. The NCAOC is also working on a social media policy. The Committee is also considering revisions to the DRC's website. Commission member Lucas Armeña serves as chair of the Ad hoc Committee.





DRC POLICY ON CONTINUING MEDIATOR EDUCATION

Adopted February 26, 2016

General Requirement

Every active DRC certified mediator in the FFS and/or MSC programs must annually complete a total of at least two (2) hours of continuing mediator education (CME) approved by the DRC that relates to G.S. §7A-38.1, G.S. §7A-38.4A, Rules of the NC Supreme Court for the MSC and FFS Programs, Rules of the NC Industrial Commission, Standards of Professional Conduct for Mediators, Grievance and disciplinary procedures of the DRC, advisory opinions adopted to date by the DRC, or case law updates involving mediation.

Programs concerning the subjects listed above shall be eligible for CME credit only if they are also approved by the Board of Continuing Legal Education of the NC State Bar for CLE credit.

Effective Date

This policy shall be implemented beginning with the certification renewal period for fiscal year 2017-18. Approved CME credits taken between October 1, 2015, and September 30, 2017, shall satisfy the CME requirements for mediator certification renewal for fiscal year 2017-18. Thereafter, approved CME hours must be completed between July 1 of the previous year through September 30 of the year for which the certification renewal application is filed.

Guidelines for implementing the CME Policy shall be promulgated and approved by the NC Dispute Resolution Commission.

RELEVANT WEB ADDRESSES

DRC Rules: <http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/CommissionRules.pdf>

MSC Enabling Legislation: http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_7A/GS_7A-38.1.html

FFS Enabling Legislation: http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_7A/GS_7A-38.4A.html

MSC Program Rules: http://www.nccourts.org/Courts/CRS/Councils/DRC/MSR/Rules/MSR_allrules.pdf

FFS Program Rules: http://www.nccourts.org/Courts/CRS/Councils/DRC/FFS/Rules/FFS_allrules.pdf

Standards of Professional Conduct: <http://www.nccourts.org/Courts/CRS/Councils/DRC/Documents/StandardsConduct.pdf>

N.C. Lawyer Initiates a Prison Mediation Experiment

B. Forrest Bowen is a North Carolina licensed attorney and 1982 graduate of Campbell Law School. He is currently working on an LLM in Dispute Resolution through Pepperdine Law School's Strauss Institute for Dispute Resolution. Mr. Bowen also volunteers at South Carolina's Allendale Correctional Facility teaching inmates about dispute resolution. Mr. Bowen was interviewed about his volunteer work by the DRC's Executive Director, Leslie Ratliff.

Ms. Ratliff -- Please tell me a little about yourself.

Mr. Bowen -- I currently live in Bluffton, South Carolina. Throughout my 30 year career I have largely been an entrepreneur and worked in strategic planning and real estate investment banking. Specifically, I have been involved in projects seeking to rehab struggling apartment communities, office building, and hotels. A few years ago, I stumbled on an article about dispute resolution, the process hooked me, and I just kept reading. Eventually, I realized that I really wanted to focus on conflict resolution. A couple of years ago, I visited the Strauss Institute and knew I had come to the right place. I am currently working on my LLM there. Recently, I was pleased to be nominated to serve on the NCBA's Dispute Resolution Section Council. My term starts this June and I am really looking forward to the experience. I hope to also start doing some mediation work in North Carolina.



B. Forrest Bowen

Ms. Ratliff -- Tell me a little about the Allendale Correctional Facility and how you came to be a volunteer there.

Mr. Bowen -- Allendale, located near Fairfax, South Carolina, is a level 2 correctional facility (there are 3 levels in SC), so it is a medium security facility. The inmates are all male and include those who are incarcerated for life or for lengthy periods as well as those serving much shorter sentences. Last summer Allendale was designated as a "program facility". What that means is that the institution is committed to offering various programs designed largely to combat recidivism. Those programs run the gamut from counseling for addiction to GED classes, to practical skills classes or workshops on topics like technology, business, reading blueprints, pet grooming, music and art. The classes are largely taught by volunteers. The prison has some 170 volunteers who make their services available to the inmates. There is even an 80 year old wife of another volunteer who comes in and teaches the inmates to quilt! That is her passion and she loves to share it. The "program facility" designation is significant and I understand that Allendale is considered a very progressive, even model, facility.

I became involved initially because I had a friend who was volunteering as an addiction counselor. I was intrigued by what he was doing and asked if I could tag along one day. Once I began to interact with the inmates, I realized I had some skills I could share, skills that might not only help them cope better with prison life, but keep them on the outside once they were released. It is shocking to contemplate, but 65% of inmates who are released end up back in prison within three years. That's one of the big reasons the prison population is so large in this country.

