

THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION



ANNUAL REPORT FISCAL YEAR 2020-2021

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November 3, 2021

Ladies and Gentlemen:

I am pleased to present the N.C. Dispute Resolution Commission's Annual Report for Fiscal Year (FY) 2020 – 2021.

Commission members and staff are keenly aware of the important role with which we have been entrusted and are committed to the faithful execution of the Commission's statutory charge to certify and regulate the conduct of mediators and mediator trainers who are serving North Carolina's court-ordered Mediated Settlement Conference, Family Financial Settlement Conference, Clerk Mediation and District Criminal Court Mediation Programs. This Report details the exemplary work of the Commission and its staff in the discharge of those statutory obligations during the last fiscal year.

The Commission undertakes its work in order to educate and raise awareness about North Carolina's court-ordered mediation programs, to ensure that our mediators are highly ethical people of good moral character, and to maintain the public trust and confidence in and integrity of our certified mediators and our state's court-ordered mediation programs.

The Report also discusses the Commission's goals for FY 2021-2022. Please feel free to contact me if there are questions or concerns you would like the Commission to address, or comments you would like to make. With best wishes,

Sincerely,

A handwritten signature in blue ink, reading "Phyllis M. Gorham". The signature is written in a cursive style.

Judge Phyllis Gorham, Chair
NC Dispute Resolution Commission

TABLE OF CONTENTS

From the Chair	3
1. Introduction	5
2. A. Commission Members	6
B. Ex-Officio Members	8
3. Commission's Office	9
4. Interface with Other Agencies or Programs	9
5. Budget	10
6. Certifications Issued FY 20-21	10
7. Program Statistics FY 20-21	10
8. Commission Structure in FY 20-21	11
9. Commission Business in FY 20-21	14
10. Plans and Goals for FY 2021-2022	20
11. Conclusion	22
Addendum 1: MSC Program Statistics Chart	23
Addendum 2: FFS Program Statistics Chart	24



1. INTRODUCTION

The North Carolina Dispute Resolution Commission (Commission) was established in 1995 by G.S. § 7A-38.2. The Commission is charged primarily with administering mediator and mediator training program certification and with regulating the conduct of mediators and mediator training program personnel. The Commission also helps to support mediated settlement conference programs operating in North Carolina's courts, including: the superior courts' Mediated Settlement Conference (MSC) Program, the district courts' Settlement Procedures in Equitable Distribution and Other Family Financial Cases (FFS) Program, the district courts' District Criminal Court Mediation (DCC) Program, the Clerk Mediation (CMP) Program, and the Pre-litigation Farm Nuisance Mediation (Farm) Program. In addition to certifying and regulating mediators and providing program support, the Commission also recommends policy, rules, and rule revisions relating to dispute resolution to the General Assembly and Supreme Court; seeks to promote mediator education and skills development; interfaces with and serves as a resource for other state agencies offering mediation services or seeking to provide such services; and serves as a clearinghouse for dispute resolution information.

Over the past twenty-six years, mediation has become institutionalized in our courts. The programs the Commission helps to implement enjoy the support of judges, court staff, attorneys, and the public. The work of mediators results in many cases settling earlier than they would have otherwise and enables judges to better manage their caseloads. Moreover, the programs are cost-effective in that they do not rely on taxpayer dollars. Rather, the MSC, FFS, Clerk and Pre-litigation Programs operate on a "party-pay" model, in which the parties referred to mediation share the costs of mediation equally, or as otherwise agreed to by the parties during the mediation. Mediators waive fees for indigent parties. In turn, mediators fund the work of the Commission and its staff in the form of certification and certification renewal fees.

This Annual Report describes the activities and accomplishments of the Commission for the fiscal year period from July 1, 2020, through June 30, 2021.

2. MEMBERSHIP

A. Commission Members

The Commission is currently a seventeen-member body. In accordance with G.S. § 7A-38.2, its membership consists of: five judges, including two superior and two district court judges (the additional judge has often been a member of the North Carolina Court of Appeals); a clerk of superior court; five mediators, including two who are certified to conduct mediated settlement conferences in superior court, two who are certified to conduct family financial settlement conferences in district court, and one who is certified to conduct criminal district court mediations; a district attorney; two practicing attorneys not certified as mediators, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation. Members who were serving as of June 30, 2021, and their appointing authorities are listed below.

