



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Dispute Resolution Commission Meeting Minutes

Friday, April 19, 2024

In Person Meeting at the Doubletree Hilton in Atlantic Beach, NC

Commissioners present in person: Frank Laney, Judge Bragg, Angela Kidd, Paul Ekster, Robin Stinson, David Niblock, Zach Bolen, Judge Hamilton, Judge Stading, David Wijewickrama,

Ex Officio members present in person: De Maca Adams

Commission staff present in person: Tara Kozlowski, Maureen Robinson, Mary Brooks

With regrets: Judge Gorham, Ben David, Judge King, Judge Southern, Dolph Sumner, Justina Tate, Alice Stubbs, Ralph Meekins

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

1. Welcome and Announcements – Judge Hamilton
 - a. Hello everyone. It's great to see everyone again; I'm happy to announce you'll have the Vice-Chair running the meeting again. This meeting is in person with no one attending remotely. We are waiting on one more member to join us, so we have a quorum to vote on the minutes, so let's move forward with the Office Report.
2. Office Report – Mrs. Kozlowski
 - a. Budget.
 - i. We are still working with AOC Financial Services regarding the new software. We have had a few hiccups regarding our own policy for submitting fee requests. Please keep track of your reimbursements and make sure your check is correct.
 - ii. We have a beginning balance for this year of almost \$370,000, which is fabulous. Our receipts so far are just under \$312,000, and our expenses are about \$122,000. Our current balance is at \$558,000. This includes the grant 100k, so I estimate we are closer to \$460,000. By the end of the fiscal year, we should land in the green by \$51,000 which is fantastic. This meeting will take a nice portion of these funds, but you all deserve the celebration for working so hard this year. We really appreciate your efforts. Financially speaking, we are doing very well. Please keep in mind we are still on the learning curve with the Grant funds as the AOC has the money under our umbrella in a separate account, but the funds are being reported as DRC

funds overall. We are watching the interest for the grant funds carefully to make sure they are applied to the correct account.

Late Member arrived – Quorum reached.

b. Renewal.

- i. We have had a lot of applications coming in, Mary is consistently busy. I know Frank just taught a class (CDSS) with about 20 attendees which is spectacular. We still have a lot of people coming through training and our numbers are consistent with where they should be.

c. Training/Education.

- i. Mr. Laney: I teach with CDSS, and we typically offer a spring and fall MSC and FFS course, both this year and last year we have had to add a few additional courses as we have such great interest. We have 3 MSC classes this year which were all full, and last year we taught 3 FFS classes that were all full. The demand is out there and keeping us busy. Right now, we are the only FFS program, and one of two trainers for the MSC program.
- ii. Mrs. Kozlowski: We do have a new trainer, Laura Jeffords with The Mediation Center in Asheville, has become a DCC certified trainer and is in the process of drafting and completing their application to become certified to teach the MSC and FFS programs. They are a wonderful group with fabulous trainers. They are only providing in-person training. Hopefully this will help expand training opportunities and options.

d. NCBA DR Section Roundtable.

- i. Jim Cooley, chair of the NCBA DR Section last year, has created subtask groups and task force groups to expand mediation programs. He has selected Ann Anderson to host an open discussion round table about mediation. Ann tagged about 10 people to sit and have a conversation about mediation. The idea is to have an open discussion. There is no CLE or CME provided but has received great feedback with 100 people signed up for the next discussion. This will be beneficial, working almost as a listserv, as it is an informal question and answer session but live.

e. Supreme Court Rules.

- i. Please see the Rules on page 22 of your packet. These are the Rules you all have approved, posted for comment, and eventually adopted by the Commission over the past year and a half. Staff will be sending the Rules to the Supreme Court for review and consideration next month. Before they are sent up, I'd like to give all members a final chance to review the proposed amendments in the event we need to pull something out of the mix.
 1. Staff is requesting to clarify the form to be used under MSC/FFS Rule 7 when filing a Consent Order for Substitution on Mediator. We have two different Rules where a mediator can be substituted out of a case. Under Rule 2 the form to be used is listed, and there is confusion on what form should be filed under Rule 7. The forms

are different as the mediator collects fees under Rule 7, but not Rule 2. This is not a substantive change, but technical change for clarification so there is no requirement to post for comment. Please note, your packet has proposed language for the MSC, FFS, and Clerk Programs. However, we discovered there is no form for Rule 2 of the Clerk program. Even though the Rules provide for a form, we have not created one to date for this purpose. Staff spoke with the AOC regarding the creation of the form, and they are not able to take on this task during the implementation of Odyssey. Please disregard the request for the Clerk Rules to be updated as we are only looking to update the MSC and FFS Rules at this time.

2. Mrs. Stinson: Under the Clerk Rules, Rule 7B would not go up to the Court? Kozlowski: Correct.
 - ii. Mrs. Stinson made a motion to approve. Seconded by Mr. Wijewickrama. Discussion: None. Vote- all in favor. None opposed. Motion carried, approved.
3. Welcome and Announcements- Judge Hamilton, Continued.
 - a. Now that we have all members present, we can move forward with the meeting minutes from our last Commission meeting.
 - b. Approval of January 26, 2024, Meeting Minutes. Frank Laney made a motion to approve January 26, 2024, meeting minutes. Seconded by David Niblock. Discussion: Add regrets that Robin Stinson as not attending. Vote – all in favor. None opposed. Motion carried, approved.
4. Committee Reports –
 - a. Executive Committee Report – Judge Hamilton
 - i. Grievance Appeal Hearing. A panel of the Commission convened at the Judicial Center on March 18th of this year to hear the appeal of the sanction issued to mediator A-23 by the Grievance and Disciplinary Committee. The Commission panel found the mediator was in violation of Standards 3, 4, 6, and Advisory Opinions 28 and 31. The Commission panel found all violations to be minor and of a technical nature, taking into consideration mitigating factors the panel sanctioned the mediator with a private letter of warning.
 - ii. This is a little different than what happened at committee level, correct? Mrs. Kozlowski: Correct.
 - b. Criminal Sub Committee – Mr. David/Ms. Estle
 - i. Previous Matters.
 1. Update on DCC Pilot Program.
 - a. Mrs. Brooks The pilot officially took off on February 15th with 5 participating community mediation centers serving 7 counties. The first quarter of the pilot ended March 31st. Even with the first quarter comprising of only 6 weeks, far less mediations were conducted than we hoped. We allotted

