



THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Dispute Resolution Commission Meeting Minutes Friday, September 20, 2024 In Person at the Judicial Building, Raleigh, NC

Commissioners present in person: Judge Gorham, Judge Hamilton, Judge Stading, Dolph Sumner, Justina Tate, Angela Kidd, Robin Stinson, David Niblock, Zach Bolen, David Wijewickrama, DA Murray

Commissioners present online: Ralph Meekins, Paul Ekster, Frank Laney

Ex Officio members present in person: De Maca Adams, Kevin Howell, Rick Igou

Ex Officio members present online: Ketan Soni

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

With regrets: Judge King, Judge Southern, Judge Bragg, Alice Stubbs

Guests: Lauren Quinn

The Honorable Judge Gorham, Chair, called the meeting to Order.

1. Welcome and Announcements – Judge Gorham
 - a. Judge Gorham welcomed all to the Judicial Center and introduced our guest, Joy Easley who will be joining us as a Commission Member as of October 1st.
 - b. Approval of April 19, 2024, Meeting Minutes. Robin Stinson made a motion to approve the April 19, 2024, meeting minutes. Seconded by David Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
 - c. New Member and Reappointments.
 - i. Please welcome District Attorney Andrew Murry to the Commission. DA Murry fills the seat of retired DA Benjamin David. District Attorney Andrew Murray was sworn in by Judge Hamilton.
 1. DA Murray: I am presently from Henderson, Transylvania, and Polk Counties. I was a previous DA in Mecklenburg County for a number of years.
 - ii. Chief Justice Newby has reappointed the following Members to a second 3-year term on the Commission: Judge King, Judge Hamilton, Judge Southern; David Niblock; Robin Stinson; and Justina Tate. It is good to have you continue on the Commission.
 - iii. We have a guest joining us today, Ms. Lauren Quinn, who is appointed to the Commission as of October. It is nice to have you.

- d. Vote for Vice-Chair seat, effective October 1, 2024. Chief Justice Newby has appointed Judge Lori Hamilton to the position of incoming Chair, effective October 1, 2024. Therefore, we will need to elect a new Vice-Chair. Would anyone like to nominate a member of the Commission to serve as Vice-Chair?
 - i. Judge Hamilton: I would like to nominate Judge Stading as Vice-Chair. Judge Stading sits on the Court of Appeals and comes to us from Mecklenburg County. He was a private defense attorney, an assistant district attorney, and a district court judge before taking the bench at the Court of Appeals. I would submit that Judge Stading is imminently qualified.
 - ii. Other nominations?
 - 1. Ms. Stinson moved nominations be closed. Seconded by Mr. Niblock. Vote – all in favor. None opposed. Motion to close nominations carried.
 - iii. Judge Hamilton asked for motion to approve Stading as Vice Chair of the Commission. Mr. Wijewickrama made the motion. Seconded by Ms. Stinson. Vote – all in favor. None opposed. Motion carried, approved.
 - e. Honoring Members rotating off the Commission. We have a few members that will be rotating off the Commission as of September 30, 2024.
 - i. Dolph Sumner was presented a plaque or appreciation of his dedication for his service as a commissioner from 2021-2024.
 - ii. Alice Stubbs served as a commissioner from 2022-2024. Not present.
 - iii. Benjamin David served as a commissioner from 2020-2024. Not present.
2. Office Report – Mrs. Kozlowski
- a. State Ethics Compliance. They have modified reporting for anyone who modified their reports shall be recorded in the Commission’s meeting minutes. Biennial Evaluation of Statement of Economic Interest Filed by:
 - i. The Honorable Christopher Bragg. We 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.
 - ii. The Honorable Phyllis M. Gorham. We did not find an actual conflict of interest or the likelihood of a conflict of interest.
 - iii. The Honorable Angela Kidd. We did not find an actual conflict of interest or the likelihood of a conflict of interest.
 - iv. The Honorable Toni King. We did not find an actual conflict of interest or the likelihood of a conflict of interest.
 - v. Mr. Frank C. Laney. We 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.
 - vi. Mr. Ralph W. Meekins Sr. We 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.

- vii. Mr. H. David Niblock. We 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.
 - viii. The Honorable William F. Southern III. We 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.
 - ix. The Honorable Michael J. Stading. We did not find an actual conflict of interest or the likelihood of a conflict of interest.
 - x. For our newest Commission Member, the NC Ethics Commission evaluated a Statement of Economic Interest filed by the Honorable Andrew Murray and did not find an actual conflict of interest or the likelihood of a conflict of interest.
- b. Budget. We have quite a bit of money. Financial Services is using a new program, please let us know if there is a delay on your reimbursement. We ended the 23-24 FY on June 30th with a gain of \$48k. Keep in mind the AOC is still covering Maureen's salary until we can implement the annual mediator dues increase once we move into Odyssey. The income plus last year's roll over of \$369,489, gives us \$418,0202 to begin this FY. On July 5th, we were notified by financial services of \$660 in chargebacks from the prior years of 2019, 2020, and 2021. We have reimbursed financial services for these chargebacks. We have requested reimbursement from the mediators who initiated the chargebacks but have not received all monies due. Mr. Bolen will expand on a new plan to charge a fee for these matters in the Mediation Certification and Training Committee report.
- c. Committees. As we have members rotating on and off the Commission at the end of the month, now is the time to let staff know how many committees you would like to be a part of, and what work load you can handle.
- i. I would like to introduce Rick Igou; he will be the acting ex-officio member on behalf of the NCBA DR Section for the next two years. Historically, the chair of the section would sit as the ex-officio member during their term. The section chair does not always have time to sit on the DRC as an ex-officio member along with their other duties. Therefore, the current section chair, Denise Cline, recommended the Section nominate a council member to serve as the DRC ex-officio member. The Section nominated Rick Igou, which was approved by Judge Gorham, to serve a 2-year term on the Commission as an ex-officio member.
- d. Renewal. Renewal is going well this year. With 10 days left, we have about 350 people that have not renewed their certification. This is normal.
- e. Training/Education. We have several training courses scheduled for the future, trying to educate mediators as well as attorneys across the State.
- f. Conflict Resolution Day. This year our program will be 100% remote due to renovations here at the Judicial Center. We are lucky to have the NCBA DR