Zachery Bolen (Raleigh), knowledgeable citizen member, appointed by the Senate President Pro Tem on June 29, 2020, for a term expiring on September 30, 2023.

LeAnn Nease Brown (Chapel Hill), certified MSC mediator, appointed by the Chief Justice on November 8, 2016, for a term expiring September 30, 2019. Reappointed to the Commission by the Chief Justice on October 1, 2019, for a term expiring September 30, 2022.

Thomas M. Clare (Raleigh), knowledgeable citizen member, appointed by the President Pro Tem of the Senate on October 1, 2014, for a term expiring September 30, 2017. Reappointed to the Commission by the President Pro Tem of the Senate for a term expiring September 30, 2020. Mr. Clare's seat was filled by Zachery Bolen.

Benjamin David (New Hanover), district attorney, appointed by the Chief Justice on March 9, 2021, for a term expiring on September 30, 2023.

The Honorable William C. Farris (Wilson), district court judge, appointed by the Chief Justice on September 21, 2017, for a term expiring on September 30, 2018. Reappointed by the Chief Justice on September 26, 2018, for a term expiring September 30, 2021.

The Honorable Phyllis Gorham (Wilmington), superior court judge, appointed by the Chief Justice on October 1, 2019, for a term expiring on September 30, 2022. Judge Gorham was appointed Chair of the DRC by Chief Justice Cheri Beasley in October of 2020.

The Honorable Richard S. Gottlieb (Winston-Salem), superior court judge, appointed by the Chief Justice on September 26, 2018, for a term expiring on September 30, 2021.

Debra A. Griffiths (Raleigh), certified family financial mediator member, appointed by the Chief Justice on September 26, 2018, for a term expiring on September 30, 2021.

The Honorable Susan A. Hicks (Carthage), Clerk of Moore County, appointed by the Chief Justice on February 24, 2012, for a term expiring September 30, 2014, reappointed by the Chief Justice for a term expiring September 30, 2017. Reappointed by the Chief Justice for a term expiring on September 30, 2020. Ms. Hicks' seat was filled by the Honorable Lisa Johnson-Tonkins.

The Honorable J. Calvin Hill (Asheville), district court judge appointed by the Chief Justice on September 26, 2018, for a term expiring September 30, 2021.

Laura Isley (Raleigh), knowledgeable citizen member, appointed by the Speaker of the House on June 29, 2018, for a term expiring on September 30, 2021.

Lisa Johnson-Tonkins (Greensboro), Clerk of Guilford County Superior Court, appointed by the Chief Justice on October 1, 2020, for a term expiring September 30, 2023.

Rebecca Knight (Asheville), certified family financial mediator member, appointed by the Chief Justice on September 26, 2018, for a term expiring September 30, 2021.

Barbara Morgenstern (Greensboro), practicing attorney not certified as a mediator, family law specialist, appointed by the NC State Bar President on July 29, 2019, for a term expiring September 30, 2022.

Diann Seigle (Raleigh), district criminal court mediator, appointed by the Chief Justice on May 16, 2013, for a term expiring on September 30, 2014, reappointed on October 1, 2014, by the Chief Justice for a term expiring September 30, 2017. Reappointed by the Chief Justice on September 21, 2017, for a term expiring on September 30, 2020. Ms. Seigle's seat was filled by Jayne Zanglein.

Ketan Soni (Charlotte), certified MSC mediator, appointed by the Chief Justice on October 1, 2020, for a term expiring September 30, 2023.

The Honorable John M. Tyson (Raleigh), NC court of appeals judge, appointed by the Chief Justice on September 21, 2017, for a term expiring on September 30, 2020.

Reappointed to the Commission by the Chief Justice on October 1, 2020, for a term expiring September 30, 2023. Judge John M. Tyson was elected to the position of Vice-Chair of the Commission at the December 2020 Commission meeting.

The Honorable William A. Webb (Raleigh), superior court mediator, appointed by the Chief Justice on November 24, 2014, for a term expiring September 30, 2017. Appointed the Commission's Chair by the Chief Justice on November 8, 2016, for a term expiring on September 30, 2018. Reappointed by the Chief Justice on September 21, 2017, for a term expiring on September 30, 2020. Reappointed chair by the Chief Justice on September 27, 2018, for a term expiring September 30, 2020. Judge Webb's seat was filled by Ketan Soni.