408 mediations for the 1st quarter, however, only 70 were completed. Doubling that number to consider the short quarter still only leaves us on target for 140 mediations per quarter. Please see page 25 of your packet. Concerned the number of mediations being conducted by the current participating community mediation centers, additional community mediation centers that are certified with the DRC have been invited to join the pilot. We are continuing to work with the chief district court judges, district attorneys, and community mediation centers to make this pilot a success. Come join us, please use the money. Forsyth County DA is not willing to participate. So, we have expanded the program to Cabarrus, Caldwell, Burke, and Catawba Counties.

- b. Commission members and staff have extensive conversation about how the pilot program operates and how to get more districts involved.
- c. Mrs. Kozlowski went into great detail explaining the history, initial set up, and current processes of pilot program. The initial pilot invited all community mediation centers, all 100 NC counties, all DAs, and all chief district court judges to participate. We are currently working with those that have responded and expressed interest. We began the pilot with limited participating counties, but soon realized we were not able to collect sufficient data with the limited numbers, so we are now reaching out those who initially expressed an interest in participating. When we first pitched this idea to the Conference of DAs, and to the AOC, they loved the idea – but we had no statistics to show the program would be effective. That is where the grant funds come in, to provide data so we can eventually seek annual funding through the General Assembly. What we know is each mediation costs \$60, and the cost to take a magistrate’s case through court is approximately \$60. The idea is to provide ADR services at the same cost that will alleviate our court’s dockets and provide a more amicable resolution for the parties. The goal of applying for grant funding, was to show the results from a one-year pilot, but the pilot has not taken off as quickly as hoped.
- d. Several Commission members share interest in getting their districts to participate to make the program successful. All members were encouraged to have their local DAs, chief district court judges, and community mediation centers to

- reach out to Mrs. Brooks if there is interest in joining the program.
2. New Form, CR-700.
 - a. This form was shared with the Commission last meeting.
 - ii. New Matters.
 1. None.
 - c. Grievance and Disciplinary Committee – Judge Hamilton
 - i. Update on complaint activity.
 1. Mediator H-23. Mediator filed a Report of Mediator that included substantive information about the mediated settlement conference. Commission staff initiated a complaint and sent the mediator a letter of inquiry, where mediator timely responded. The committee reviewed staff's complaint, mediator's response, and found under DRC Rule 9(d)(2) that the mediator violated Standard 3. Taking all factors into consideration, the committee issued mediator a private reprimand and required mediator to complete a 16-hour DRC certified training course within one year. Mediator did not appeal the decision.
 - a. Discussion: Is there any concern about folks having to take training from someone on the disciplinary committee?
 - b. Kozlowski: The trainer on the committee recused themselves from the decision on the sanction, and there are multiple trainers available for this course.
 - c. Discussion: Commission members and staff discuss the policies and procedures of our current rules, if there are areas to improve, and how to move forward with modifying the rules.
 - d. The discussion involves ironing out procedures internally for appeals; raised questions and concerns. Mrs. Kozlowski addresses each question and Commission agrees to address issues at the committee level.
 2. Mediator A-24. Staff received a complaint against mediator A-24 that provided insufficient information to pursue the complaint on the information provided. Staff reached out to the complainant twice by phone and 6 times via email, requesting additional information. The last email indicated without additional information staff would request the matter be dismissed. Complainant failed to respond. Staff requested I review the matter under DRC Rule 9(c)(5)(a). I agreed with staff's recommendation and dismissed the complaint. The complainant has a 30-day right of appeal to the Grievance and Disciplinary Committee.
 - a. Discussion: Does the Complainant know staff was trying to reach them? Mrs. Kozlowski: yes, we sent multiple emails

and made phone calls to the complainant. The letter dismissing the complaint indicated the complainant has a right to appeal the decision to dismiss to the Grievance Committee.

- b. Mr. Laney: What general Rules were allegedly violated?
- c. Mrs. Kozlowski: The complainant filed a complaint against the mediator prior to the mediation. The major allegation was mediator asking for retainer, which is not a Rule violation. The complainant also listed about 15 Rule and Standard violations without any substance as to how the Rules or Standards were violated. The complainant would not respond as to the list of alleged violations with no substance.

3. Mediator B-24. Staff initiated a complaint against Mediator B-24 based on the allegation that mediator failed to report to the DRC a sanction received by the NC State Bar and failed to report the sanction on the mediator's FY 23-24 Renewal Application. Mediator has until May 10th to respond.

- ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
 - 1. All letters of warning for failure to report a Letter of Notice and Substance of Grievance timely, that were discovered during the renewal process, have been sent to mediators.
- iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
 - 1. Nothing to report.

d. Mediator Certification and Training Committee – Mr. Bolen

- i. CME offerings approved since August 2023. We have approved three new CME training courses. Two 2-hour CME courses offered through the Mediation Center in Asheville, and one 1-hour CME course offered through the NCBA.
- ii. Applications for certification that came before the Committee.
 - 1. None.
- iii. Previous Matters
 - 1. None.
- iv. New Matters
 - 1. DRC Rules. We had a meeting before this meeting to discuss the consideration to modify the DRC Rules. The Grievance and Disciplinary Committee is moving forward with updating the Grievance procedures and Standards of the Rules of the Dispute Resolution Commission. Our committee met before the meeting today and we want to make sure the rules are consistent. We all

agreed they should be, and the mediator certification and training committee would look to the grievance committee and follow suit.