Ms. Ratliff -- Do you ever feel threatened going into the prison to volunteer?

Mr. Bowen -- Actually, no. The prisoners have never behaved aggressively toward me and, in fact, seem genuinely grateful that I am there and trying to make a difference in their lives. I work in a classroom alone with them, though there are security officers nearby, and have never felt uncomfortable. I had some preparation for the experience in the sense that I taught a business law class in a juvenile detention facility in NC while I was attending law school. It is probably important to understand that this is somewhat of a selective group of inmates. They have to apply to be in this facility and, even if they are incarcerated for life, must demonstrate that they are interested in trying to improve themselves. Of course, many of these inmates will also have an opportunity for parole, so they participate in

the hope of learning some good life skills. All applicants applying to enter Allendale must have a record for good conduct. I must say that I have been extremely impressed with the population and have developed strong relationships.

Ms. Ratliff -- Please tell me about your experience volunteering at Allendale.

Mr. Bowen -- I am currently teaching 6 hours every Friday. I started out just trying to teach about conflict in general, how it develops and ways to address it. Then, later, I also began to teach a business course designed around a couple of television shows that were popular with the inmates, *Shark Tank* and *The Profit*. I also started a spirituality class. Later, I began to think about teaching a more comprehensive dispute resolution course, one that would actually train inmates to be mediators. In effect, we would be setting up a mediation program within the prison. It was only after I had thought about doing this that I learned about a California program called *Prison of Peace*. Established in 2010, *Prison of Peace* is a non-profit organization dedicated to reducing violence and promoting peaceful conflict resolution among prison inmates. The program was started by two California attorney mediators, Laurel Kaufer and Douglas E. Noll, and trains inmates to serve as mediators or "Peacemakers" within their prison communities. The program has enjoyed a lot of success, including lowering recidivism rates for participating inmates. (To learn more about the *Prison of Peace* Program, visit <http://www.prisonofpeace.org/>.)



Ms. Ratliff -- What was the warden's reaction when you first approached him/her with your idea to teach conflict resolution skills to inmates?

Mr. Bowen -- Allendale's warden, John Pate, is a remarkable individual. He is committed to empowering the inmates and to doing everything he can to improve conditions in the prison as well as to preparing those who will be released to succeed on the outside. When I told him what I wanted to do, he responded that I had come to the right place! There was a lot of conflict in the prison and if the inmates could be empowered to address it themselves, he was all for it. I explained that the focus of my efforts would be on the interpersonal conflicts that arose between and among Allendale's inmate population. This was important to stress because prisons are very controlled environments and inmates are expected to observe the rules. I did not want this program to become about prison rule enforcement. The mediators would be there to help their fellow inmates sort out their interpersonal conflicts.

Ms. Ratliff -- What did the inmates think of your idea?

Mr. Bowen -- I can honestly tell you that the inmates have been incredibly interested and engaged. They listen attentively to lectures and willingly engage in group exercises. The inmates are very curious about the subject of conflict. After all, it is typically conflict that got them in trouble in the first place and landed them in prison. Those who expect to be released understand that if they want to stay out, they will have to find ways to respond to conflict that do not involve aggression or even violence. Many of them do not have the tools that we take for granted, i.e., they have not necessarily learned how to negotiate effectively or to moderate impulsive behavior. They see the course and the mediation process as a potential way to acquire those skills.

Moreover, the warden is right. There is a lot of conflict in prison and it does affect the quality of life the inmates have. Prison populations are concentrated. It is a lot of folks crammed into a relatively small area. Privacy, as we know it, doesn't really exist -- you can't just go in a room and close the door behind you. You certainly can't get away on vacation. Cells are small and inmates don't get to choose those with whom they share that space. It may be that their cellmate is someone they don't particularly like, or who is very different from them in terms of race,

LESLIE RATLIFF **RECEIVES PEACE AWARD**

Leslie Ratliff, Executive Secretary of the Commission for 20 years, was recently awarded the 2016 NC Bar Association Dispute Resolution Section Peace Award at the Section's annual meeting and CLE on February 19, 2016, at The Westin Hotel in Charlotte.

Leslie has devoted herself to the peaceful resolution of conflicts for decades. Prior to moving to North Carolina in 1993, Leslie served as the Director of Florida's 15th Judicial Circuit's Alternative Dispute Resolution Office, and as a mediator. She was recruited by the NCAOC in 1993 to assist with the implementation of NC's new mediation and arbitration programs. She stepped up as the first Executive Secretary of the Dispute Resolution Commission upon its statutory creation in 1995, and since then, has remained at the helm. Leslie is a licensed attorney in Florida and Kansas.

