



# THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

## Dispute Resolution Commission Meeting Minutes

Friday, February 28, 2025

1:00 PM The Ballantyne Hotel, Charlotte NC

Commissioners present in person: Judge Hamilton, Judge Bragg, Joy Easley, Paul Ekster, Judge Gorham, Clerk Kidd, Judge King, Ralph Meekins, DA Murray, David Niblock, Lauren Quinn, Judge Southern, Justina Tate, David Wijewickrama.

Ex Officio members present in person: Rick Igou and Ketan Soni.

DRC Staff present in person: Tara Kozlowski and Maureen Robinson.

With Regrets: Judge Stading, Frank Laney, Zach Bolen, Robin Stinson, Tina Estle, Kevin Howell, and De Maca Adams.

Mrs. Kozlowski called the meeting to Order at the request of The Honorable Judge Hamilton, Chair.

1. Welcome and Announcements – Mrs. Kozlowski
  - a. Mrs. Kozlowski welcomed all to the Ballantyne for our annual retreat. We celebrate the work the Commission produces throughout the year to promote ADR practices in NC.
  - b. Please welcome two new Commission Members.
    - i. Joy Easley was appointed by the Speaker of the House to fill the Knowledgeable Citizen seat for a three-year term.
      1. Ms. Easley: I am an attorney by profession, worked at DA's office and in private practice. I am now Chief Magistrate in Brunswick County.
    - ii. Lauren Quinn was appointed by the President of the State Bar to fill the non-mediator, attorney, who is a family law specialist seat.
      1. Ms. Quinn: I practice at Ward and Smith and am head of our family law group. I practice in all the offices except for the Asheville office, am a certified family law specialist and live in New Bern. I am glad to be here.
  - c. Approval of September 20, 2024, Meeting Minutes. Judge Southern made a motion to approve the September 20, 2024, meeting minutes. Seconded by Mr. Wijewickrama. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
2. Office Report – Mrs. Kozlowski

- a. Our renewal period ended September 30<sup>th</sup>, but due to Hurricane Helena all mediators who reside in a Western North Carolina County were given a one-month extension on their renewal. Mrs. Robinson called each mediator in this area to check on their well-being and offered to walk them through renewal and waive payment if needed, per Judge Hamilton's approval.
- b. Our office has been working with the AOC on multiple tasks:
  - i. Our Mediator program does not translate into Odyssey, so we expect our current application to dissolve sometime this summer. We may need to use an outside program to operate our program. It is a learning curve, and we are working to maintain our required functionality in the new platforms. We are working with a configuration team to update our mediators. We have limited access to Odyssey, what we see is a public view. We are not able to pull up mediators, or view lists. I don't think anyone in Odyssey can see who is certified in what program, so court staff and the public must look through our current Mediator software. We hope to implement this new program application this summer. If we can do so, we will be able to increase mediator certification dues \$25 per certification, as approved by the Commission about 5 years ago. The Commission has only increased our dues once since 2002. At that time, the AOC would not allow us to implement the fee increase as it would require an update to our software. Software that would eventually be phased out, therefore, the approved fee increase was put on hold.
- c. Statement of Economic Interest Reports.
  - i. Our new members, Ms. Easley and Ms. Quinn have filed their Statement of Economic Interest with the State Ethics Commission. After evaluating Ms. Joy Easley's SEI, the State Ethics Commission did not find an actual conflict of interest or the likelihood of a conflict of interest.
  - ii. After evaluating Ms. Lauren Quinn's SEI, the State Ethics Commission 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.
- d. Rule and Standard Amendments to the Supreme Court.
  - i. The proposed rule amendments presented to the Supreme Court to be signed in October, were delayed due to questions about removing the attorney requirement to sign the final agreement for MSC matters. Our submission was reviewed in December 2024, adopted on December 11, 2024, and went into effect on January 6, 2025. All rules and standards that were proposed were adopted except for the "No Weapons" language. We anticipated that language would be rejected. All new language is already posted on our website.

Judge Hamilton arrives.

- e. Staffing.