Section's roundtable group give us two hours of sage advice. We already have 107 people signed up, so it should be a great event.

3. Committee Reports –

a. Executive Committee Report – Judge Gorham

i. Executive Committee Meeting. The Executive Committee held a meeting on July 11th under DRC Rule 1(c)(1), as there were matters that needed to be addressed prior to this meeting. The following members were in attendance, Zach Bolen, Robin Stinson, Judge Hamilton, Frank Laney, and myself. Ms. Kozlowski, Ms. Robinson, and Ms. Brooks were also in attendance. We discussed the following four matters at the meeting. Judge Hamilton will review the four matters for me.

1. HB959. Concerns about HB959. House Bill 959 was filed on May 1, 2024, with proposed language requiring mandatory mediation for certain HOA disputes. The Bill passed the first reading on May 2nd and was referred to the Judiciary Committee on May 2nd. The bill failed to move after this date or cross over before the legislative session ended. Staff drafted a memo of concerns regarding the proposed legislation and requested approval to reach out to the drafters of this legislation with the noted concerns. The Committee did not have policy concerns about this legislation, but we had concerns about how they are trying to implement this mediation program. The Committee recommend staff reach out to bill drafting and the legislatures that over see this bill to provide the noted concerns.

2. Civil Subcommittee Matter: Rule 2 Designation Form.

a. Comments to Rule 2. The proposed amendments to Rule 2 divides the designation or appointment of a mediator into two separate forms – one form for party designations and one form for court appointments. This request came from court staff who are having trouble appointing mediators in Odyssey. The Commission voted to approve the proposed amendments on April 19, 2024, and the proposed language was posted for comment for 30+ days. Staff received one comment. The Civil Subcommittee met on June 25, 2024, to consider the proposed language and comment. The Committee determined the comment did not warrant a change in the proposed language and voted unanimously to recommend the original language approved by the Commission. This Committee adopted the proposed rule amendments to the MSC, FFS, Clerk and Farm Nuisance Rules. The proposed amendments were included in the 2024 request to the Supreme Court.

- i. Ms. Kozlowski: The Commission voted to send all form program changes to the Supreme Court, but after discussions with Grant Buckner at the Supreme Court, we pulled the Farm Rules. The Farm Rules are not urgent to modify, and we are looking to update the Farm legislation, which will require future amendments to the rules if adopted. Also, the forms to implement Rule 2 are a bit different than what we originally planned. AOC legal and the AOC director requested to include space for the filing party to list all parties who agreed to the designation of the mediator on the form. No one but the filing party needs to sign the document, they just need to list who all is in agreement of the designation.
- 3. Civil Subcommittee Matter: No weapons language. The Commission approved and adopted proposed language that prohibits parties from bringing a weapon into a mediation session. Staff has been working with Grant Buckner with the NCSC on the proposed rule amendments and there is concern the NCSC has the authority to adopt this language as this is not a rule of procedure. Additionally, it was determined the legislature may be the appropriate body to seek adoption of this protection for our mediators as legislation was discovered that limits the ability for anybody other than the General Assembly to regulate the carrying of a concealed handgun, NCGS 14-415.23(a). Our Committee voted to pull the proposed language from the submission to the NCSC and send the language back to Committee level to evaluate the proposed language under 14-415.23(a).
 - a. Discussion: I was in Buncombe County, I was supposed to go to a mediation, and the gentlemen went on a killing spree up there. He killed a police chief and his girlfriend. I had a discussion with a judge on this Commission two years ago, about carrying a gun into a mediation. The gentleman had a kill list, I was on it, my deputy was on it, along with other people. He was in a relationship with a court staff member who was going to possibly assist him in bringing a gun into the courthouse. I am very much against taking a firearm into a mediation, and I stand by that. But this is a very serious problem, and these are strange times. We depend on courthouse security, and we depend on courthouse employees to provide security and safety for us. We never anticipated an employee would bring a gun into the

courthouse, and yesterday we just saw a sheriff kill a judge. I am just suggesting to you, the Commissioner in favor of allowing a firearm in the mediation had a point.