The NCBA Dispute Resolution Section Peace Award honors a person who has 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; (f) leadership with local, state and national boards and legislative bodies.

Leslie's commitment to these goals has helped ensure that mediation and other dispute resolution programs are now widely accepted, efficient, and an integral part of NC's court system.

Congratulations, Leslie! The Commission is proud of your accomplishments and is pleased that you have been honored in this way.



Frank Laney presents Leslie Ratliff the Peace Award at the February 2016 Dispute Resolution Annual Section meeting in Charlotte, NC.



The Honorable
William A. Webb

Commission Members appointed to serve on Chief Justice's Commission on the Administration of Law and Justice

Commission members Judge William A. Webb, retired Magistrate Judge for the E.D.N.C., and Diann Seigle, director of Carolina Dispute Settlement Services in Raleigh, were appointed to serve on the Chief Justice's Commission on the Administration of Law and Justice. Both also serve on the Criminal Justice Committee of that body, with Judge Webb serving as chair of that Committee.



Diann Seigle

Interview with Judge William Webb

Judge Webb recently spoke with DRC Deputy Director, Harriet Hopkins, about his service on the Chief Justice's Commission on the Administration of Law and Justice. Judge Webb is also a member of the Dispute Resolution Commission, where he serves on the Grievance and Disciplinary Committee.

Introduction:

The North Carolina Commission on the Administration of Law and Justice, convened by Chief Justice Mark Martin, is an independent, multidisciplinary commission that is charged with engaging in a comprehensive evaluation of our judicial system and making recommendations for strengthening our courts within the existing administrative framework. Chief Justice Martin described the need for this Commission in his 2015 State of the Judiciary Address, and announced the Commission Co-Chairs in May 2015.

The Commission's work will provide a basis for discussion with the General Assembly to help ensure North Carolina's Judicial Branch meets the needs of our citizens and their expectations for a modern court system. The Commission will finalize its findings and recommendations in a series of reports that will be presented to the Chief Justice and made available to the public in early 2017.

The Chief Justice appointed Judge William Webb to the Commission, and appointed him one of the five co-chairs. He chairs the Criminal Investigation and Adjudication Committee. He is a retired Magistrate Judge from the Eastern District of NC.

Ms. Hopkins—Judge Webb, how did you come to be a part of the Chief Justice's Commission on the Administration of Law and Justice?

Judge Webb—I've known and been friends with Chief Justice, Mark Martin, for years, so I could not say no when he asked! No, in all seriousness, I commend and support his initiative to conduct a thorough assessment of North Carolina's justice system and make recommendations for changes that will serve our state well in the future. It is a large and meaningful undertaking, and when he asked me to serve, I was honored to accept his invitation.

Ms. Hopkins—For the sake of our readers who may not know, what are the five Committees of the Commission?

Judge Webb—There is a Civil Justice Committee, chaired by Dean David Levi; the Legal Professionalism Committee chaired by Catharine Biggs Arrowood; the Public Trust and Confidence Committee, chaired by J. Bradley Wilson; the Technology Committee, chaired by Justice Barbara Jackson; and the Criminal Investigation and Adjudication Committee, of which I am chair.

Ms. Hopkins—Who serves on this Committee with you?

Judge Webb—The Committee includes representatives from all aspects of the criminal justice system, from district and superior court judges, clerks of court, prosecutors, sheriffs, defense attorneys, relatives of victims, community members. The broad range of participants, some with adverse interests, ensures a lively discussion of various points of view and the knowledge and experience that each brings to the table informs our exploration of the many issues before us.

Ms. Hopkins—With respect to those issues before your Committee, were you given a specific charge or did the issues evolve in some other way?

Judge Webb—The Chief Justice asked this Committee to identify and explore the best ideas and best practices that we could recommend to enhance and improve the criminal courts and process in NC.

Ms. Hopkins—That is a huge undertaking with so many issues and challenges facing the criminal justice system. The first meeting of the Committee was in October, 2015, I believe. Since that time, have you identified the issues which are priorities?

Judge Webb—Yes, we have. Jessie Smith at the School of Government facilitated the initial brainstorming session where, literally, dozens of issues were discussed. She led us through an exercise of voting on each issue—“explore, don’t explore; need more information”—through which we were able to winnow down the list. The Committee has consolidated all of the topics we discussed into four main areas of focus, each of which includes many related topics. Those four broad areas of focus are: indigent defense services, increasing the juvenile age for criminal prosecution, pre-trial release, and criminal case management.