- i. Mary Brooks is no longer with our office; we are looking to fill her position quickly. Additionally, Mrs. Robinson is retiring at the end of June, so this is her last meeting. There is an AOC directive that prohibits overlap hires, so we are not able to hire Mrs. Robinson's replacement until she leaves. As such, Hamilton approved hiring for a 4<sup>th</sup> position, so we have enough people to staff the office. It will take two new hires to fully replace Mrs. Robinson.
  - ii. I have requested Judge Hamilton allow staff to slow down our work pace a bit with all the changes. We want to produce quality, and we are not able to keep our current pace with the staffing changes. The Commission is required to hold two meeting per year, we typically operate with three to four meetings a year, but this year we will likely only hold two meetings. The Executive Committee can operate on behalf of the full Commission is action is needed prior to our next meeting. Staff has everything well set to allow the workflow to slow down a bit, and we do not anticipate any emergencies popping up at this time.
- f. Budget.
  - i. Our budget is approximately \$522,848.94 in the bank. This will decrease over the next few months, as we do not have income coming in, but only have expenses this time of year. We did pull Mrs. Robinson's salary back onto the DRC's budget to receive the AOC's approval for hiring a 4<sup>th</sup> DRC staff member. The AOC has graciously been covering Mrs. Robinson's salary for the past five years as they were not able to increase our mediator fees as requested based on limited resources with the implementation of Odyssey.
- g. Request to Implement Fees.
  - i. Financially, we are doing well. Although, we have expenses coming up. We would like to be able to maintain a positive balance in our accounts. Staff spends a significant amount of time reviewing provisional pre-training approval packets and out of state training to determine if it is substantially compliant with DRC training. The pre-approval packet is an opportunity for a non-attorney to submit a packet for staff to determine if they will qualify to certify under the DRC's threshold requirements. We have a lot of individuals who inquire about certification, we understand that this is part of our responsibility, but we spend a lot of time on these matters. Additionally, determining if out of state training is substantially compliant with DRC training also is time consuming, as we will review the entire training packet to ensure the material is similar. The statute that we operate under, 7A-38.2, allows us to charge up to \$200 per certification. Currently our application fee is \$50, so we have \$150 to play with. Staff is proposing a \$50 fee for pre-approvals and a \$50 fee for substantial compliance reviews. Requesting a fee for these services would greatly assist the Commissions ability to increase revenue, especially during the staffing changes.

1. Discussion: The Commission discussed the net loss of mediator fees expected with Odyssey, the amount of roll over in our budget each year, and how pre-approval applications operate. Staff reviewed the amount of time spent on reviewing pre-approvals, and the benefit of doing a pre-approval for an application who may not meet the threshold requirements to certify. Applications and annual mediator fees were discussed, per our enabling statute.
2. Discussion of changing the name of pre-certification packet to pre-certification review. The pre-approval process was explained that if the application is missing or has a red flag it moves to committee review. If qualifications are missing, the Mediator Certification and Training Committee reviews the application. If the applicant has an issue with past moral conduct, the Grievance and Disciplinary Committee reviews the application.
3. Discussion about out of state attorneys certifying as a mediator in NC. And that we have received multiple requests for the observations to move to 100% remote, as we have so many out of state people wanting to become mediators without having to travel to NC to complete the observation.
4. Discussion about fees not increasing for over 20 years, and a careful review of the statute allowing fees to be charged by the Commission.
5. Discussion about being able to shore up the fees to match the statute. Comments about paying a portion of the fees for a pre-approval, and the balance of the fees for the application. We have the opportunity now to shore up the fees to not limit the Commission's ability to survive and that we stay financially solvent. We need to ensure the longevity of our program.
6. Discussion about how many people will drop their certification based on dues increase. The Commission considered that if a mediator mediates one court-appointed case per year, for one hour, they earn \$175 admin fee and \$150 for the mediation and have earned back their mediator dues for the year.
7. Discussion on the number of certified mediators each year. The numbers have been consistent for the past seven years I have been with the Commission running around 1350+ mediators each year. We have mediators who lapse when they do not want to keep up with the new Rules or technology, and others who join because they love the technology.
8. Discussion of expenses the Commission will realize moving forward. We rely heavily on the AOC for support, but do pay staff salaries, incidental fees and expenses, and all our office supplies and equipment. We don't know what is happening with the State budget,

so our expenses could increase if we need to take on more financial responsibility for operating expenses than we have in the past.