4. Criminal Subcommittee Matter: 2025 IOLTA Grant for DCC Program. The 2024 IOLTA Grant awarded to promote the DCC Pilot Mediation Program has started to gain some traction, but we do not have enough data to request the program be funded on a state level. The 2025 IOLTA Grant application was due August 31, 2024, and the Committee voted to approve staff's request to apply for another year of grant funding to continue with the DCC Pilot through 2025.
- b. Criminal Sub Committee – Tara Kozlowski on behalf of Judge Toni King
 - i. Previous Matters.
 1. Update on DCC Pilot Program. The Committee has not met since the implementation of the DCC Pilot Program earlier this year. The DCC Pilot Program is operating through Grant funds received from IOLTA to provide the \$60 mediation fee due at the beginning of each DCC mediation conference. Mary Brooks can provide detailed information on the participating counties, centers, and amount of fund used to date.
 2. Mary Brooks: When we met in April, we were fresh into the program. Quarter 1, we had five participating centers in seven counties, and they conducted a total of 64 mediations. Quarter 2, we added two centers in four counties for a total of 83 mediations. For Quarter 3, as of today, we have a week left, we are using the same seven centers who have added two counties. We have confirmation that in Quarter 4 we will be adding the center located in Asheville. This center will be bringing in additional counties. It started slow, but every quarter the number of mediations have increased, so hopefully we will keep moving forward.
 - a. Discussion: A background of the DCC Pilot program was reviewed to bring new Members up to speed.
 - b. Discussion: Mr. Igou reported on his work with the Community Mediation Center in Carrboro who is often able to provide services at no cost to the community. Mr. Igou agrees the \$60 fee kills the DCC program.
 - c. Mrs. Kozlowski confirmed the Commission does not receive any funds for running this program, all grant funds will be dispersed to the centers for mediations conducted, or returned to IOLTA after the grant period concludes. Our goal

is to show the program's success to help the DRC advocate for state funds eventually.

- ii. New Matters.
 - 1. None.
- c. Grievance and Disciplinary Committee – Judge Hamilton
 - i. Update on complaint activity.
 - 1. Mediator A-24. Staff received a complaint against mediator A-24 that provided insufficient information for staff to pursue the complaint against the mediator. Staff reached out to complainant multiple times, but complainant failed to respond to staff's requests for additional information. The complaint was dismissed under DRC Rule 9(c)(5)(a). The complainant failed to appeal this decision to the Grievance and Disciplinary Committee, this file is now closed.
 - 2. 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 failed to appeal the decision, and the public sanction against mediator Michelle Pennington has been posted on the DRC website.
 - ii. Update on conduct, fitness, and renewal application issues (character concerns raised by staff).
 - 1. None.
 - iii. Update on conduct, fitness update on applicant and pre-approval issues (character concerns raised by staff).
 - 1. Applicant C-24. Staff received an Application for Certification to Conduct District Criminal Court Mediations from applicant C-24. Upon processing the application, staff discovered multiple criminal convictions. The applicant reported that he has been convicted of a crime and made a reference to a background check he included in the application. The Committee reviewed the application in conjunction with the DRC's *Policy for Reviewing Matters Relevant to Good Moral Character, Conduct and/or Fitness to Practice*. The Committee reviewed applicants six prior misdemeanor convictions, eight DMV convictions, and five suspensions of his license. The Committee found probable cause that applicant C-24's past conduct was inconsistent with good moral character; however, the Committee took into consideration his last conviction occurred in 2003, and the applicant has reinstated his driver's license. The application included a letter of support from the community mediation center who submitted C-24's application for certification. The Committee determined to certify applicant C-24 with certain

conditions imposed on his certification for a one-year probationary period.

2. Applicant D-24. Applicant D-24 was certified as an MSC mediator in 2022 and lapsed the same year by failing to renew his certification. He applied to re-certify as a MSC mediator in 2024 and provided a letter of warning from the NC State Bar with his 2024 application for certification. Staff discovered applicant D-24's original application submitted in 2021 failed to disclose the pending grievance with the NC State Bar, and the subsequent Letter of Warning issued on February 16, 2022. Applicant D-24 was certified at the time the Letter of Warning was issued. The Committee determined there was sufficient evidence to find probable cause that applicant D-24 violated the MSC Rules and the DRC Rules, and that his conduct was unprofessional. This matter is still pending, as the Committee requested applicant D-24 to complete two hours of CME and have a meeting with Ms. Kozlowski. The Committee will continue to consider this matter at the next Committee meeting.
 - a. Discussion: Mrs. Kozlowski confirmed D-24 has complied with the CME and speaking with staff.
- iv. Consideration of DRC Grievance Procedure and the legal standards used in the DRC Rules. This is going to be a matter of some importance to the full Commission at some point. This Committee determined to review the DRC Grievance procedures for accuracy and consistency. The Committee discovered, after researching past meeting minutes, the two-tier grievance process that moves from Committee level to a full Commission de-novo hearing was adopted by the NCSC in 2006. The legal standards adopted in the new grievance process was a requirement for probable cause at the Committee level and beyond a reasonable doubt at Commission level. Upon review of the programs enabling statute, the Committee discovered the general assembly's language provides for the appeal at Commission level to be a review of the Committee's decision, not a de novo review. The Committee is working toward proposing new language for the DRC Rules where the grievance and disciplinary procedures align with the Commission's enabling legislation.
- d. Mediator Certification and Training Committee – Mr. Bolen
 - i. Our Committee met on September 3rd. Commission staff published the third installment of the Beyond Neutrality Podcast. Staff continues to receive positive feedback, often, on episode 1 and 2 and are excited to offer the third episode.
 - ii. CME offerings approved since April 2024. The Committee has approved several courses for CME credit, they are listed in the packet.