David A. Wijewickrama (Waynesville), knowledgeable citizen, appointed by the Governor on October 11, 2019, for a term expiring September 30, 2022.

Charlot F. Wood (Winston-Salem), practicing attorney not certified as a mediator, appointed by the NC State Bar President on January 27, 2017, for a term expiring September 30, 2017. Reappointed by the NC State Bar President on September 8, 2017, for a term expiring September 30, 2020. Reappointed to the Commission by the NC State Bar President on July 31, 2020, for a term expiring September 30, 2023.

Jayne Zanglein (Sylva), certified DCC mediator, appointed by the Chief Justice on October 1, 2020, for a term expiring on September 30, 2023.

B. Ex-Officio Members

A number of *ex-officio* members also attend Commission meetings. Although *ex-officio* members do not vote on matters before the full Commission and its committees, they actively participate in committee and Commission meetings. Serving as *ex-officio* members as of June 30, 2020, were:

Kinsley Craig (Shelby), Trial Court Coordinator, District 27B, representing the Judicial Support Staff Conference.

Tina Estle (Fayetteville), Director, Cumberland County Dispute Resolution Center, representing the Mediation Network of North Carolina.

Kate Deiter-Maradei (Raleigh), Chair, NC Bar Association's Dispute Resolution Section.

Frank Laney (Cary), Mediator, Fourth Circuit Court of Appeals.

DeShield Greene (Raleigh), Court Management Specialist, NCAOC Court Programs and Management Services Division.

John Schafer (Cary), Deputy Commissioner, NC Industrial Commission.

STATE ETHICS COMMISSION REVIEW. The Dispute Resolution Commission is a covered agency under the North Carolina State Government Ethics Act. During FY 2020-2021, Commission members and its staff liaison complied with all State Ethics Commission (SEC) requirements pertaining to training and the filing of Statements of Economic Interest (SEI) with the SEC. Following review of each SEI filed, the SEC found no conflicts of interest on the part of any member of the Commission that would prohibit his/her service.

3. COMMISSION'S OFFICE

During FY 2020-2021, the Commission's office operated with a staff of three: Executive Director **Tara L. Kozlowski**, Administrative Assistant, **Maureen McCarthy Robinson**, and Secretary **Mary E. Brooks**. Office staff supports the work of the Commission and its committees; processes applications and application renewals for mediator certification and certification of mediator training programs; reviews complaints; and supports court staff, judges, mediators, and attorneys in implementing North Carolina's mandatory mediated settlement conference programs. Staff maintains the Commission's website, which can be accessed at www.ncdrc.gov and publishes articles and news about the Commission on a regular basis. Additionally, the Commission provides information and updates through social media on LinkedIn and Twitter. The Commission's office is in the North Carolina Judicial Center located at 901 Corporate Center Drive in Raleigh, NC.

4. INTERFACE WITH OTHER AGENCIES AND PROGRAMS

In addition to North Carolina's state courts, dispute resolution programs and services are also operating in many other venues within the state. Though the Commission was established under the Judicial Department and is largely a creature of the courts, it has not hesitated to respond to requests for assistance from agencies and offices housed and working outside the courts. The NC Industrial Commission (mediation of workers' compensation claims); the NC Office of Administrative Hearings; the Federal Eastern, Middle, and Western Districts of North Carolina; the NC Office of State Personnel; the NC Department of Insurance (disaster mediation); the United States Department of Agriculture's Mediation Program (targeting farmers and lending institutions); and a

number of smaller state and federal agencies all operate established mediation programs with assistance, in part, from mediators and trainers certified by the Commission.