Ms. Hopkins—What has the process been in advancing those four topic areas which the Committee voted to explore?



Judge Webb—We have had presentations by experts to help educate us as to what the issues and problems are and to inform us of both potential alternatives and pitfalls to changes. We’ve learned from folks like Tom Maher from IDS, Michelle Hall from the Sentencing Commission, William Lassiter from the Department of Correction, Lorrin Freeman, Wake County District Attorney. We’ve reviewed and commissioned studies to elicit relevant data about what we are looking at. We’ve heard from the State Crime Lab.

Ms. Hopkins—Has it been difficult facilitating discussions between people who may have differing experiences with the legal system, points of view, and interests?

Judge Webb—The emphasis is on creating an atmosphere of respectful listening; that is my goal. I want to help steer us to our areas of commonality. I have found that despite the diversity of Committee members’ involvement within the legal system, there is surprising agreement on many issues, such as increasing the salaries of those in the judicial system, increasing the budget, upgrading technology so that we can have an efficient and top-notch case management system, and the like. But, as they say, the devil is in the details. That is why we’re doing our homework. We’re seeking out facts and data so that we can make evidence-based recommendations at the end of this process.

Ms. Hopkins— I understand that looking at ADR expansion in the court system, and at the District Criminal Court Mediation Program in particular, is part of your Committee’s focus. That is a subcategory to the issue of criminal case management, is that right?

Judge Webb—Yes, it is a very important part of what we are exploring in criminal case management. In fact, we did have a Committee meeting devoted to ADR and its possible expansion in NC. We heard presentations from Frank Laney, a 4th Circuit mediator, Jody Minor, the Executive Director of the Mediation Network of NC, which is the umbrella group for most of North Carolina’s community based mediation programs, and Leslie Ratliff, Executive Director of the DRC. We seek to bring all stakeholders to the table.

Ms. Hopkins—Have you received any guidance from the Chief Justice as to what his priorities might be in the area of criminal investigation and adjudication?

Judge Webb—Yes. He is very committed to increasing the age at which juveniles may be tried as an adult for less than the most serious felonies. We’ve collected evidence which shows that in any given year, there are approximately 5700 juveniles between the ages of 16-18 charged with crimes. Only 3.3% of those are alleged to have committed violent crimes. The data reflects that these numbers are fairly consistent over the last 10 years, with the percentage of violent crimes never rising above 4%. We suspect that this is surprising to many people, prosecutors, judges, and sheriffs alike. I suspect that most people if asked would guess that percentage to be much higher. The evidence does not seem to support a law that requires 16 and 17 year olds to be tried as adults in all felony cases. The only other state to do so is New

DRC DISCIPLINARY UPDATE

Sanctions Imposed

A. Reinstatement of certification upon conditions:

The Commission reinstated the certification of an FFS attorney-mediator, upon the completion of certain conditions, who had previously been decertified by the Commission for failing to report a pending Bar grievance on two successive certification renewal applications. The grievance against the FFS attorney-mediator raised serious issues about the attorney-mediator's conduct in his handling of a case involving the custody of a child who had been hospitalized for serious injuries. DSS was investigating the matter and trying to determine who had inflicted the injuries and with whom the child should be placed. The Disciplinary Hearing Committee suspended the attorney-mediator's license to practice law for one year effective 30 days from the date the Order was served upon him. The Order provided that Petitioner could apply for reinstatement at the expiration of the one-year suspension upon a showing that he had complied with the conditions set forth in the Order. Thereafter, the attorney filed Notice of Appeal to the NC Court of Appeals, which, in an unpublished opinion affirmed the DHC's Order suspending the attorney. He subsequently sought a Writ of Supersedeas from the NC Supreme Court and sought a temporary stay of his suspension pending his appeal, which stay was granted. The NC Supreme Court denied the Petition for Writ of Supersedeas, ending the stay and ending the appeal of the Order of Discipline. The NC State Bar reinstated the Order of Discipline and the one-year suspension then became effective. After the expiration of the one year suspension period, the attorney petitioned and was granted reinstatement by the NC State Bar. Pursuant to DRC Rule IX.E(16) the attorney-mediator petitioned for reinstatement of certification as an FFS mediator. His reinstatement is not yet effective as all of the conditions of the DRC Order have not yet been met.