- iii. Training offerings approved since April 2024. It will be nice to have a couple of new trainers out there in the world.
 - 1. Duke Law School Professor Casey Thomson submitted a 40-hour in person MSC trainer application.
 - 2. The Mediation Center (Asheville), Laura Jeffords, submitted an MSC 40 and 16-hour trainer application.
- iv. Applications for certification that came before the Committee.
 - 1. No new applications for certification are before the Committee.
- v. Previous Matters
 - 1. As Judge Hamilton mentioned, we are bringing some consistency between DRC Rule 10 and Rule 9. That matter is before the Grievance and Disciplinary Committee and remains pending.
- vi. New Matters
 - 1. Update on Family Law CLE offered by NCBA for certification. Staff has worked with the NCBA to update the Basics of Family Law 12-hour CLE program for FFS Applicants to watch at a discounted rate. The discounted fee increased \$11.00 making the total fee \$110.00 for applicants to watch (NO CLE Credit available for watching this video). Staff updated the Guidelines for Family Financial Settlement Rule 8(a)(1) Basic Understanding of NC Family Law Requirement Online Video Available.
 - 2. Updates to CME Policy. Staff amended the DRC CME Policy to clarify that the “Standards of Professional Conduct” listed as an approved content only applied toward the NC Supreme Court Standards of Professional Conduct for Mediators.
 - 3. Proposed amendments to adopt Administrative Fees for Insufficient Funds and Chargebacks. As mentioned in the office report, the Committee has proposed implementing a \$50 administrative fee if a mediator disputes the renewal payment with their credit card company. Mediators are put on notice several times that their credit card statement will reflect a payment made to NIC. When a dispute is made, NIC automatically refunds the money paid, and notifies the DRC – sometimes timely, sometimes not timely.
 - a. Judge Gorham: Is there a motion to approve? Motion made by Mr. Sumner. Seconded by Mrs. Stinson.
 - b. Discussion: Is there a Law that limits what we can charge as insufficient funds, that we can only charge x percent, or x amount of dollars. Or any limiting legislation?
 - c. The state bar says when you are passing along credit card fees to clients, you can’t pass more than the actual fees. This doesn’t answer the direct questions, but this may give some guidance on what we can charge.

- d. Mrs. Kozlowski: We can pull this back to Committee level and research to see if there are any limits on what we can charge.
 - e. Discussion: Is there is a limit to what we can charge for insufficient funds? This is more an issue of when folks pay with their credit card and when they get their statement, it shows NIC on their bill and they dispute the charge with the credit card company. So, the fee is for DRC staff's admin time spent on these matters. Mediators are told the fee will show up as NIC, but they reverse the charge anyway.
 - f. All agree to pull this back into Committee to review legalities of implementing an admin fee for chargebacks.
4. Proposed amendments for Dated Training Policy. A situation was brought to our attention where you have mediators that will complete their training but wait more than a year to submit their application. The inactive mediators are required to complete 2 hours of training to reactivate, so are lapsed mediators who recertify within three years. There is a little bit of a loophole where folks could take their training, wait more than a year to submit their application and not take that 2-hour course. Staff estimates this will impact about 1/3 of applicants, so it is not a small number. The Committee proposes amending the language in the DRC Dated Training Policy to require any applicant to complete 2 hours of CME if they have not submitted their application to the DRC for certification within a year of completing their training.
- a. Judge Gorham: Do we have a motion to approve? Mrs. Stinson made a motion to approve. Seconded by Mr. Niblock. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved
5. Proposed amendments to the Observation Guidelines. Staff received a request from a mediator who was seeking to allow 15-30 individuals observe an online mediation at one time. The Committee proposes to limit the number of observers to 2 individuals. The Committee feels that more than 2 observers on any case would impede the observer's ability to learn the process and procedures of a mediation. Additionally, too many observers could have a negative impact on the mediation as there may be unnecessary delays, or too many people watching to allow the parties to speak freely during the conference.
- a. Judge Gorham: Do we have a motion to approve? Mr. Sumner moved to approve. Seconded by Mr. Wijewickrama.