2. Consideration of Observations Requirements. We have been requested to consider moving all required observations for an application for certification in any program, to be allowed to be completed through remote observations. The committee discussed the matter thoroughly and was not inclined to allow all observations to be conducted through remote technology. The committee opted to maintain status quo and allow some observations to be conducted remotely, and to require at least one observation to be conducted live, in-person. The committee felt a mediator certified by the DRC would conduct in-person mediations during their tenure as a mediator, and therefore, we should train them properly on how to conduct in-person mediations. We looked to the application process, and the obligation to one in person mediation.
 3. Discussion: A detailed conversation commenced over AI and how it cannot be used in mediation as it records the conversations. Points were brought up about major companies using AI during mediations. AI questions stemming from mediators wanting to use AI for drafting, however mediators cannot draft. The discussion continued to mediators not sharing their opinions or judgment from experience. The conversation then moved to mediators being able to move outside of bounds vs. following the rules. Commission staff reminded all that they are there to support mediators and provide resources, rules, and standards to follow.
- e. Civil Sub Committee – Ms. Stinson
- i. Previous Matters.
 1. Forms still pending with AOC Civil Forms Subcommittee. All form amendments are on hold with the AOC until Odyssey is up and running statewide.
 2. Public Records Mediation program. The committee is still reviewing the public records mediation program. The committee is interested in determining if we can implement mandatory or voluntary mediation in the rules, without interfering with other procedures already in place. The committee will continue to work on this matter and provide updates accordingly.
 - a. Mrs. Kozlowski: Staff needs to conduct research on this to make sure we will not step into problems if we adopt this program and write rules.
 3. MSC Rule 4(c)(1) amendment. MSC Rule 4(c)(1) and Clerk Rule 4(b)(1). The current MSC Rules requires the final agreement to be signed by the party and the party’s counsel. The proposed change would delete the requirement that the lawyer had to sign the

mediated settlement agreement. The committee agreed that it is not necessary for the attorney to sign the final agreement and voted to remove the requirement from the MSC Rules. This affects the Clerk Rules, but the FFS Rules do not require the attorney to sign the final agreement. The Commission approved the proposed amendments in January, and the Rule was posted for 30 days.

- a. Commission staff received 2 comments, and both were considered by the committee. After consideration of the comments, the committee determined to move forward with the original proposed language and recommends the Commission adopt the proposed amendments. Ms. Stinson: One comment was in favor of the rule change, and one said we need to leave lawyers on the hook. The committee recommended we send this to the Commission with the rule change in the place and leave out the requirement for the lawyer to sign the form.
 - b. Mr. Niblock made a motion to adopt this recommendation. Seconded by Mr. Bolen. Vote – all in favor. None opposed. Motion carried, approved.
4. Clerk Program. Mr. Frank Johns has wanted to build support on the Clerk Mediation program. The Clerks have been resistant, they don't have a lot of energy behind this program. Ms. Kidd has brought this matter to the attention of Jamie Lassiter, the Executive Director of the Conference of Clerks. The executive committee of the Conference of Clerks will be discussing this program at their regional meeting later this month.

ii. New Matters

1. Update Farm Nuisance Statute. There are amendments to the statute for your consideration to update the language to align with MSC and FFS procedures.
2. Update Farm Nuisance Rules. After reviewing the public record mediation statute, we became aware that the Farm Nuisance Statute and Rules are out of date. The recommended changes focus on the procedure used to report the results of mediation to the court. These recommended changes will bring the Farm Nuisance Mediation Program in line with the MSC and FFS Programs.
 - a. Mr. Wijewickrama made a motion to approve statutory and Rule changes. Seconded by Zach Bolen. Vote – all in favor. None opposed. Motion carried, approved.
 - b. Question: Mr. Laney: Where are we on this, has AOC approved the legislative change? Mrs. Kozlowski: No, this is the beginning. The statutory change needs to occur before the Rule change, so we need to approve the Rule change so

we can post the proposed amendments. Then determine if the changes we have approved can be implemented into Odyssey, and if so then we can adopt the Rules. However, the Rules cannot go up to the Supreme Court until we have a legislative change.

3. Split Rule 2 Designation Form into two separate forms, designation, and court appointment. Staff has received multiple calls from court staff who have expressed their concern with the process of appointing a mediator in Odyssey. The clerk driven eCourt system is not ideal for timely notifying court staff of the request for a court appointed mediator. The request was made to divide the process into two separate forms, one for designated mediators and one for court appointed mediators.
 - a. Judge Hamilton: Does anyone have any questions on this? None.
 - b. Judge Hamilton asks for a motion. Mr. Laney made a motion to approve. Seconded by Judge Bragg. Vote – all in favor. None opposed. Motion carried, approved.
 - c. Discussion: Judge Bragg: When I receive appointment, the forms are not completely filed out. Ms. Adams: there are features different counties may use in Odyssey, Wake County does not use that feature. Mrs. Kozlowski: The BAPM team asked us to modify our Rules to eliminate the ability for districts to create local rules, however, we felt this would cause chaos. Not all districts will operate the same under Odyssey as the districts can opt not to follow the one path Odyssey provides. It creates more work for the districts, but they can opt out of processes.
 4. Ms. Stinson: asked to review the AO ad hoc Committee AO Review proposed AOs. However, there is an AO with a substantive change that will be addressed in the S&AO Committee report. Judge Hamilton requested we vote on the AO revisions after the S&AO Committee.
- f. New Media Committee – Mr. Wijewickrama
 - i. Updates to website.
 - ii. Social Media Presence.
 - iii. Vignettes of the Rules. Tara met with Ketan Soni to consider ideas for the vignettes. They have come up with a plan to provide a short video for each Rule and Standard. That will be a spoof of a well-known sit-com. Ketan is to begin drafting ideas to bring to the committee for consideration. Mr. Wijewickrama: Recommends jib job to create skits and use commissioners faces on cards, etc. All Members agreed the jib job creations would be great.
 - g. Standards and Advisory Opinions Committee Report – Mr. Laney