9. Discussion around likelihood of attorneys dropping their certification due to the increase of fees. This is just another part of the business expense. The State budget is in flux, and we don't know what the future holds. That is a business expense, we need to maximize our profits.
  10. Mrs. Robinson – we have not increased fees since 2004 or 2006.
  11. Mrs. Kozlowski – hopefully, the one-time application fee will not stop applicants from wanting to certify, and the increase in dues is not so significant that mediators will lapse their certifications.
  12. Judge Bragg makes a motion to raise the application fee and the certification fee to \$200 each.
  13. Mrs. Kozlowski – a preapproval could be \$50, then the remaining application fee could be \$150, keeping us in line with the statute.
  14. Discussion of how to address applicants who apply for both MSC and FFS, where staff only conducts one background check. If the applications do not come in at the same time, then we redo the work and would charge a second application fee.
  15. Mrs. Kozlowski – To clarify, we have a motion to charge \$200 per application and certification on the table. If it is a non-attorney application the pre-approval is \$50 and subsequent application is \$150. If the applicant applies for both programs at the same time, we will only charge one application fee. Judge Hamilton, would you like to call for a vote?
- ii. Judge Hamilton called for a vote: Judge Bragg made a motion to charge \$200 per application. If it is a non-attorney application the pre-approval is \$50 and subsequent application is \$150. If the applicant applies for both programs at the same time, we will only charge one application fee. Seconded by Judge Southern. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.
  - iii. Mrs. Kozlowski – can we move to the topic of substantial compliance review?
    1. Discussion: Staff described the process to determine if out of state training is compliant with the requirements in the DRC 40-hour Training Guidelines. Mrs. Robinson reports she can spend a week working on one request.
    2. Recommendation made to charge a fee for this.
    3. Mrs. Kozlowski – suggests charging \$150 for the review and \$50 for the application. These requests take time, as we ensure the training will prepare an applicant for DRC programs.
  - iv. Judge Hamilton – let's take a vote on the substantial compliance fee. Judge Southern made a motion to charge a substantial compliance review fee of

\$150, and subsequent application fee of \$50. Seconded by Mr. Niblock. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.

- v. Request by Mrs. Robinson to change the name of the Provisional Pretraining Approval Process.
- vi. Judge Hamilton allowed the request to move forward. Judge Bragg made a motion to change the name to Pre-Certification Assessment. Judge King seconded. Discussion: None. Vote – all in favor. None opposed. Motion carried, approved.

h. Odyssey/Renewal.

- i. We have little information other than we are moving into eCourts at some point.

i. Training/Education.

- i. We hosted a 2-hour CLE/CME on October 17, 2024, to celebrate Conflict Resolution Day. We used a group from the NCBA DR Section, the Mediators of the Roundtable for the presentation. A special thanks to the panelists: Ann Anderson, Frank Laney, Jackie Clare, Ray Owens, Ken Carlson, Trish Holland, and Rick Igou. We had over 180 participants attend the presentation and received a lot of great feedback.
- ii. We have had a lot of opportunities to conduct a lot of CME trainings around the State this past year. On average, I present about 16 hours of CME credit every 6 months. I am hopeful the CMEs are working. In 2021 I logged 76 ethics calls, in 2022 the calls increased to 131, and in 2023 they increased to 158 calls. For 2024, we received 237 calls with ethics questions. The number of mediators has stayed somewhat consistent, after a drop off due to COVID and moving into remote tech. The increase in calls is a positive thing.

3. Committee Reports –

a. Executive Committee Report – Judge Hamilton

i. Executive Committee Meeting.

- 1. Proposed Draft AO 45. The Executive Committee held a meeting via email on December 2, 2024, under DRC Rule 1(c)(1), as there was a matter that needed to be addressed prior to this meeting. The following members participated, Zach Bolen, Robin Stinson, Frank Laney, David Wijewickrama, Judge Gorham, Judge Stading, and Judge Hamilton. Ms. Kozlowski, Ms. Robinson, and Ms. Brooks also attended. We discussed the following matter at the meeting. The Standards and Advisory Opinion Committee has been working with the State Bar for the past two year on the DRC's request for a formal ethics opinion to define a mediator's responsibility when a party asks to negotiate a term that is in violation of the Rules of Professional Conduct. The State Bar ethics subcommittee has proposed a draft Formal Ethics Opinion (FEO) that the S&AO

committee approves of. The State Bar ethics subcommittee requested the DRC issue an advisory opinion to mirror their advice to be consistent across the board and show our cooperative nature. The State Bar's ethics committee is waiting on our draft AO. For the DRC to issue our AO with the State Bar's FEO in early 2025, and comply with DRC procedure, the matter was brought to the executive committee for initial approval.