B. Decertification of FFS mediator:

The Grievance and Disciplinary Committee determined to decertify an FFS attorney-mediator. In the course of investigating a grievance filed against the attorney-mediator by a party in an FFS mediation the attorney-mediator had been selected to mediate, the Commission learned that the attorney-mediator: i) had failed to report a prior suspension by the Bar on multiple certification renewal applications; ii) that he failed to schedule a mediation in the case, and filed a tardy and incomplete Report; and iii) that his conduct violated Standard III in that he agreed to represent the non-complaining party involved in the case after failing to schedule a mediation. The attorney-mediator filed timely notice of appeal, but a few days prior to hearing, withdrew his appeal.

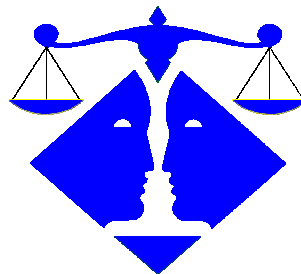
Commission Meetings

Dispute Resolution Commission meetings are open to the public and all are welcome. The next meeting is scheduled for Friday, May 20, 2016, at 10:00 am at the NC Judicial Center, located at 901 Corporate Center Dr., Raleigh, NC. If you plan to attend the meeting, please let Commission staff know so that we can ensure adequate seating. You may either email staff at DRCMediators@nccourts.org, or call (919) 890-1415.

TEST YOUR KNOWLEDGE!



- _____ 1. The Commission has not raised certification fees since 2003.
- _____ 2. In a dispute over payment of the mediator's fees, the mediator may disclose the amount of the fees owing and by whom.
- _____ 3. Statements made by a party in a mediation of a superior court case that has not yet been ordered to mediation may be discoverable and admissible.
- _____ 4. No evidence otherwise discoverable or admissible will be made admissible simply because it was presented at a mediated settlement conference.
- _____ 5. If a plaintiff in a case fails to attend a court-ordered mediated settlement conference without good cause, the court may impose sanctions, including fines, attorney fees, travel costs, as well as dismissal of plaintiff's complaint.
- _____ 6. Even if the mediator disagrees, all parties and persons required to attend may agree that a party or participant required to attend may attend by telephone.
- _____ 7. "What Happens in Vegas, Stays in Vegas" accurately describes the concept of the confidentiality of the mediated settlement conference.
- _____ 8. On his or her renewal application, the mediator shall disclose to the Commission any pending grievances or discipline by any licensing agency.
- _____ 9. If a case settles after a mediator has been appointed by the court but mediation has not been scheduled, no Report of Mediator has to be filed.
- _____ 10. Standard V does not prohibit a mediator expressing his/her opinion as a last resort to a party or attorney who requests it if the mediator has already helped that person utilize his or her own resources to evaluate the options available to that person.



Answers on Page 18

COMMISSION STAFF AND JUDGE WEBB ATTEND TENNESSEE CONFERENCE

Tennessee hosted the 2015 Southern Dispute Resolution Program Conference on November 19-20, 2015. Commission member Judge William Webb and Leslie Ratliff and Harriet Hopkins, Commission staff, attended the Nashville program, along with 36 other participants from 11 states.

Program administrators from southern states have met with some frequency over the last 15 years, with the DRC hosting the April, 2014 conference. The Tennessee conference departed from the previous conference model, and was expanded to invite Commission members in addition to program staff.

Topics were broad and the discussions lively. Each state's attendees moderated a particular topic, which included Program Evaluation, CME, Ethics and Discipline, Future of ADR Training, Issues with Pro Se Parties, and New Frontiers in ADR. Leslie, Harriet, and Judge Webb moderated the discussion on Program Evaluation. It was clear to all that our discussions only scratched the surface of each issue.

What follows are some of the interesting facts we learned in addition to the extensive policy and practical discussions:

Florida has 6200 certified mediators.

Georgia requires mediation trainers to show a video produced by the GA ADR office.

Virginia is exploring the use of Google Hangouts for mediation (up to 10 people on a video call).

Tennessee trainers pay a fee to their ADR Commission for each attendee.

Florida requires 16 hours of CME annually, per certification.

Alabama celebrates mediation with special events such as: giving an award to the pro bono mediator of the year and celebrating "mediation month" with educational outreach and activities.

A few ADR offices offer conflict resolution training for Clerks of Court.

Kentucky has a successful felony mediation program



Nashville's full scale replica of the Greek Parthenon sits on a major city thoroughfare, across from our hotel and Vanderbilt University. Inside is a full scale 42-foot statue of Athena. For more information:

<http://www.nashville.gov/Parks-and-Recreation/Parthenon.aspx>

religion, ethnicity, sexual orientation, or views and values. If you think about it, we can all relate at least a little. Most of us have had roommates in college or as young adults in the working world. A lot of times these relationships ended up in conflict and someone had to move out. Can you just image if you couldn't have moved out or gotten away?