i. Previous Matters

1. Confidentiality Agreement. The Commission and the DR Section have been working together to draft an Agreement to Mediate. The State Bar weighed in, and then determined they were out of their lane. The Commission approved draft of the form that contains terms for a service contract (confidentiality agreement) is before AOC legal for review. Tara has met with AOC attorneys Nicole Brinkley and Antares Holloway to provide the background of why this form was created. They are continuing to consider the form and have not issued a formal position. However, they have confirmed the form will not be an AOC form.
2. State Bar matter: Mediator acting as scribe. We wanted clarification on what an attorney can do regarding acting as a scribe. Staff requested a formal opinion from the State Bar on the ability of a mediator to act as a scribe, and the impact of a term of the final agreement that violates the Rules of Professional Conduct. Nichole McLaughlin with the State Bar is working on a response for the DRC.
3. Request for AO regarding processing fees. Can a mediator change a processing fee if a party pays by credit card, or electronic payment means? The committee answered this question in the affirmative with conditions. Please review the proposed AO addressing the payment processing fees associated with paying through electronic means. The AO provides that the mediator must accept payment by cash or check to allow the party to pay the mediator fee without incurring a processing fee. However, if the party elects to pay the mediator through a third party, such as a credit card, Venmo, Zelle, PayPal, or any other electronic payment method, any fees associated with the payment will be responsibility of the party.

Mr. Bolen made a motion to approve. Seconded by Angela Kidd. Vote – all in favor. None opposed. Motion carried, approved.

4. Update on Request for paralegal to attend mediation. This matter has been discussed at committee level, Commission level, and back to committee level. Allowing this would be problematic in several areas. Ultimately, staff and the committee debated it and decided to prohibit this because of the confidentiality issues. There is not enough interest to modify or amend Rules and Standards to allow for this behavior. Staff notified the requestor of the committee's decision.
 - a. Discussion: Ms. Stinson: This doesn't affect staff bringing in lunch? No. this precludes staff from sitting in and hearing all conversation and working through the mediation. Mrs.

Kozlowski: The committee originally was split, so it was brought to the Commission, and they were split. So, it was kicked back to committee, who remained split, so the committee decided to let it lie as there was no majority.

ii. New Matters

1. Consideration of Conflict-of-Interest Standard. Staff received a request to loosen the Conflicts of Interest Standard to allow colleagues to accept mediations where an attorney/mediator has provided a consultation for one of the parties. The Standard is a bright line, moving the line would open so many spaces that would be problematic. The committee reviewed all concerns and reasons why this Standard is in place, and unanimously declined to reconsider this Standard.
2. Consideration of Standard 7(h) and “Gift” AOs. The Ad Hoc AO Review Committee brought to our attention the Gift Rule under Standard 7(h). Based on the AO Review Committee’s recommendation, this committee considered loosening our interpretation of the Standard. The language throughout the AO talked about a Bright Line Rule, but the Rule is not bright line as the Rule discusses the mediator’s impartiality. Mediators may use token gifts to advertise; things that you can pick up for free from a convention are not gifts of value. Coffee mugs, mouse pads, pens, and notepads are fair game. The other end that is not fair game is basketball B tickets to a NC State or Duke game, stays at my beach house; those are only available to certain people.
 - a. All agreed that loosening the interpretation would be to everyone’s benefit and keep the Standard to prohibiting gifts that would weigh on a mediator’s impartiality. To do so, would require a slight modification of Standard 7(h). Please see page 52 of your packet.
 - b. Comments: Mr. Laney: I was around when the original AO was drafted, and I always felt this was unconstitutional. To make this clear, and non-ambiguous we decided we would prefer to make a change to standard 7(h). We think the first sentence is clear and the second sentence is confusing. We’d like to propose to strike the second sentence.
 - c. Ms. Stinson motioned to approve new AO. Seconded by Mr. Laney. Vote – all in favor. None opposed. Motion carried, approved.
 - d. Judge Hamilton: I am concerned about how the mediator’s impartiality and how that gets defined. Should we build in a Reasonable Person Standard? How does it get determined if something is impartial? Judge Bragg: We looked at congress

gifts, state gifts, gifts set by a dollar amount of \$500. There is no specific definition, but it is too difficult to nail down. Mr. Wijewickrama: Can we add in objectively reasonable. But how do you define that? Judge Hamilton: I get that; there could be some safety measures in place. Mr. Laney: I would like to propose we fix this and vote by email when the “Reasonable Person Standard” is added. Mr. Wijewickrama motions to approve. Seconded by Mrs. Stinson. Vote – all in favor. None opposed. Motion carried, approved.

5. Ad Hoc Committee Reports –

a. eCourt Committee – Ms. Adams.

- i. I don’t have anything to report on eCourts, but I have an update on Odyssey. Track 3 rolled out February 5th (northeastern part of the State) and track 4 is on track to roll out in April in the northern part of the State (about 10 counties), 5 and 6 will roll out this summer and fall.
- ii. Mrs. Kozlowski: We discovered Odyssey does not update mediator information. It updates State Bar information for lawyers, but if a mediator changes their contact information it does not update the information in Odyssey. This is becoming a nightmare. Court staff in Mecklenburg discovered error.
- iii. Mrs. Robinson: on a happy note, only a certified mediator can be assigned to mediate, or appointed to a case, as they are the only mediators in Odyssey.

b. Video Observation Committee – David Wijewickrama

- i. Nothing to report.