- b. Discussion: Question: In other parts of the Rules we talk about observers and call them neutral 3rd party observers. Do we want to make sure we update the language to reflect “observers” are “neutral 3rd party observers”. That would be clear and consistent. They are applicants I assume.
 - c. Mrs. Kozlowski: Do we need to expand this to applicant 3rd party neutrals.
 - d. Should we capitalize the word Observer to make it a technical word and then define it as a neutral 3rd party applicant.
 - e. There is no requirement in the Rules that an applicant take training first. This may be something to consider. It is hard to get observations, so people will do the observations first.
 - f. We should leave it as the “intent to apply”. The question then becomes will the intended applicant read the Policy? The idea was posed to move observations after training, but the idea was quickly killed due to difficulty of obtaining observations.
 - g. We should define observer and capitalize the word.
 - h. Mrs. Kozlowski, these changes are not substantive so we could easily apply.
 - i. Mr. Bolen moved to amend the motion to include defining “observer” and capitalizing the word. Vote - all in favor. None opposed. Motion carried, approved.
- e. Civil Sub Committee – Mrs. Stinson
 - i. Previous Matters.
 1. Forms are 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 matter of the public records mediation program is still pending before this Committee. The Committee has requested staff to conduct preliminary research on this program to aid in a more in-depth review of the matter in the future. We are trying to determine the best way to move forward with this to not conflict with other rules and statutes in place for remedies.
 3. Update on the Clerk Program. Mr. Frank Johns, Mr. Frank Laney, and Ms. Colleen Byers are hosting their first Clerk Training Program this October, and they have approximately 40 interested attendees. Mr. Johns is taking the lead on motivating clerks around the State to utilize this program.
 4. Proposed amendments to the Farm Nuisance Rules.

- a. Comment received on proposed Farm Rules. The Farm Nuisance Rules have been amended to bring them in line with the MSC and FFS programs. The recommended changes focus on the procedure used to report the results of mediation to the court. The Commission approved the proposed amendments at the April 20, 2024, meeting, and the proposed language was posted for more than 30 days. No comments were received. The Committee reviewed the proposed amendments at our June meeting, and recommend the Commission adopt the amendments.
 - b. Judge Gorham asked for a motion. Judge Hamilton moved to approve. Seconded by Mr. Niblock. No discussion. Vote – all in favor. None opposed. Motion carried, approved.
5. Report on Rule 2 and the mediator designation form. We have already discussed the designation forms for the appointment and designation of mediators in the Executive Committee report.
- ii. New Matters
 - 1. None.

Mrs. Stinson gave report for the ad hoc AO Committee – see below.

- f. New Media Committee – Mr. Wijewickrama.
 - i. There are no updates at this time.
- g. Standards and Advisory Opinions Committee Report – Mr. Laney
 - i. Previous Matters
 - 1. Confidentiality Agreement. This is the agreement to mediate that we have been working on for a bit. A couple of mediators worked with us and the State Bar to come up with a document, that would allow the parties to agree to hold everything confidential between the parties. The State Bar gave its blessing and withdrew from the battlefield, they said it is not their job to give their blessing. AOC counsel is not comfortable with this as parties may not understand what they sign. However, AOC counsel said we may use the document, they have just given us advice regarding the document. The Committee understands we can post the document against the AOCs recommendation not to post. The Committee likes the idea of the form, and we feel the benefits outweigh the risks. The Committee feels the document is not complicated and is straight forward. We advise making the form for mediators to use for litigants to use as confidentiality agreements that don't have counsel to draft.
 - a. Discussion: How does a pro se party know they want a confidentiality agreement? The parties can let the mediator

- know they want a confidentiality agreement, and the mediator can give the parties legal information.
- b. Mrs. Kozlowski: We cannot provide legal advice, but we can provide legal information. The mediator can show parties where to find information, but they can not say “if you want confidentiality, then sign this”. We have a section on our website for unrepresented parties.
 - c. Mr. Wijewickrama, can we have Mrs. Robinson share her thoughts? Mrs. Robinson, I think this is big mistake. I do not like the agreement because I was taught that a mediator should not be involved in this type of agreement. It is an agreement between the parties, and the mediator should not have anything to do with this. It is crossing the legal line, even to mention this.
 - d. We have a double standard within our Commission where if lawyers do something a set of rules apply, and a non-lawyer has a different set of rules apply. Is this something that a non-lawyer can do, but a lawyer cannot. Is this practicing UPL as a non-lawyer? It is how you interpret giving someone information, is it legal advice or not? There is no clear answer.
 - e. What if the mediator answers one question about this document? That is legal advice.
 - f. Mrs. Kozlowski: the Committee has gone round and round on this document. The intent is not to give legal advice, but to provide basic information on the parties’ rights. This is tricky though, and there is a reason this has been in the works for 2 years. The State Bar felt this was a great idea, as it provides access to justice, but it is not in their wheelhouse.
 - g. The discussion circled back to how the idea for this document originated, and steps that followed.
 - h. It was determined that by providing this document, no DRC rule or standard would be violated. The issue centers around the ability of the mediator to give the parties the form.
 - i. The ROD gives forms out to people daily. “Fill this out and include a check”. The discussion moved around to how court staff and clerks give out forms.
 - j. Judge Gorham called for a motion: Mr. Wijewickrama moves to approve posting the agreement on the DRC website. Seconded by Mr. Sumner. Further discussion? None. All in favor: Judge Stading, Mr. Sumner, Ms. Tate, Clerk Kidd, Mr. Niblock, Mr. Bolen, Mr. Wijewickrama,

DA Murray, Mr. Laney, Mr. Meekins. Any opposed: Ms. Stinson, Judge Hamilton, Mr. Ekster, Judge Gorham. The Aye's have it.