Hurt relationships are very much a fact of life in a prison setting as is the practice of shunning. I believe the general inmate population has a vested interest in learning to respond more productively to conflict. It is a way to improve the quality of their lives and make a difficult situation at least a little more tolerable.

Ms. Ratliff – Did you actively choose which inmates to train as mediators?

Mr. Bowen – Actually those participating in the class and being trained to mediate are all “inmate coordinators”. There are 40 of them enrolled. These are folks that the prison administration has identified as demonstrating a cooperative attitude, a willingness to take advantage of the programs offered, and a genuine desire to improve themselves. They are setting a good example, so to speak, for others. They also have some responsibility for “policing” their cohorts. That’s why I want to keep it clear that the mediation program is to be about interpersonal conflict and not rule violations, i.e., the mediators need to be entirely neutral.

Ms. Ratliff – Can you tell me a little more about your class?

Mr. Bowen -- We meet every Friday. I have designed the course in three parts and it very much tracks what I have learned at the Strauss Institute, except that it is especially tailored for the inmates and the kinds of conflicts in which they are likely to be involved. Part I will deal with conflict theory. Part II involves teaching the inmate coordinators how to be effective negotiators. And, Part III involves teaching them to be mediators and arbitrators. Once the inmate coordinators complete their training and the program is in place, it should operate like this: When two or more inmates are involved in an interpersonal dispute, the trained inmate coordinator would first try to get those involved in the dispute to work it out themselves. He might try to educate them about negotiation techniques and would certainly encourage them to both talk and listen. He would not, however, play a direct role in their discussions. If that effort failed, the trained inmate coordinator would mediate their dispute. If that effort also failed, he (or a panel of three inmate coordinators) would serve as their arbitrator and the decision would be binding. The training is over a 20 week period, so it is intense. There will also be a program for continuing education, including advanced negotiation and mediation courses. I am working with my first group of inmate coordinators now and we are covering Part II material. I really believe that addressing interpersonal disputes early, i.e., before they have time to fester, is key. You want to reach inmates before matters escalate and someone gets physical or relationships are harmed.

I truly want this training to be a realistic and meaningful experience for the inmate coordinators. For that reason, I asked five of them to serve on an advisory board. It is their express role to provide me with suggestions and feedback – positive and negative. It is also important for your readers to know, that I am not “dumbing down” this course for the inmates. The material is challenging and I fully expect them to meet the same standard of rigor that Strauss expected me and my fellow students to meet.

Ms. Ratliff – Have you encountered any stumbling blocks?

Mr. Bowen -- Laughing – Well, I guess you would expect to encounter some stumbling blocks in a prison setting. Every time I come in the prison, I have to be searched and the books, audio visual or other equipment I bring with me must also be searched. That process can be time consuming, especially when several people are waiting to enter ahead of you. In addition, I have to request permission to move about the facility. For security reasons, they always have to know where everyone is. Also, because it is a prison they don't like routine. It is harder for someone to cre-

ate problems if they lack a set schedule or routine. For that reason, prison staff tend to always be mixing things up for the inmates, changing their schedules and altering their routines. That can make it challenging for everyone to get to class on time. Money is also a problem, i.e., there is simply not enough of it. I would like to be able to provide each inmate coordinator in my class with a copy of the same text book on introductory conflict resolution that I had at Strauss. That textbook, though, runs upwards of \$100.00. I hope to eventually interest some law firms or churches in contributing and covering these kind of costs. Because we don't have the text books at this point, I have actually been drafting and assembling a text book as I go along. As such, I have been spending a lot of time on this project outside the prison. Also, there is a disparity in the education levels of the inmate coordinators that can sometimes create a challenge in presenting the material. Some of them are college graduates, others may be high school graduates, and still others have little formal education. As I said, I am committed to keeping expectations high for everyone. Supplemental handouts can help with some of that. Again, this is a motivated group and they are very interested in the material. That goes a long way.

Ms. Ratliff – So, you have high hopes for your efforts – for your experiment?

Mr. Bowen – Yes, I certainly do. Prison of Peace has experienced astounding results. They are seeing a real correlation between completion of the program and lowered recidivism rates. In other words, by changing someone's perception of conflict and giving him the tools to respond more appropriately to conflict, you may be able to keep him from returning to the prison system and maybe even help him become a productive, contributing member of society. Many of these inmates simply never had the opportunity to learn productive ways to address conflict; their reality has largely involved only bullying, aggression, and violence. We can't change the past, but we can certainly try to give them a new template and tools for moving forward more productively. I certainly hope that my Allendale program will be able to replicate some of the results that Prison of Peace is seeing.