c. Cherokee Nation Mediation Program – Mr. Wijewickrama

- i. Update on progress. Mrs. Kozlowski met with the Chief Justice Saunook to discuss implementing DRC Rules and Standards in the EBCI. We discussed what they want and what we can do to help. They want their mediators to become certified, but we can’t regulate since they are in a “different state”. We discussed the option of the Commission regulating Standards and the EBCI regulating the Rules, however, the Chief prefers if the Commission regulates both. We don’t have jurisdiction. We went through a few different possibilities; we do not want to have to change our statutes. Our idea is to have the rules in Cherokee to require them to follow our Rules and Statutes.
- ii. Mrs. Kozlowski: our courts operate differently. The individual the EBCI would like to certify to conduct family law mediations, specifically custody, may not be eligible to certify under our FFS Rules. There are lots of details we will have to work through.
- iii. Mr. Wijewickrama- Superior court is equal to district court on the reservation. We are having to ex parte child custody between in the boundary, on the boundary, and out of the boundary of the reservation. If

you are off the reservation, you don't have to attend tribal mediation, but you would have to attend mediation in court. The tribal court is asking for all individuals to be treated equally regardless of where they are on the boundary. As an example, no Indian on the reservation owns property; the Bureau of Indian Affairs owns the property, and they hold a possessory interest that is given to the tenant holder. There are a few wrinkles because things work differently. To be a custody mediator, the EBCI mediator does not qualify. Cherokee tribal custody conflict is different also, it is a cultural issue. They do not follow the general rules. We are trying to figure out how to apply state law in Indian Cherokee county. These are some of the issues we have been walking in and out, while trying to figure out how to apply state law in the EBCI. There are 4 counties surrounding the county that have tribal property, they can use state court mediators. If they are in Triable Court, we want them to use mediators certified by our Commission.

- iv. Mrs. Robinson- We may be able to certify him under Association of Conflict Resolution.
- v. The Chief Justice and the NC State Bar in 2010, entered into a MOU agreeing that all lawyers on the reservation must have a NC bar license. This is what we are trying to do now, to have better ways to deal with child custody. We are trying to get away from competing orders. The tribe has language that says they should look to NC law for guidance, but they are not required to follow it. We are trying to eliminate the pick and choose, and we are confusing state schools with tribal orders. We are trying to level out the field.
- vi. The question is if we can we get the Chief Justice to agree on the MOU on our side.
- vii. The committee consists of Judge Hamilton, David Wijewickrama, Dolph Sumner, and we added Ketan Soni, and Judge Bragg. We need to figure out what to do on our side for technical guidance. The EBCI has a desire to comply with State Rules. The EBCI is a young nation trying to implement processes to help children.
- d. DRC Funds Committee – Mr. Niblock
 - i. Nothing to report.
- e. Ad Hoc AO Review Committee – Ms. Stinson
 - i. Guidelines used by Committee during review.
 - ii. Review of AOs. All AOs have been reviewed and revised. All bad law, and outdated procedures have been removed. Please see the guidelines the committee used when reviewing the AOs for consistency on page 54 of your packet. We are going to publish the AOs. Mrs. Kozlowski: yes, the only substantive change we made was in AO 33, the gift AO. We archived a few AOs by moving the substance of the archived AO to another AO in the set.
 - iii. These shall be known as “Robin’s rules.”

- iv. Judge Bragg makes motion to approve. Seconded by David Niblick. Vote – all in favor. None opposed. Motion carried, approved.
 - v. Discussed how to post for comment as the documents are voluminous.
 - f. Green Book – Mr. Laney
 - i. Update on progress. The Green book is progressing. It has slowed down; I have been inundated with the director of CDSS leaving and have spent two and a half months training and cleaning up the mess. Everyone agreed that July 1st is the new deadline. We have our underpaid staff person, working on this. Everything is proceeding on pace.
 - ii. Mr. Wijewickrama – There is a gentleman we found who can provide information on the tribal perspective on dispute resolution.
 - g. Long Range Planning Committee – Mr. Bolen
 - i. Nothing to report.
- 6. Ex Officio and Other Organization Reports.
 - a. Mediation Network – Ms. Estle
 - i. Nothing to report.
 - b. Court Staff – Mrs. Adams
 - i. Third quarter reporting statistics for MSC, FFS, and ARB are as follows. The third quarter settlement rate for FFS Mediations is 74%, and if you consider the cases that settle prior to or in mediation, the settlement rate is 78%. For MSC mediations, we have a 61.2% settlement rate, that increases to 67% if you include the cases that settle prior to or in mediation. For court-ordered arbitration, 4350 cases were ordered into arbitration during the third quarter. 1801 cases were arbitrated, 573 cases were dismissed, and 1065 cases were disposed of. Only 338 cases appealed with an 18% appeal rate.
 - ii. The counties that have rolled over, we are still trying to reconcile the data from the old system into Odyssey.
 - iii. We had a court ordered arbitrator panel CLE presentation with Rick Igou for the state bar.
 - c. NC Court Managers Conference –Ms. Tate
 - i. Nothing to report.
 - d. NCBA Dispute Resolution Section – Ms. Cline (Mr. Laney on behalf of Ms. Cline)
 - i. Mr. Laney – Nothing other than the free discussions offered for all by Ann Anderson (panel). We have another panel next Tuesday.
 - ii. Maureen Robinson- I’m trying to get them to offer the 2022 basics of family law training for our FFS applicants.
 - e. Industrial Commission –Mr. Howell
 - i. Nothing to report.
 - f. Court of Appeals – Judge Stading
 - i. In January, I missed the meeting this may be repetitive. The statistics entered from our attorney as of 12/31/2023, we had 29 total mediations, 15 settled, 2 were held open for settlement and 12 that impassed. We have 15

judges – one less opinion that each judge had to write, and a very positive thing.

- g. Legislation – Mr. Laney
 - i. Nothing to report.
- 7. Update on next meeting – Mrs. Robinson
 - i. September 20 or 27 at judicial center in Raleigh. Ms. Robinson announces her retirement for June 30, 2025. Ms. Kozlowski strenuously objects.
 - ii. Ms. Robinson picks destination for retirement retreat.
- 8. Adjournment – Judge Hamilton.
 - a. Motion to adjourn by Judge Hamilton. Seconded by David Wijewickrama. All in favor, none opposed. Motion carried, approved.



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Dispute Resolution Commission Meeting Minutes

Friday January 26, 2024
10:00 am

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

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

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

Ex Officio Members present in person: De Maca Adams.

Ex Officio Members present via WebEx: Tina Estle.

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

Commission Guests present via WebEx: Ashley Benefield.