2. The Executive Committee voted unanimously to approve the proposed draft AO and requested staff to post the AO for comment.

b. Criminal Sub Committee – Judge Toni King

i. Previous Matters.

1. Update on DCC Pilot Program. Regarding the DRC DCC Grant Program, the 2025 grant funds of \$100,000.00 from IOLTA will provide up to 1665 mediations in District Criminal Court that will be free to the parties. This Pilot program is operating in conjunction with eight DRC Certified Community Mediation Centers, working in 17 counties. For the month of January, we have reported 94 mediations conducted in District Criminal Court matters, with an 81% settlement rate. This program has been working really well in Cumberland County.
2. Question on how long we were going to run the DCC Pilot Program. Mrs. Kozlowski: The idea was to run this for one year, in 2024, then ask the General Assembly to fund the project. Based on the political climate of our State, the Executive Committee determined a few months ago to request grant funds for one more year. We are hoping 2025 provides better results, and we will be able to seek State funding for this program. If we are not able to obtain State funding, we will continue to seek grant funds through IOLTA.
3. Discussion about offering this program Statewide. The program is available Statewide; however, not all districts elect to participate in the program. Community mediation centers are spread out over the State, and not all counties have a local center. Additionally, not all Centers that are operational are certified with the DRC.
4. There are several reasons why Centers may opt to not certify with the DRC. Our Board feels our mediators do not need the certification, and the training could be an extra burden. However, we are supportive of the program and enjoy collaborating with the DRC.
5. Mrs. Kozlowski: Our goal is to eventually move all Centers toward certification and providing DCC mediations in every district, but we have a long way to go.

ii. New Matters.

1. None.

- c. Grievance and Disciplinary Committee – Judge Southern
  - i. Update on complaint activity.
    - 1. Mediator H-23. Staff received a complaint in 2023 against mediator H-23 alleging the mediator violated The Standards of Professional Conduct, Standard 3, Confidentiality by disclosing substantive information about the mediation on the Report of Mediator. The committee found probable cause and issued a private reprimand to Mediator H-23 that included a requirement to complete a 16-hour training course within one year. Mediator H-23 completed the training course, this matter is now closed.
    - 2. Mediator F-24. Staff received a complaint against Mediator F-24 based on the allegation that mediator was biased toward the plaintiff and failed to hold a proper mediation. This matter is currently under investigation.
  - 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 I-23. Staff received an Application for Certification to Conduct District Criminal Court Mediations in 2023 from applicant I-23. The applicant had multiple criminal convictions that included damage to property, several failures to appear, and drug use. The committee found probable cause that applicant I-23's past conduct was inconsistent with good moral character; however, the committee took into consideration her last conviction occurred in 2007, and the applicant had reinstated her driver's license. The committee certified applicant I-23 for a one-year probationary period. Applicant I-23 has completed the probationary period assigned by this committee and is now certified without limitations. This matter is closed.
  - iv. DRC Grievance Procedure and the legal standards used in the DRC Rules.
    - 1. Update. Staff continues to work toward drafting language for the committee's consideration regarding new language for the DRC Rules to align the grievance and disciplinary procedures with the Commission's enabling legislation.
- d. Mediator Certification and Training Committee – Mrs. Kozlowski on behalf of Mr. Bolen
  - i. New Training and CME offerings approved since September 2024. The Committee has approved a few new training programs and courses for CME credit.
  - ii. Applications for certification that came before the Committee.
    - 1. None.