Ms. Ratliff – Can we check back in with you down the road to see how things are going?

Mr. Bowen – I hope you will. In fact, you have an open invitation to visit the classes!

Ms. Ratliff – Thank you, Mr. Bowen. And, thank you for trying to make a difference in the lives of these inmates. You have made a huge commitment in terms of your time and energy. It is really impressive.

Mr. Bowen – Thank you. I hope your readers will enjoy learning about Allendale and the inmates' interest in dispute resolution.

Test Your Knowledge Answer Key (Page 10):

1. T
2. T
3. T
4. T
5. F (only monetary sanctions are permissible)
6. F (the mediator must consent unless the court orders the relief sought)
7. F
8. T
9. F (a Report is due in every case ordered to mediation)
10. T

York. And, this requirement also contributes to the high incidence of these juveniles in our county jails, which can be a financial challenge for local sheriffs.

Ms. Hopkins—I imagine that these findings will inform further exploration of juvenile justice issues, and any recommendations to be made in the future.

Judge Webb—Yes, they will. We are looking at what other states are doing with the related issues of pretrial release programs, the issue of money bonds, referral to mediation of minor felonies, and the like.

Ms. Hopkins—Has the District Criminal Court Mediation Program that the Commission supports come up in the Committee's discussions?

Judge Webb—Yes, it has. I have been surprised to learn that many of the people on the Committee are relatively unfamiliar with this program, which, in fact, has existed for a decade, with much success, thanks to the hard work of the local community mediation centers, the Mediation Network of North Carolina, and the Dispute Resolution Commission. We are working on increasing statewide awareness about this program and evaluating the possibilities that expanding it might offer, such as, as I mentioned, the mediation of non-violent or serious felonies.

Ms. Hopkins— There may well be some of our mediators reading this interview who are also unaware or have limited knowledge of the DCC Mediation Program. For instance, the DCC Program is not operating in all district court judicial districts. Might your Committee also look at the merits of expanding it statewide?

Judge Webb—I feel strongly that the DRC is the appropriate body to consider these issues and take the lead in this effort and make recommendations. It has a statutory charge to support the program and any initiatives should originate with that body. Our Committee is aware of its boundaries with other governmental and organizational entities. We want to work with them as may be helpful, but certainly do not wish to in any way usurp their normal functions.

Ms. Hopkins—Judge Cash appointed an Ad hoc Committee to study the District Criminal Court Mediation Program and make recommendations to the Committee. Is this what you are referring to?

Judge Webb—Yes, that Committee has a broad charge from the Commission's chair, to study all aspects of the District Criminal Court program. Diann Seigle is the chair of that Committee and I serve on it. And, Diann is also on the Criminal Committee that I chair, and she serves on the DRC and the Chief Justice's Commission. So, there are open lines of communication between both bodies and the good potential for staying informed.

Ms. Hopkins—Do you have a personal opinion about the efficacy and usefulness of the DCC program?

Judge Webb-- I have personally observed the operation of the program in Wake County District Court and I feel strongly that it helps tremendously in the handling the dozens of cases every week that are ideal for mediated settlement. Many community mediation centers are doing a good job administrating this program. I personally would love to see it in place statewide. I think there may be ways that it can be made more efficient such as providing center staff access to the docket prior to the date of court, and reducing the need for the presence of a prosecutor, but these are decisions to be made on the ground, between the centers and the prosecutors.

Ms. Hopkins—I understand that this Commission has an 18 month life span. What is the process moving forward? Each Committee continues to meet, and then what?

Judge Webb—In August, 2016, each of the Committees will be holding a series of town-hall meetings across the state. The purpose is to inform the public as to the work of the Commission in general and the Committees in particular, and invite comments and questions.

Ms. Hopkins— Will the Committees have separate meetings with the public or will representatives from all five Committees attend a particular venue together?

Judge Webb—No, each Committee will set its own meeting dates and locations.

Ms. Hopkins-- Does that mean that the Committees will have recommendations to roll out at those meetings?

Judge Webb—Not necessarily. I am taking the view with my Committee that we will not release any particular recommendations until the Chief Justice has reviewed them. I will look forward to telling the public what the issues are that we are studying, and to asking them to express their concerns, questions and ideas. The recommendations will come later, and the input from the public will also inform the process and discussions going forward after those meetings.

Ms. Hopkins—And, after those public meetings?