2. State Bar matter: Mediator acting as scribe. Mrs. Kozlowski has worked with the State Bar for a while on this matter and brought everything to the Committee. 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. Mrs. Kozlowski met with the State Bar Ethics Committee on 9/10 to review the progress of the FEO draft. The State Bar Committee would like the Commission to issue an AO, so guidance from the Bar and the Commission are viewed as a unified force for mediator attorneys. We anticipate the FEO to have 7 questions. The last question relates to how a mediator should handle a situation when a party asks for a term to enter negotiations that violates the RPC.
 - a. Discussion: How is this different than a mediator helping parties enter a contract that gives a spouse an unequal distribution of assets in exchange for not reporting child abuse? From a mediator's point of view, I don't care what the contract says – it is not my job to determine if the contract is fair or just. But if the child abuse has not been reported, then I am under a duty to report the abuse and may need to stop the mediation to report with social services.
 - b. This potential resolution will not solve every scenario, but it is intended to protect mediators by helping them stay in compliance with other regulatory bodies. The discussion continued for a good time about the pros and cons of setting boundaries for mediators to avoid regulation by the State Bar.
 - c. Mr. Laney: This conversation has been helpful to determine how this matter moves forward. The Committee continues to work on this matter, and there is no vote required today.
3. Consideration of Standard 7(h) and "Gift" AOs.
 - a. Comments received on proposed 7(h). The Commission approved proposed modifications to Standard 7(h) to align with the "gift" AO being revised by the AO Review Committee. The proposed language was posted for comment for more than 30 days, and 3 comments were received. The committee reviewed the comments but declined to modify the proposed amendments. We recommend Standard 7(h) be adopted.

- b. Judge Gorham asked for a motion to approve. Mr. Laney made a motion to adopt Standard 7(h) and to the gift AO. Seconded by Mr. Bolen. Any discussion. None. Vote – all in favor. None opposed. Motion carries, approved.
- 4. Proposed AO 44 regarding processing fees.
 - a. Comments received on proposed AO 44. The Commission approved proposed language for an AO addressing the payment processing fees associated with paying through electronic means. Not all mediation participants carry enough cash, or a check book, to pay the mediator immediately. If the mediation is conducted remotely, parties may want to pay by credit card. The AO allows the mediator to pass the service fee charged to run a credit card on to the payor as long as the mediator offers payment by cash or check, with no fees attached. The AO was posted for comment for more than 30 days, and comments were received. The Committee reviewed the comments but declined to modify the proposed amendments. We recommend the AO be adopted and posted.
 - b. Discussion: The original AO called for the charge to be what the credit card charges. The comments received pointed out we do not know the fees that will be charged. The Committee amended the memo to follow the AOC's charge for taking credit cards.
 - c. Judge Gorham asked for a motion to approve. Ms. Stinson made a motion to approve. Seconded by Mr. Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
 - d. Discussion: The State Bar will not allow an attorney to charge more than the actual fees assessed. A discussion ensued about if an attorney mediator may charge according to the AOCs fee chart rather than the actual fee.

ii. New Matters

- 1. Request to loosen Standard 3(c) to allow some communication with court staff.
 - a. Staff received a request to reconsider Standard 3(c) which prohibits a mediator from sharing information with court staff. Court staff often looks to the mediator for additional information, and this places the mediator in a bad position having to deny the court's request. The Committee discussed this thoroughly and determined not to move forward with this request. The Committee agreed the ability for the mediator to communicate with court staff could simplify matters, however, they felt it would be problematic and

inconsistent with the general principles of mediation. The Committee's concern focused on a slippery slope of providing information to the court. It would be difficult to draw lines in the sand to allow some communication, but not all. The Committee's goal is to keep the mediator safe from violating the rules, where a clear rule is best. The attorneys or parties may openly share information with the court at anytime throughout the process.

- b. However, the Committee agreed a mediator could provide limited information, that would not be considered a violation of Standard 3(c), including the date of the scheduled mediation or if the mediation has not been scheduled, as this does not provide any substantive information to the court or give the appearance of bias by the mediator. The mediator may not share communications, or lack of communications, from the parties to the mediator regarding the scheduling process. For example, the mediator may not share the mediation has not been scheduled because defendant is failing to respond to the mediator's communication efforts.
 - c. Discussion: None.
2. Review of need for AO on UETA in light of recent COA holdings. There are two recent Court of Appeals opinions that discuss the signing of a settlement agreement based on the signature block of an attorney. The question becomes what constitutes an electronic signature. The Committee is working on a proposed AO to address this issue, as we feel clarification is necessary. We hope to address all questions relating to electronic signatures for mediators on forms when e-filing, as well as party signatures on final agreements.
- a. Discussion: I have seen adobe make a signature and insert, type in your name, or you can sign the screen. It has been raised in the past on consent documents that someone did not sign the document. Are we going to allow the mediator to choose the signature method? Federal Court for example, no longer requires a wet signature.
 - b. Mrs. Kozlowski, it is not up to the mediator to determine the legality of the signature. The parties sign to their preferences and if they deem it signed and final then the mediator follows that direction. It has been a bit since I have reviewed the statutes, but I believe any mark made electronically with the intent to be a signature will be accepted as a signature under the UETA.