iii. Previous Matters

1. DRC Rules, Rule 10 to remain consistent with DRC Rule 9. We are still on hold for revised DRC Rule 10 so we remain consistent with the Grievance and Disciplinary Committee's Rule 9.
2. Proposed amendments to adopt Administrative Fees for Insufficient Funds. We reviewed proposed amendments to our policy regarding payments and our ability to collect administrative fees for insufficient funds and credit card chargebacks at our September meeting. The commission approved the language but asked to keep this matter at committee level to determine the legality of assessing admin fees for these payment issues, and to determine the cap for admin fees if allowed. The Policy was posted for 30 days and received no comments. Staff confirmed with the AOC that the insufficient funds fee is capped at \$35 and will be collected moving forward by the AOC through the DRC. The statute requires placing the payor on notice – please see the updates to the DRC payment policy.
  - a. Additionally, staff met with AOC Legal and CFO to discuss implementing the administrative fee for credit card chargebacks. All agreed, the statutes are silent on the ability to charge an admin fee, likely due to the ability to argue against the requested chargeback. Therefore, legal recommends we do not include an admin fee in our Policy. The main issue the DRC is having is our processing company NIC is not putting the DRC on timely notice, so we have not been able to argue against the charge. As the DRC moves into Odyssey, it is not clear if we will continue to work with NIC, but staff will continue efforts to ensure better communication between our processing company and the DRC to avoid issues in the future.
  - b. Questions about using a different payment method, such as Zelle. Mrs. Robinson: Unfortunately, we need to stay within the AOC's Policy. The Zelle terms of service may not work with our needs.
  - c. Mrs. Kozlowski: Please see the revised proposed DRC Payment Policies. This matter has already been approved and posted for 30 days, today's revisions reduce the fee from \$50 to \$35 for insufficient funds and delete the proposed text to charge an admin fee for chargeback. Therefore, this does not need to be re-posted and will go live if approved.
    - i. Judge Hamilton asked for a motion to approve. DA Murry made a motion to approve. Seconded by Mr. Meekins. Discussion: None. Vote – all in favor.

3. Proposed amendments for Dated Training Policy. The Commission approved 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. Staff posted the proposed language for 30 days and received a comment. The committee determined the comment did not relate to the proposed changes and voted to recommend the Commission adopt the original proposed amendments. Please see the proposed DRC Dated Training Policy.
  - a. Discussion: The Dated Training Policy allows a few years between when the mediator completes their training and can certify without the need for additional training. This amendment would fill the gap and provide CME during the period after training and before certification.
  - b. Judge Hamilton asked for a motion to approve. Judge Bragg made a motion to approve. Seconded by Judge Gorham. Discussion: None. Vote – all in favor.
- i. New Matters
  4. Proposed amendments to the Trainer Guidelines. The MSC and FFS Rules both require prerequisite courses to be completed for certain applicants before they can attend the full 16- or 40-hour training. This language was requested by trainers, to ensure the course attendees had the base knowledge to understand the training. Staff has discovered a few applicants who attend the courses out of order. To remain in compliance with the Rules, staff requested to place a prerequisite check in place for certain applicants prior to attending the 16- or 40-hour training course. The course participants would contact the DRC to request a Prerequisite Course Form to be completed by staff. The participant would then provide the form to the trainer prior to attending the course. The committee voted to approve the trainer guidelines per staff's recommendation. Proposed amended Guidelines are not required to be posted for comment, however, the approved language was shared with all DRC Certified Trainers and modified based on suggestions received. The trainers who commented, and made recommendations approve the version before you today. Please see the MSC and FFS Training Guidelines.
    - a. Judge Hamilton asked for a motion to approve. Judge Southern made a motion to approve. Seconded by Judge Bragg. Discussion: None. Vote – all in favor.
  5. DRC Training for Court Staff and Judges. This committee is working with staff to promote DRC training for judges and court staff. We are working toward obtaining a small window of time at

court management conferences as well as in the School of Govt training for Judges across the state.