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

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

9. Welcome and Announcements – Judge Hamilton
 - a. Thank you all for joining us today, we have a few members who are attending remotely. I hope everyone has had time to review the meeting packet in preparation for today's meeting.
 - b. Judge Hamilton: I am a new vice-chair, and it is my honor to have been asked to take this position and I'm certainly looking forward to filing my obligations as your vice-chair.
 - i. For the Record: The Vice-Chair position on the Commission became vacant when Judge Tyson completed his second term on September 30, 2023. The full Commission participated in an email vote to elect a new Vice-Chair. Judge Gorham nominated Judge Hamilton to serve as Vice-Chair and the motion was seconded by Judge Southern, Zach Bolen, Frank Laney, and Justina Tate. The following Members voted yes: Bolen, Bragg, Ekster, Gorham, Kidd, King, Laney, Meekins, Niblock, Southern, Stinson, Stubbs, Sumner, Tate, and Wijewickrama. The following Members did not vote: David, Stading, Hamilton. On October 16, 2023, the Commission elected Judge Hamilton to the position of Vice-Chair.

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

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

techniques. Staff created and updated forms for the member's review and are reaching out for any suggestions.

2. Mrs. Kozlowski: The centers who will be providing the mediators to mediate the district criminal court matters, all entered into the Memorandum of Agreement that provides for payment terms to the participating centers.
3. Discussion: If there are cases with wealthy parties, should they pay the fees? Ms. Kozlowski explained that the grant is for all mediations, but that economic statistics regarding the parties will be collected.

ii. New Matters.

1. None.

b. Executive Committee Report – Judge Hamilton

- i. Under DRC Rule 1(c)(1), the Executive Committee may make decisions on matters which require action before the next Commission meeting, the votes are reported at the next Commission meeting. We have had two matters that were brought before it after our August meeting.

ii. Vote on DCC Pilot Counties and Training Guidelines.

1. Judge Hamilton: The wonderful news that Ms. Brooks was able to obtain a \$100,000 grant through IOLTA to operate the DCC Pilot Program for one year. Additionally, a DRC certified trainer requested to increase the number of remote attendees from 15 up to 22 persons per class, an adjustment we made to the MSC and FFS training guidelines last year. Please see the Memo to the Executive Committee in your meeting packet for further information. The Criminal Subcommittee recommended inviting the following counties and community mediation centers to join the pilot once the grant has full approval from the Supreme Court.

- Cumberland County, Cumberland County Dispute Resolution Center
- Guilford County, One Step Further Mediation Services of Guilford County
- Alexander and Iredell Counties, Piedmont Mediation Center
- Wake County, Carolina Dispute Settlement Services
- New Hanover and Pender Counties, Coastal Community Mediation Center of NC

2. The following Executive Committee members voted yes to both proposals: Mr. Bolen, Judge Gorham, Judge Hamilton, Ms. Stinson, and Mr. Wijewickrama. Frank Laney abstained, and Benjamin David did not vote.

3. Discussion: Mrs. Kozlowski stated that we invited all 100 counties, district attorneys, community mediation centers and judges to participate. The pilot was awarded one fifth of original requested amount. Staff and criminal subcommittee trimmed pilot down to 7 counties based off demographics, established relationships, income,

and diversity. Staff was concerned that two centers may not be able to perform.

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

8. The question was asked to Mr. Laney and Ms. Estle if they could handle the requirements of this program, both answered affirmatively.
- c. Grievance and Disciplinary Committee – Judge Hamilton
 - i. Update on complaint activity.
 1. Mediator A-23, appeal. The appeal hearing scheduled for this matter on November 3, 2023, was continued to March 8, 2024. The appeal panel will include any Commission Member that did not sit on the committee issuing the original sanction. The mediator is appealing the committee issued sanction of violating the following MSC Rules and Standards: Rule 2(a); Rule 4(c)(4); Rule 6(b)(5); Standard 3. Confidentiality; Standard 4. Consent; Standard 5. Self-Determination; and Standard 6. Legal and Other Professional Advice Prohibited.
 2. Mediator G-23. A complaint was filed against a mediator by a party to a mediation. The party alleged that the mediator held the mediation past the mediation deadline, among other claims. Staff reviewed the complaint and the mediator’s response and determined there was no violation. The Order to Extend the mediation deadline was granted by the county’s mediation coordinator, however, a paper copy of the extension could not be located in the court file. The mediation coordinator confirmed approving the request, and the extension was noted in CaseWise. Staff brought the matter to me for review under Rule 9(c)(5)(a), and I agreed with staff’s recommendation to dismiss the matter. The Complainant timely appealed my decision to the committee. The committee reviewed the complaint and the mediator’s response and determined there was no violation. The matter was dismissed.
 3. Mediator H-23. Mediator filed a Report of Mediator listing the party who failed to appear at the mediation. A few days later, mediator filed an amended Report of Mediator listing additional information on the report that included substantive information about the mediated settlement conference. Commission staff initiated a complaint and sent the mediator a letter of inquiry, and the mediator did respond in a timely fashion. The committee reviewed staff’s complaint, mediator’s response, and found under DRC Rule 9(d)(2) that the mediator violated Standard 3. Taking all factors into consideration, the committee issued mediator a private reprimand and required mediator to complete a 16-hour DRC certified training course within one year. Mediator has until February 16th to appeal this decision.
 - ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).