3. Request to modify legislation to include anti-abuse language for FFS and MSC Programs. The course attendees have asked trainers why the anti-abuse clauses provide better coverage. The MSC and FFS statutes are outdated regarding the ability to disclose information for the protection of abused or neglected individuals. The Committee proposes we mirror the Clerk and Farm legislating on these issues.
 - a. Mrs. Kozlowski: The AOC has not approved this request yet, the matter runs through the Commission then to the AOC to request the proposed legislative change be included in their request to the General Assembly.
4. Judge Gorham asked for a motion to adopt? Mr. Laney made the motion. Seconded by Mr. Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.

Mr. Laney reported on his other Committees, ad-hoc Green Book and Legislative Liaison, at this time – see below.

Ms. Kozlowski: Break for lunch. The Civil Subcommittee to meet over lunch.

Under Agenda Item 3(e)(1) Civil Subcommittee – Ms. Stinson requested to add a matter to the agenda as a meeting was held over lunch. Judge Gorham granted the request.

- No Weapons Language. Mrs. Stinson: We have previously adopted proposed amendments to all program Rule sets to include No Weapons language. The proposed language includes prohibiting weapons in a mediation, including concealed carry weapons. The language was submitted to the Supreme Court, who advised staff of legislation that provides only the General Assembly can make rules governing conceal carry.
 - Therefore, the Committee recommends we strike “whether openly or concealed” from the proposed rule amendments. We are also wanting the Commission to know we plan to come back with proposed legislation to an exception to the conceal carry statute and will be presenting language at a later date with a proposed AO on best practices to prohibit weapons at a mediation.
 - o Mrs. Kozlowski: If this passes today, I will try to reinsert the new amended proposed language for the Rules to the Supreme Court this month.
 - Judge Gorham asked for a motion to approve. Mr. Niblock moves to approve. Seconded by DA Murray. Discussion: None. Vote – all in favor. None opposed. Motion carries, approved.
4. Ad Hoc Committee Reports –
 - a. eCourt Committee – Ms. De Maca Adams
 - i. Update on Odyssey. The Committee has not met. Track 5 went live on enterprise justice in July. Track 6 will go live on October 4th, at that time eCourts will be in 49 counties in the state. BAPM was made aware of not being able to file ROM in DCC matters, that has been resolved.

- ii. A tutorial was created by DRC staff and Salim Uqdah, with instructions on how to file the ROM, the training is under the mediator toolbox. That info has also been shared with court staff.
- iii. Mrs. Kozlowski gave an update on how the Mediator Application will transition into Odyssey. The process will be slow moving as Odyssey was not designed to adopt our application, and a new path will need to be created. Staff is a bit nervous as we do not have access to mediators on Odyssey, we cannot see who is listed as certified, or how they are listed, and must rely on third party knowledge at this time. Staff will keep everyone posted as we move forward.
- b. Video Observation Committee – Mr. Wijewickrama
 - i. Nothing to report.
- c. Cherokee Nation Mediation Program – Mr. Wijewickrama
 - i. You all know the news, smokie mountain news.com, reported our senior resident in Haywood and Jackson is going to be resigning. Brad Lettz will be confirmed as the new Chief of the Tribal Court. The Chief we have been working with, Chief Saunooke, for whatever reason failed to take the action needed to move this project forward. Mrs. Kozlowski went out to Cherokee to meet with him, and I screamed and yelled as loud as I could for a resolution, but for whatever reason, it didn't work. All the groundwork we laid for this project, is now pending. Judge Lettz will be confirmed next Thursday, then there is a 10-day objection period. The Chief can ratify it and can then take over. We can climb that hill to continue to work on this project, and Judge Bragg may be able to get a meeting with Judge Lettz.
- d. DRC Funds Committee – Mr. Niblock
 - i. Nothing to report.
- e. Ad Hoc AO Review Committee – Ms. Stinson (Report given during Civil Subcommittee Report)
 - i. Review of Commission approved AOs.
 - 1. Comments received on proposed AOs. The Commission voted on April 20, 2024, to approve the proposed amendments to the revised AOs. You all have a red lined version, and a clean version to review. For the new members, we have a Committee to ensure the AOs are commensurate with the other AOs that have been entered. The AOs were posted for comment for 30 days, and two comments were received. The Committee reviewed the comments but declined to modify the proposed amendments. We recommend the AOs be adopted as-is and posted. At our August 18, 2023, Commission meeting we discussed hiring an indexer to index the AOs. With positive feedback from the members on this issue, the Committee recommends staff hire a third party to index the AOs if the proposed amendments are adopted.

- i. Judge Gorham: Do I have a motion to approve? Mr. Niblock made a motion to approve hiring an indexer. Seconded by Ms. Tate.
 - ii. Mrs. Robinson: We need a motion to adopt the AOs to have something to index. Is there a motion to adopt the AOs? Mr. Sumner moved to adopt. Seconded by Mrs. Tate.
 - 1. Discussion: How will this be paid? Ms. Kozlowski explained the DRC has funds in our account from mediator dues, we do not receive state funds, so we have the discretion to use our funds as directed by the Commission.
 - 2. Is it possible to use AI rather than hire someone to index the AOs? Mr. Soni volunteered to use AI to index the AOs, if Mr. Soni is not able to successfully index the AOs, staff will hire an indexer. Mr. Laney has a name of indexer if we need to hire.
 - ii. Vote – all in favor. None opposed. Motion carried, approved.
 - f. Ad Hoc Green Book – Mr. Laney
 - i. Update on progress. The Committee has made slower progress than hoped, but we are still working on it. We have made substantial progress, and we are continuing to work. We have spent less than \$1000. We have hired a law student to help with the administrative side. There will be additional charges later this year, and hopefully the book will be out next summer.
 - g.