e. Civil Sub Committee – Mrs. Kozlowski on behalf of 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 matter of the public records mediation program is still pending before this committee.
3. Update on the Clerk Program. The Clerk training is now available, and we have a group of interested mediators working to track common issues they have with the Clerk program for future consideration. The Chair of the Civil Subcommittee would like to request Judge Hamilton create an ad-hoc committee to work on revising the Clerk Rules, allowing committee members to be pulled from DRC Members as well as the mediators from the public side.
  - a. Judge Hamilton approved the request. The Chair has ability to create ad hoc committee upon request under DRC Rule 1(c)(2).
  - b. We have a group of individuals who have expressed interest in serving on this committee, Frank Laney, Frank Johns, Colleen Byers, Judge Jay Bryan, Clerk Kidd, and Clerk Mark Kleinschmidt.
4. Proposed amendments to the Farm Nuisance Rules. The Farm Nuisance Rule amendments are on hold until we can modify the programs enabling legislation.
5. Proposed No Weapons legislation. In 2024, the Commission adopted proposed rule changes to prohibit weapons in a mediated settlement conference. The Supreme Court declined to include the language in the Rule amendments as the request is not a rule of procedure. The Supreme Court felt the General Assembly would be to address these issues, especially as the GA is the only regulatory body who may regulate the carrying of a concealed handgun, NCGS 14-415.23(a). The committee proposes draft legislation for NCGS 14-415.11 and 7A-38.1, modifications are highlighted in yellow.
  - b. Judge Hamilton asked for a motion to approve. Ms. Easley made a motion to approve. Seconded by Mr. Wijewickrama. Discussion: None. Vote – all in favor.
6. Proposed No Weapons AO 47. Additionally, the committee proposed draft AO 47, giving best practices to mediators who wish to prohibit weapons during the mediated settlement conference. If approved, the AO will be posted for 30 days.

- a. Discussion: Concerns were expressed about taking this position in an AO as the language may be aspirational in nature. Additional concerns about the conceal carry language were discussed. However, Rule 6(a)(1) that provides the mediator is in charge of the conference and allows the mediator to remain in control at all times.
  - c. Recommendation was made to issue the AO in response to one of our mediators, under Rule 6(a)(1), asking if they may prohibit a dangerous weapon in a mediation and safety protocols. Recommendation to remove some language from the draft.
  - d. Judge Hamilton asked for a motion to approve. Mr. Wijewickrama made a motion to approve. Seconded by Ms. Quinn. Discussion: None. Vote – all in favor.
- ii. New Matters
  - 1. Proposal to amend the Report of Mediator for agreements that require 3<sup>rd</sup> party approval. Staff has received multiple requests to amend the Report of Mediator to allow a mediator to report a matter is settled contingent on a 3<sup>rd</sup> party approval. These matters are currently being called an impasse, as there is not a final agreement on all matters. However, mediators report court staff want to know if the matter is waiting for final approval from an agency or regulatory body. The committee has asked staff to further research the implications of this request to see if it is viable.
- f. New Media Committee – Mr. Wijewickrama
  - i. Updates to website. Staff continues to work to ensure all posted material has the correct trademarked logo. Under the Public Sanctions portion of the website, Commission staff added: “Public Sanctions issued by the North Carolina Dispute Resolution Commission, prior to 2019 are not published below”. Brochures – all DRC brochures were updated to include a QR code on them. The code directs to the DRC website. New link created under the “More Information” section of the website “Attorney’s Guide for Mediation in North Carolina”. Staff modified the certification packet mailed to newly certified mediators. All information available on the website is now included in an email via links, and staff is only mailing out hard copies of the brochures and the mediators initial certification. The Labor Department’s Mediation Program was added to the DRC’s “Other Mediation Resources” page. The new pro-rated fee schedule was added to the MSC and FFS Application pages.
  - ii. Social Media Presence.
    - 1. No updates.
  - iii. Vignettes of the Rules.
    - 1. No updates.

- g. Standards and Advisory Opinions Committee Report – Mrs. Kozlowski on behalf of Mr. Laney
  - i. Previous Matters
    - 1. State Bar matter: Mediator acting as scribe. Approved draft AO 45. This matter has been circling the DRC for about 2 years. This committee provided a draft AO to the Executive Committee for approval, as the State Bar is hoping to post their FEO around the same time our AO goes live. The Executive Committee approved the draft, and the proposed AO was posted for 30 days. We received several comments on the proposed draft. The committee reviewed the comments and adjusted the AO that is being recommended to the full Commission today. This has been circulating for about 2 years, and we are trying to provide the best guidance to our mediators. The committee recommends the final approved draft be adopted.
      - a. Discussion: The mediator lawyer shall not transmit...the State Bar Ethics committee has reviewed this and provided comments. Their comments were integrated to the final draft.
      - b. Special thanks to Frank Laney for spearheading this conversation, this is a well thought out document.
      - c. Judge Hamilton asked for a motion to approve. Judge Bragg made a motion to approve. Seconded by Mr. Meekins. Discussion: None. Vote – all in favor.
    - 2. Proposed draft AO 44 regarding processing fees. This AO was revised to align with State Bar's position for Attorneys. The Commission adopted proposed language for an AO addressing the payment processing fees associated with paying through electronic means. This Commission approved the AO in April of 2024, posted the AO for comment, and adopted the AO in September of 2024. Judge Hamilton requested staff to run the adopted AO by the State Bar to ensure compliance with the RPCs. The AO was revised to apply to both designated mediators and court appointed mediators. The State Bar's position is the attorney may not profit from the assessed fees. Our AO aligns with fees charged by the AOC and therefore do not run contrary to the State Bar. The revisions to the AO do not require this document to be posted for comment again, if approved, it will go live.
      - a. Judge Hamilton asked for a motion to approve. Judge Southern made a motion to approve. Seconded by Judge Gorham. Discussion: Typos were pointed out and corrected. Vote – all in favor.