1. Update on sanction for Mediator F-22. Mediator was sanctioned with a private reprimand and requirement to complete a 16-hour DRC certified training course within one year. Mediator timely provided staff with a certificate of completion from the course. That matter has been taken care of.
- iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
 1. Applicant I-23. Staff received an application for DCC certification that fell outside of the guidelines concerning past moral conduct. Applicant had several past misdemeanor and felony charges, all of which occurred more than 15 years ago. Applicant also had numerous failure to appear and failure to pay matters on her record, mostly involving traffic matters and driving without a license. All traffic matters have been resolved more than 6 years ago, and applicant does currently hold a valid NC driver license. Applicant has worked for the community mediation center sponsoring the application for several years and has the full support of that center's director. The committee determined to certify the applicant with a one-year probationary period, where the applicant must remain clear from any criminal activity, not receive any complaints from their work as a mediator, and not violate DRC Rules and Standards.
- d. Mediator Certification and Training Committee – Mr. Bolen
 - i. CME offerings approved since August 2023. We have approved several new CME training courses. Please see the list of approved courses in your agenda.
 - ii. Applications for certification that came before the Committee.
 1. None
 - iii. Previous Matters
 1. Proposed amendments to FFS Rule 8(a)(1) and (a)(5). At our last Commission meeting, we approved proposed modifications to the language in the FFS Rules to clarify FFS Rule 8(a)(1) and (a)(5). The new language eliminates confusion around required observations and requirements for family law education for applicants. The language was posted for 30 days, we did not receive any comments. The committee recommends the Commission adopt the language. If the language is adopted, the amendments will be submitted to the Supreme Court for review.
 - a. Discussion: None.
 - b. Mr. Niblock made a motion to adopt the proposed amendments to FFS Rule 8(a)(1) and (a)(5). Seconded by Mr. Laney. Discussion: None. Vote- all in favor. None opposed. Motion carried, approved.

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

1. Clerk Program.
 - a. We have received a request from Mr. Frank Johns to encourage the use of the Clerk Mediation Program by Clerks and attorneys across the state. It is my understanding that Mr. Johns wishes to advertise and educate, not recreate the program. He met with staff in November to review the history of the program. Frank Laney was invited to join the meeting to further discuss both the clerk program and the creation of a new certified clerk training course. Mr. Johns is working with the Elder Law and Estate Planning and Trust Sections, and the Elder and Special Needs Section of the NCBA.
 - b. Discussion: Mrs. Kozlowski provided a brief history of the Clerk Program and the two-year pilot program that was unsuccessful. The Clerk Mediation Program has been used infrequently but continues to operate across the state. Clerks are reporting no overflow or need of program. Clerk Kidd recommended to Ms. Jamie Lassiter, Director of the Clerk's Conference. Clerk Kidd suggested the Clerk's revisit the program to determine what did and didn't work. Ms. Lassiter suggested this information be brought to the executive committee of the Clerk's Conference. Then the executive committee can bring the information to a conference meeting and bring a fresh new start. There are twenty-two new clerks with the state who may not realize this program exists.
 - c. The former Clerk Training Program was outdated and pulled by staff. The Commission offers a mediation program, but we do not have a current certified trainer to train our mediators. Mr. Laney is willing to take it on. There's sudden new interest in the program. There was a clerk CME application from the NCBA and Mr. Johns that was denied since it didn't fall within the CME policy.
2. MSC Rule 4(c). We received a recommendation to strike the language from the MSC Rules that requires the final agreement to be signed by the party's counsel. The committee agreed that it is not necessary for the attorney to sign the final agreement and voted to remove the requirement from the MSC Rules. The Clerk Rules also require attorney signatures under Rule 4(b)(1), and need to be modified. The FFS Rules do not require the attorney to sign the final agreement. Please see page 44 of the packet. If the proposed language is approved, it will be posted for comment for 30 days.
3. Mr. Laney made a motion to approve the amended language that removes the attorney's obligation to sign the final agreement.

Seconded by Niblock. Discussion: Is this for domestic agreements? Kozlowski: this is only for the MSC Rules and will impact superior court final agreements. Vote – all in favor. None opposed. Motion carried, approved.

- f. New Media Committee – Mr. Wijewickrama
 - i. I am going out of order; I have the Chief Justice of the Cherokee Nation standing by. He will not need to go through tribal council, the Chief will be able to go through administrative code to require certification for mediators. Being that is the case, we are going to speed up the process. We have talked to one of our judges, Justice Saunooke. He is going to make the change and send it to us for consideration, then it goes back to him, and he will implement. We want to grandfather one mediator for a year to obtain the training. If that is okay, they will just go through rule making. Plan to have it done by the last day of February. We will receive comments from the Chief that we will send through the committee then up to the full commission in April.
 - ii. Social Media. Staff has now posted a second podcast that is available for 1 hour of CME. Mediators can now log onto to their profile to report their own CME for the 24-25 renewal year. Staff has been keeping our social media sites up to date to provide a constant flow of information to our mediators and the public.
 - iii. Vignettes of the Rules. We have not held a meeting to discuss the making of the vignettes, but we will hopefully gain some traction on this project this spring.
 - iv. Mr. Laney presented his new book, “The Practical Mediator”. The book is on Amazon and is a collection of writings, an array of articles, skills, rules, programs, etc.
- g. Standards and Advisory Opinions Committee Report – Mr. Laney
 - i. Previous Matters
 - 1. State Bar matter: Confidentiality Agreement.
 - a. Staff has been working with Ms. Sarah Kromer, Ms. Danae Woodward, and the State Bar on the issue of what provisions may be included in the Agreement to Mediate (service contract). This is no longer a State Bar issue. We have been working to find a solution of how to incorporate the issues of confidentiality between the parties and the mediator’s inability to testify in the Agreement to Mediate. Hopefully after the committee meeting at lunch, the committee will have one draft for the Commission to consider. If the Commission approves the draft, we will send it to AOC legal for review.
 - b. The committee met and voted for substantive changes on language to be clear and legally enforceable, that allows for

information to be shared with their attorney, accountant, or other professional regulated by statute.

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

Form 20 was a bit more complicated as legal requested to list the Standard that was applicable when completing the form. To make the reason clear to those who may not know the Standards by heart, we compromised with legal to include the reason with the Standard that applies. These forms went live on October 12, 2023.

ii. New Matters

1. Request for AO regarding processing fees.

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

2. Request for paralegal to attend mediation.

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

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

cannot stipulate their way out of our Rules. FYI there's a bill at the general assembly to allow paralegals give legal advice.