Long Range Planning Committee – Mr. Bolen
 - i. Update on request for mediation for civil district jury trials. We had one thing that came before us. A request to bring civil jury trials to mediation. This will take some time, so we are going to investigate.
5. Ex Officio and Other Organization Reports.
- a. Mediation Network – Ms. Estle, not present.
 - b. Court Staff – Ms. De Maca Adams
 - i. Stats for MSC, FFS, and ARB. Quarter 4 reporting for the Mediated Settlement Conference Program provides 61% of cases completely settled or were partially settled in the mediation settlement conference. The settlement rate increases to 66% for cases that settle prior to trial. For the Family Financial Program, the settlement rate is 74% of cases that settle completely or partially, and that increases up to 77% for cases that settle prior to trial. As for Arbitration Program the appeal rate decreased for quarter 4 to 18%, which means that approximately 482 cases of the 5052 cases ordered into arbitration went on to trial. I do not have statistics for the Clerk Mediation Program, but it continues to be underused. However, for FY 23-24 we have about 25 cases that have completed the Clerk Mediation Program, this is an increase over FY 22-23 where we only had 10 cases reported.
 - c. NC Court Managers Conference – Ms. Tate
 - i. Nothing to report.

- d. Industrial Commission – Mr. Howell
 - i. I have stepped in as Chief Deputy Commissioner this past March and took over this seat in November. I am stepping into the shoes of a giant, Tammy Nance. I am still getting up to speed and learning the ropes. We do have some annual reporting numbers.
 - 1. Cases that were referred to mediation with a final disposition was 88134 and we have an overall settlement rate at mediation of 71%. That is down 3% from the prior year. We have another 980 cases settled before hearing, so that would bump those statistics.
 - ii. We transitioned to a new case management system. The technology works, where I see pitfalls is internal, workflows have changed as we are learning. The time to process matters takes longer while we learn the programs.
 - iii. We brought in some teacher temps over the summer to help reduce backlog due to implementation of new system. As we become more proficient, all of our stakeholders should benefit.
 - iv. Annual conference end of September, the 30th through October 2nd. It is a great way to learn more about the Industrial Commission. I look forward to being a resource for the Commission.
 - v. One more thing, I have reviewed some of our forms, we need to make some changes. I am a bit tech savvy, so we now have fillable forms online. And at some point, we will have the ROM directly on our website. This will cut down on our processing time. This will benefit us internally and everyone externally as well.
- e. NCBA Dispute Resolution Section – Rick Igou
 - i. I am honored to be here; I have been here as an observer when I was chair of the section. I was an ex officio about 10 years ago, and I am happy to be here. We work on FY, so just had our first quarterly meeting. Denise Cline is current chair, and we switch chairs annually. The biggest news is the roundtables we have been having, it is an open conversation, and they have been successful. We don't have another one scheduled, but we do have the one scheduled with Conflict Resolution Day. We have two more meetings scheduled, December 4th and our annual meeting in March of 2025.
- f. Court of Appeals – Judge Stading
 - i. I have some annual statistics to report, as of the 5th of September. There has been a total of 12 mediations requested, eight of those were held by judges and four of those used private mediators. The judge/mediators held the eight mediations, settling three and five ending in impasse. Two of the mediations were held by private mediators, where both settled, and the two private mediations are pending. On the whole, five cases settled and five impassed, with two held open.
- g. Legislation – Mr. Laney

- i. We are updating the Farm Nuisance legislation and the MSC and FFS legislation. We will send all requests to the AOC's legislative group by October 1st. The Collaroy to that, we are not participating with the homeowner's association. We are going to help them create legislation but are going to try and stay out of that piece as much as possible.
 - ii. Mrs. Kozlowski: I have touched base with Represented Iler, who is representing the HOA Mediation Bill, to speak to him about the pitfalls the Commission has learned over the past 30 years.
6. Update on next meeting – Mary Brooks – We will have the most epic party, at the Ballantyne in Charlotte next February. We have whole lodge to ourselves; it is a separate building with a dance floor. We will celebrate Ms. Robinson's upcoming retirement. The meeting will start at 1:00 pm, and dinner will be at 7:00.
7. Adjournment – Judge Gorham requests a motion. Ms. Stinson moved to adjourn the meeting. Seconded by Clerk Kidd. All in favor.

Post meeting conversation with Judge Hamilton.

1. Check with Brian Oten about charging for mediator fees and % allowed by State Bar, and if that only applies to the attorney charging for attorney services.



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.

8. 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.
9. 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.
10. 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.
11. 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 statutes 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 jab 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 though 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 re-consider 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.
- 12. 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.
13. 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.
- 14. 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.
- 15. 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.

16. 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.
17. 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.
18. 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 become the executive director in the fall. 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-mediators 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. Kozłowski: 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.
19. 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.
20. 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.
21. 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.
 22. Adjournment – Judge Hamilton
 - a. Motion to adjourn by Mr. Laney, seconded by Mr. Wijewickrama.