3. Proposed draft AO 46 regarding UETA. This Committee considered two COA opinions dealing with the enforcement of settlement agreements based on signature block of an email under the Uniform Electronic Transitions Act and drafted a proposed AO to address commonly asked questions. If the Commission approves proposed AO 46, it will be posted for 30 days for comment.
    - a. Relevant cases: *Garland v. Orange County*, *Glenwood v. Glenwood*.
    - b. Judge Hamilton asked for a motion to approve. Judge Bragg made a motion to approve. Seconded by Judge King. Discussion: None. Vote – all in favor.
  4. AI. Again. This matter has been through this committee on multiple occasions. AI creates content, mediators cannot create content. However, the concern now is the technology automatically defaulting to AI to record and summarize meetings. The Committee decided to issue notice to mediators to correct their settings for all remote tech used in a mediation, and we will look to revising an old AO to reinforce that AI may not record the session.
- ii. New Matters
1. Request to define the mediator's inability to draft. The committee discussed at length the request to define the mediator's inability to draft in a mediation. After careful consideration, the committee felt creating a bright line rule would be possible while the landscape is still moving. The committee felt the mediator should be direct with the parties and attorneys and let them know it is their responsibility to draft any final documents.
  2. Request to loosen Standard 3(c) to allow some communication with court staff. Standard 3(c) which prohibits a mediator from sharing information with court staff. The committee discussed this at length and determined not to amend the language in the Standard.
    - a. However, the committee would like to address educating mediators on how to recess and reconvene. The Committee will look to producing a statement from the DRC on how mediations should flow.
  3. Proposed expansion of LAP exception under Standard 3(d)(10). Staff received a request to report a mediator who was not remembering simple items and was appearing to have some memory and mental health issues. The goal would be to expand the current Standard to match the LAP Mission Statement to include mental health as a reportable matter.
    - a. Currently 3(d)(10) states, if a mediator or mediator-observer witnesses concerning behavior of an attorney during a mediation, then that behavior may be reported to the North

Carolina Lawyer Assistance Program for the purpose of providing assistance to the attorney for alcohol or substance abuse.

- b.** LAP Mission Statement: NC LAP is a service of the North Carolina State Bar which provides free, confidential, non-disciplinary assistance to lawyers, judges and law students in addressing mental health issues, including problems with drugs or alcohol, and other life stresses which impair or may impair an attorney's ability to effectively practice law...
  - a.** Judge Hamilton asked for a motion to approve. DA Murray made a motion to approve. Seconded by David Niblock. Discussion: None. Vote – all in favor.

