

DISPUTE RESOLUTION COMMISSION



NEWS AND UPDATES
WWW.NCDRC.GOV

October 2022

DRCMediators@nccourts.org

919-890-1415



Renewal Period for FY 2022-23 is Now Complete!

Thank you to all the mediators who renewed their certification(s) for Fiscal Year 2022-23. The NCDRC staff hopes you found the renewal process easy. Don't hesitate to reach out to staff with any questions, or concerns. Send your questions or concerns to DRCMediators@nccourts.org.

Commission Seeks Comment

Open for Comment!

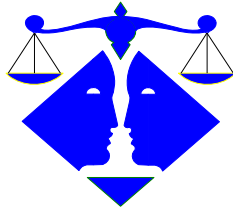
Two proposed amendments to the MSC and FFS Rules are posted for Comment until November 20, 2022.

FFS Rule 9—Certification of Mediation Training Programs. The proposed amendment removes the requirement for trainer to include an overview of North Carolina law as it applies to child custody, visitation, equitable distribution, alimony, child support, and postseparation support. *(Please note the FFS Rules require that all applicants attend a 40-hour or 16-hour FFS training, and have a minimum of 12 hours of N.C. family law education, or be a board certified family law specialist.)*

MSC Rule 8—Mediation Certification and Decertification. The proposed amendment would allow an applicant with a Master's Degree or Doctoral Degree in ADR Studies, and with five (5) years of relatively high level of professional or management experience of an executive nature in a professional business or governmental entity may qualify for certification as a superior court mediator.

Please visit the [Commission Seeks Comment](#) webpage to view both proposed amendments.

Please forward your comments on or before November 20, 2022 to DRCMediators@nccourts.org.



**Advisory Opinion of the
NC Dispute Resolution Commission
Advisory Opinion No. 43 (2022)**

(Adopted and Issued by the Commission on September 30, 2022)

N.C. Gen. Stat. §7A-38.2(b) provides, “[t]he administration of the certification and qualification of mediators and other neutrals, and mediator and other neutral training programs shall be conducted through the Dispute Resolution Commission, established under the Judicial Department.” On August 28, 1998, the Commission adopted an Advisory Opinions Policy encouraging mediators to seek guidance on dilemmas that arise in the context of their mediation practice. Later, the Policy was revised to provide that an Opinion be issued in instances where a mediator is disciplined publicly. In adopting the Policy and amendments thereto and issuing opinions, the Commission seeks to educate mediators and to protect the public.

Concern Raised

Mediator contacted the Commission to ask if the metadata from a remote mediation could be retrieved, by any person or party, after the conclusion of a mediated settlement conference.

ADVISORY OPINION

May a person retrieve, or use any data or metadata related to the mediation process that has been created or stored by remote technology providers?

No.

MSC Rule 4(f), FFS Rule 4(e), Clerk Rule 4(d), DCC Rule 4(e), and Farm Nuisance Rule 5(b)(5) all provide the following language:

“No Recording. There shall be no stenographic, audio, or video recording of the mediation process by any participant. This prohibition includes recording either surreptitiously or with the agreement of the parties.”

Metadata is data that provides information about other data. The metadata recorded on a device may be used for identification and discovery of parts of a record. Metadata can include a title, abstract, author, date, keywords, contents, quality of statistical data, characteristics of digital materials, information about the creator, copyright holder, and public licensing. It is possible that the text of a message (such as messages in a Chat feature), closed captioning record, or an image to be contained in the metadata. Metadata may be stored in the same file or structure as the data, as embedded or internal metadata, or it can be stored in a separate file or field from the described data. Regardless of the form, content, or storage location, metadata from a mediated settlement conference shall not be accessed or retrieved by any person.

The DRC program rules prohibit recording of the conference to enforce the Commission’s goal of open conversation between the parties, without fear of retaliation. The DRC continues to uphold the principle that information shared in a mediated settlement conference shall be confidential as to the mediator and the exchange of information between the parties shall not be admissible in court, subject to statutory exceptions.

The DRC recognizes that with some electronic remote communication platforms, data or metadata may be recorded without the knowledge or consent of the mediator or the participants and is beyond their control. However, the DRC cautions the mediator and parties that they may not access such data after the conference is over.