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

4. AI in mediation...

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

- h. Green Book – Mr. Laney

- i. The committee has made substantial progress. Please look at the spreadsheet you all have, Commission spent about \$22k for the second edition. The NCBA Section kicked in \$5k. We had some profit to use for the second edition that we will not have for the third edition. The expenses are similar, but we do need an administrator. I am putting \$4k in the budget to pay for administrative help, I anticipate using about \$3k but would rather have enough money to pay for the admin.
- ii. The Commission did distribute several thousand copies from across the state and paid out about 16k for the distribution for the second version.
- iii. The administrator has already been hired by Mr. Laney to assist in pulling the book together.
- iv. Mr. Laney made a motion for the use of \$25,100 to produce the third edition Green Book and hire an administrator to support the committee. Seconded by Judge Bragg. Discussion: Mrs. Kozlowski clarified the DRC is not hiring or paying the administrative position, Mr. Laney will be hiring and paying the admin's salary. All monies will be paid from the Commission funds as a vendor is normally paid. Motion is to approve \$25,100. Vote – all in favor. None opposed. Motion carried, approved.

- v. Katie Riddle is the admin's name and is building a spreadsheet for each chapter, diving the book into the chapters. That is being done as we speak. By next week, we will send out the chunk we have asked to edit. We have writers for all sections. Ms. Kozlowski has agreed to edit a large section of the book.
12. Ad Hoc Committee Reports –
- a. eCourt Committee – Ms. Adams
 - i. Nothing to update as the committee has not met. Track 3 of eCourts will roll out on February 5th in the eastern part of the state, track 4 is northern (10 counties) and will roll out on April 24th. Tracks 5 and 6 will roll out later this year.
 - b. Video Observation Committee – Mr. Wijewickrama
 - i. Nothing to report.
 - c. Cherokee Nation Mediation Program – Mr. Wijewickrama
 - i. The Eastern Band of Cherokee Nation is a sovereign nation. They have legal issues that bleed into state issues and then back into the reservation. Last year there was an officer involved shooting, the counties called for assistance erroneously, and they shot an unarmed guy. The Cherokee Nation police did not have the right to be on the land. There is a mediation in the counties, and now there is a lawsuit in the tribal land. They began a discussion a year ago to bring mediation into the Band. The mediated agreement to apply to the reservation.
 - ii. Attorneys must be licensed in NC to practice in the Band (2011 statute). Then they wanted child custody mediation. The court asked Mr. Wijewickrama if the Commission could oversee their mediators, the Commission said yes.
 - iii. This has been an eight-month process with Ms. Kozlowski and Chief Justice to work up the language. There is one elder who we want to grandfather in of one-year to get him trained and the tribe will pay for training.
 - d. DRC Funds Committee – Mr. Niblock
 - i. DRC Expense Policy.
 - 1. At our August 2023 meeting, the Commission voted to approve amendments to the DRC's Expense Policy. The new language allows for staff to use DRC funds up to \$10,000 per year for training or presentations and includes language to cover the Executive Directors State Bar Dues and Section Dues. The amended policy was posted for 30 days with no comments. The committee recommends the Commission adopt the proposed amendments.
 - 2. Mr. Niblock made a motion to adopt the amended DRC Expense Policy. Seconded by Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
 - ii. Update on requests.

1. Mr. Laney made the updated request for the Green Book earlier in the meeting minutes.
 - e. Ad Hoc AO Review Committee – Mrs. Kozlowski for Ms. Stinson
 - i. We have reviewed 32 out of 43 AOs, so far and are continuing to work toward a more consistent, easy-to-read, set of opinions. We have one more meeting for a general overview.
 - f. Long Range Planning Committee – Mr. Bolen
 - i. Nothing to report.
13. Ex Officio and Other Organization Reports.
- a. Mediation Network – Ms. Estle
 - i. They have met since Jody’s passing and have had a virtual meeting. They have not decided if they will hire an executive director. Janice Almond has been handling things. They have had a few applications of non-profits to join the group.
 - b. Court Staff – Ms. Adams
 - i. Stats for MSC, FFS, and ARB. For second quarter FFS July 1- Dec 31, settlement rate 72%, increases to 76% for cases that settle prior to or during the mediation conference. For Superior Court, or MSC matters, 65% settlement rate for the quarter, or 70% if we include all settlements that occur prior to, or during, the conference. Arbitration does not fall under the DRC umbrella; however, we still like to report these numbers. For the quarter, there were 2274 cases ordered into arbitration. 1147 cases were arbitrated, 325 cases were dismissed before hearing and 675 cases were disposed in some other way than arbitration. There were 204 appeals filed for an 18% appeal rate.
 - ii. NC Court Managers Conference –Ms. Tate
 1. Ms. Adams for Ms. Tate: The Court Managers Conference is schedule March 13-15 in kitty hawk NC. Agenda goes out today.
 - c. NCBA Dispute Resolution Section – Ms. Cline
 - i. Nothing to report.
 - d. Industrial Commission –Mr. Howell
 - i. Nothing to report.
 - e. Court of Appeals – Mrs. Kozlowski for Judge Stading
 - i. Mediation Statistics. Judge Tyson provided our office with the mediation statistics found in your packet. The 2022-2023 settlement rates for COA mediations are lower than last year, but we are pleased the program is still running and for the information.
 - f. Legislation – Mr. Laney
 - i. Mrs. Kozlowski was asked by the House Select Committee on Homeowners’ Associations to speak at a committee meeting this past Wednesday. I will let her fill you in on the meetings events.
 1. Mrs. Kozlowski: The current legislation provides for voluntary mediation for HOA disputes, but either party can decline the request.

The General Assembly seems to be interested in something more similar to our statutes that mandate mediation. However, the cost of our mediators is high for the typical HOA dispute and can be better handled by community mediation centers. The DRC does not have unlimited resources and is not able to absorb additional programs without additional funding.

14. Update on next meeting – Ms. Robinson
 - a. Our next meeting will be the retreat, April 19th in Atlantic Beach. I will send out an email next week.
15. Adjournment – Judge Hamilton
 - a. Motion to adjourn by Mr. Laney, seconded by Mr. Wijewickrama.