4. Ad Hoc Committee Reports –

- a.** eCourt Committee – Ms. De Maca Adams
    - i.** Update on Odyssey. Ms. Adams was not able to attend.
    - ii.** Judge Hamilton: By the time we meet again, all counties should be under Odyssey.
  - b.** Video Observation Committee – Mr. Wijewickrama
    - i.** Nothing to report.
  - c.** Cherokee Nation Mediation Program – Mr. Wijewickrama
    - i.** Update on progress. Mrs. Kozlowski has reached out to Judge Letts, and they have exchanged a few emails, but have not set a time yet to discuss certifying mediators who mediate on the reservation.
  - d.** DRC Funds Committee – Mr. Niblock
    - i.** Nothing to report.
  - e.** Ad Hoc AO Review Committee – Mr. Soni on behalf of Ms. Stinson
    - i.** Indexing AOs. The Commission voted to index the AOs for searching capabilities. Ketan Soni has volunteered to attempt to index the AOs.
    - ii.** Mr. Soni: there is nothing to update, we are still working on the final product.
  - f.** Green Book – Mrs. Kozlowski on behalf of Mr. Laney
    - i.** Update on progress. We are delayed a bit, but we are still working and hope to have a book out to you all soon.
  - g.** Long Range Planning Committee – Mrs. Kozlowski on behalf of Mr. Bolen
    - i.** Update. We will continue to look at ways to bring ADR into civil district jury trial matters. It is still pending.
5. Ex Officio and Other Organization Reports.
- a.** Mediation Network – Mrs. Kozlowski on behalf of Ms. Estle
    - i.** The Mediation Network has hired ED, Ann Howell, she will start in 2-3 weeks. She has worked for OAH in the past. MNNC is very excited. Things are going well for the network.
  - b.** Court Staff – Mrs. Kozlowski on behalf of Ms. De Maca Adams

- i. Stats for MSC, FFS, and ARB. The reports have some comparison charts for your review. I am concerned we are not receiving the same statistics as we are moving into eCourts.
    - ii. We have a settlement rate of 63% for MSC, that moves up to 66% if you include cases that settle prior to trial. The FFS program has a settlement rate of 76%, that moves up to 79% if you include cases that settle before trial.
  - c. NC Court Managers Conference –Ms. Tate
    - i. Nothing to report
  - d. NCBA Dispute Resolution Section – Mr. Igou
    - i. Speaking of AI we sponsored a roundtable; it was very informative and is posted online.
    - ii. Looking ahead, we have an annual meeting on March 28<sup>th</sup>.
  - e. Industrial Commission –Mr. Howell
    - i. Nothing to report
  - f. Court of Appeals – Judge Stading
    - i. Nothing to report.
  - g. Legislation – Mrs. Kozlowski on behalf of Mr. Laney
    - i. We provided three pieces of legislation we provide to the AOC in October. Initially, the Director said the legislation would not be included in this year’s proposal to the general assembly. We submitted the request to update the Farm Nuisance legislation, and the MSC and FFS legislation to allow for proper reporting of abuse/neglect. I have requested meetings to determine why but I have not received a response. I will keep you all posted.
6. Judge Hamilton adds the matter to revisit the annual certification fee to the agenda.
- a. Judge Bragg: Five years ago, we passed a \$25 increase, it has not taken effect due to eCourts. Dues have not increased since 2004. Our enabling statute allows us to charge \$200 per certification, and \$200 for annual fees per certification. Based on the work, and scope of what we do, increasing mediator fees is not unreasonable. My bar dues are \$300 a year. I would like to make a motion to increase certification to \$200 per annual certification and the dually certified annual fee of \$400. I don’t think we will lose a lot of mediators. More work can be done by DRC staff, we have the authority to govern public records. NC is growing, we need more mediators.
  - b. Discussion: With a law enforcement background, public records is a present challenge that needs to be addressed.
    - i. Discussion: The Commission considered the impact of this increase, but decided it was warranted as fees have not been increased in over 20 years.
    - ii. Questions about the possibility of increasing fees incrementally. However, it was noted that if we do incrementally, the AOC may not be able to do this in Odyssey. Mrs. Kozlowski: we may not be able to implement a graduated system. I like the idea but not sure if it possible.
    - iii. The Commission considered the financial impact of mediators failing to renew based on the fee increase, However, the final determination was that



our obligation is to look after this commission. We need to increase fees in a meaningful way – and not delay it.

- iv. Mrs. Robinson reports that Florida mediator fees are \$495.
- v. Mrs. Kozlowski: having additional funds would allow for us to hire quality staff to be able to address all pending issues timely.
- vi. Paul Ekster seconds the motion. Increase the fee to \$200 per annual certification and \$400 for annual dual fees. Inactive status half of each.
- vii. All agree to implement this increase as soon as we can get into eCourts
- c. Judge Hamilton asked for a vote. To recap, Judge Bragg made a motion to approve. Seconded by Paul Ekster. Discussion: No further discussion. Vote – all in favor.

- 7. Update on next meeting – Mrs. Kozlowski
  - a. Sometime in August!

- 8. Adjournment – Judge Hamilton

Move to adjourn