As a best practice, the DRC suggests that, when possible, it is preferred that the mediator use a platform or computer program owned or controlled by the mediator. Then, hopefully, any metadata that is generated or recorded will be in the possession of the mediator and thus not available for searching or mining by parties or their affiliates.

In summary: No Retrieval of Data or Metadata from Remote Technology Providers. No person shall access, retrieve, or use any data or metadata related to the mediation process created or stored by remote technology providers.

WELCOME NEW COMMISSIONERS

Judge Christopher Bragg

Judge Christopher Bragg was appointed by Chief Justice Paul Newby as a Certified Superior Court Mediator. Judge Bragg received his undergraduate degree in English and criminal justice from NC Wesleyan College in 1983, and his JD from UNC-Chapel Hill in 1986. He has served as a Superior Court Judge, Chief District Court Judge, District Court Judge, ADA, and judge advocate for the US Marine Corps. He also serves as a Superior Court Emergency Judge. He became certified as a Superior Court Mediator in July 2019 and certified as a Family Financial Mediator in November 2019. Judge Bragg resides in Monroe, NC with his wife Kathy, and is the proud father of two adult children and grandfather of three.



Alice Stubbs, Esq.

Alice Stubbs was recently appointed to the Commission by State Bar President Darrin D. Jordan, as a Board-Certified Family Law Specialist, not certified. Ms. Stubbs is a graduate of Phillips Academy in Andover Massachusetts in 1985, and from Davidson College in 1989 with a B.A. in economics. She studied economics and art history at the University College in London and received her J.D. from UNC-Chapel Hill in 1992. She served eight years as a Wake County District Court judge and joined Tharrington Smith in 2006. She is married and has two sons. She enjoys playing singles and doubles tennis, water, and snow skiing, reading, and traveling.



Robin J. Stinson, Esq.

Robin J. Stinson was appointed by Chief Justice Paul Newby as a certified Family Financial Mediator. Ms. Stinson is a Board-Certified Family Law Specialist since 1991. She received her undergraduate degree from Duke University and her J.D. from UNC-Chapel Hill in 1984. Ms. Stinson was certified as a Family Financial Mediator in October 2019, and as a Superior Court Mediator in March 1998. She is an active member of the Family Law Section of the NCBA, she served on the Association's Board of Governors and as chair of the Family Law Section. She is the proud parent of four adult children and two grandchildren.



Former Commissioner Hicks and Clerk of Moore County to Retire!

At the recent North Carolina Conference of Clerks of Superior Court 2022 Summer Educational Conference, Susan Hicks, was awarded the 2021-22 President's Award. The award was established to recognize a clerk who has given of themselves unselfishly to their work. Clerk Hicks has chaired the Program Committee for conferences for many years.. She is retiring in November. Clerk Hicks served as a DRC Commissioner from 2012—2020, and served as the vice chair from 2017-2020.



In remembrance....

Judge W. David Lee

It's with deep sadness that we share the death of Judge W. David Lee. Judge Lee served on the DRC as a Commissioner (2004-2012) and Chair (2008-2012). He was instrumental in guiding the Commission through some interesting time. After retiring as the senior resident superior court judge in Monroe, he was certified superior court mediator (2016). Judge Lee was dedicated to the success of the Commission, and will be greatly missed by many.



Gary Bunting Tash

Staff recently learned of the passing of former Commissioner Gary Tash (June 27, 2021). Mr. Tash served on the Commission as a family law specialist not certified as a family financial mediator, 2007—2013, and served as the first chair of the Grievance Committee. Mr. Tash brought his family law experience to the Commission and was instrumental in assisting the Commission with proposing changes to the Commission's Rules, establishing procedures for the Grievance Committee.



Reminder

All certified mediators have a duty to report any grievance/complaint filed against to NCDRC staff within 30 days of filing a response to the issuing regulatory body. (MSC Rule 8 (a)(5) and FFS Rule 8(a)(7)). Notifying the NCDRC of the grievance/complaint will not automatically trigger an investigation by the Commission's office.

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