Judge Webb—Although the Committees are operating separately, there is a great deal of overlap of issues among them. I see the Committees operating organically and holistically within the whole Commission. For instance, if the Technology Committee recommends raising the funding for upgrading the AOC's computer system, it follows that this most likely will help us advance our goal of improving the case management system. So as each Committee continues its work, I suspect that we will see some combining of ideas and recommendations. A sort of gestalt, perhaps.

Ms. Hopkins— It strikes me that so many possible initiatives that may be recommended involve the expenditure of state funds. Do you see that as a barrier to making progress on system wise changes?

Judge Webb—There is no question that money/funding is a huge hurdle. The Chief Justice has the very difficult task of digesting all of the information and recommendations that will be made, prioritizing them, and determining a strategy to secure funding and implement them. It is hoped that there may be some changes that he can simply make on his own as Chief Justice, or perhaps with only a rule change, without the need to go to the General Assembly. But, to be sure, priorities will have to be made for those initiatives requiring state funding.

Ms. Hopkins— Thank you. Is there anything that I haven't asked that you'd like to say? Any final comments you'd like to make?

Judge Webb—Yes, I want to add that I have great respect for Chief Justice Martin in taking on this massive "self-study" if you will, of North Carolina's current processes to administer the law and achieve justice for all persons. We are actually still in the information-gathering stage, having been at this work for only about six months. I am grateful to be a part of it, and I look forward with great anticipation to the opportunity to work with the Criminal Investigation and Adjudication Committee to put forth some truly effective, achievable, and evidence-based recommendations to the Chief Justice. A collaboration of this magnitude is both astonishing and exciting!

Ms. Hopkins—Thank you, Judge Webb, for talking with me today. We are very grateful for your work on the DRC and the Chief Justice's Commission.

Judge Webb—My pleasure. Thank you.

Upcoming Mediator Certification Training



Upcoming Mediator Certification Training

Superior Court Training

Carolina Dispute Settlement Services: 40-hour superior court mediator training course, May 23 - 27, 2016, in Raleigh. 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, May 21 - 25, 2016, in Raleigh, August 4 - 6, 2016 in Charlotte. 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.

Family Financial Training

Carolina Dispute Settlement Services: 40 - hour family mediation training course, June 27 - July 1, 2016, in Raleigh. See above for contact information.

Justice Center of Atlanta: 40 - hour family mediation training course, July 14 - 18, 2016, in Atlanta, GA, and October 13 - 17, 2016, in Atlanta, GA. For information, contact Melissa Heard at (770) 778-7618 or visit their web site at www.justicecenter.org.

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

6-Hour Training

Carolina Dispute Settlement Services: 6-hour course, July 6, 2016 in Raleigh. See above for contact information.

Mediation Inc: 6-hour training course, May 14, 2016 in Raleigh. See above for contact information.

Professor Mark W. Morris: 6 - hour course. For more information or to register on-line, visit www.nccourts.homestead.com.

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

Judge H. William Constangy (Charlotte): For more information, contact Judge Constangy at (704) 807-8164.

CME OPPORTUNITIES

CME and Training Opportunities

NC Bar Association is presenting “Getting a Mediation Practice Up and Running” (on Demand) (#377CYB). For additional information, call (800) 662-7407 or visit www.ncbar.org/CLE.

NC Bar Association is presenting “A Mock Mediation—How to Bring Calm to Chaos: Moving Forward in the Face of Challenging Circumstances? (on Demand) (#330CYB). For additional information, call (800) 662-7407 or visit www.ncbar.org/CLE.

NC Bar Association is presenting “Getting What you Want: A Review of Negotiation Skills” (on Demand) (#331CY3). For additional information, call (800) 662-7407 or visit www.ncbar.org/CLE.

NC Bar Association is presenting a “Mediation for Pro Se Parties: the Process, the Ethics, the Benefits” (on Demand) (#330CY3). For additional information, call (800) 662-7407 or visit www.ncbar.org/CLE.

The ADR Center periodically offers an “Advanced Mediation” seminar in Wilmington. This advanced seminar is intended to assist the experienced practitioner in enhancing his/her skills. This 6-hour seminar focuses on more complicated dynamics that present themselves at the mediation table. Participants can expect to build on their professional experiences and those of their colleagues. For additional information, call (910) 362-8000 or visit www.theADRcenter.org.

REMINDER:

THE COMMISSION HAS BROCHURES FOR EACH OF THE PROGRAMS IT SUPPORTS, WHICH ARE AVAILABLE AT NO CHARGE TO MEDIATORS, COURT STAFF, AND THE PUBLIC UPON REQUEST.

CONTACT US BY EMAIL, DRCmediators@nccourts.org, or TELEPHONE, 919-890-1415 TO REQUEST PROGRAM BROCHURES.