5. BUDGET

Commission revenues are deposited in N.C. Administrative Office of the Court's (NCAOC) Fund 220052265. Fees collected from mediators and mediation training programs for certifications and certification renewals constitute the Commission's sole source of revenue. FY 2020-2021 collections for certifications and renewals, plus our legislative carryforward from previous years, totaled \$258,881.00. This fiscal year, as in all past fiscal years, the Commission fulfilled its charge to fund its operations **without authorization or expenditure of any tax dollars.**

6. CERTIFICATIONS ISSUED

The total number of outstanding certifications by program as of June 30, 2021, were as follows: 1040 active Mediated Settlement Conference Program (MSC) certifications, 360 active Family Financial Settlement Conference Program (FFS) certifications, 113 active Clerk Mediation Program (Clerk) certifications (to conduct guardianship and estate mediations), and 44 active District Criminal Court (DCC) certifications.* In addition, there were 116 inactive MSC, 29 inactive FFS, and 14 inactive CMP certifications.**

* These numbers reflect total certifications outstanding and not the total number of mediators. The number of mediators is less than the total number of certifications in that a number of mediators hold dual certifications, *i.e.*, both MSC and FFS certification or multiple certifications.

** Inactive mediators may not conduct mediated settlement conferences and their names do not appear in the Commission's mediator database accessible at www.ncdrc.gov. However, they continue to receive information and updates from the Commission and may reactivate their certification(s) upon request.

7. PROGRAM STATISTICS

The NCAOC FY 2020-2021 Statistical and Operations Reports provide data as to the implementation and efficacy of the MSC and FFS Programs. In the MSC Program, it was reported that 3,465 cases were mediated, and of those, 1,978 cases, or 57% were resolved at a mediated settlement conference. If one includes cases that were reported as settled

prior to mediation or during a recess in that computation, the percentage of resolved cases rises to 62.9%. The Commission considers this latter percentage, i.e., 62.9%, to be more representative of the true impact of the MSC Program, believing that the order to mediate serves as a catalyst for these early settlements. In addition, research conducted in 2012 suggests that settlement rates are likely higher in that many cases which impasse at the table go on to settle in the days and weeks ahead as attorneys and parties continue to discuss offers made at mediation.

In the FFS program, 1,044 cases were mediated, and 713 cases, or 68.3% were resolved in whole or in part at the mediated settlement conference. If one also considers, as above, cases resolved after referral but prior to a conference or during recess, 75.0% of FFS cases were resolved. These settlement rates are very close to the percentages of mediated cases that settled in FY 2019-2020. The Reports track data by individual judicial district as well as provide statewide totals and are attached as Appendices to this Annual Report.

Caseload statistics for the Clerk Mediation Program have been disappointing to date. For FY 2020-2021, the Clerk Mediation Program, statewide reports show 11 cases were mediated. Two of the cases ended in impasse, three cases settled in mediation, one case settled outside of mediation, with six cases pending as of June 30, 2021. The statewide reports for the 2019-2020 FY year showed the Clerk Mediation Program remained underutilized with only 16 cases being mediated.

Statistics are not currently maintained for the District Criminal Court Program. However, feedback received from participating districts and community mediation centers indicated a high settlement rate among the minor misdemeanor matters that entered mediation. The community mediation centers indicate a drop in cases entering mediation, due in part to the difficulty of collecting the mediation fee prior to the mediation. The Commission is currently considering options on how to reinvigorate this program.

8. COMMISSION STRUCTURE

In this fiscal year, the Commission operated with seven standing committees. The committees undertake the work of the Commission and make recommendations to the full body. Committees meet as needed, generally at least once per quarter, usually by conference call or by Webinar which offers the ability to review and edit documents during the call.

A. Standing Committees

Executive/Operations Committee: Judge Webb, Chair, from July 1 – September 30, 2020. Judge Gorham, Chair, from October 1, 2020 – June 30, 2021. This Committee is charged with considering matters relating to legislation, budget, and personnel.

Standards and Advisory Opinions Committee: Diann Seigle, Chair, from July 1 – September 30, 2020. Judge Rebecca Knight, Chair, from October 1, 2020 – June 30, 2021. This Committee is responsible for reviewing matters relating to the Standards of Professional Conduct for Mediators, including suggesting amendments to the Standards; assisting staff in responding to inquiries regarding ethics: and drafting Advisory Opinions for consideration by the Commission.

Grievance and Disciplinary Committee: Ms. Griffiths, Chair. This Committee reviews character, conduct, and fitness matters, including matters self-reported by mediators at any time during the year and matters disclosed by applicants or otherwise discovered by Commission staff in the context of mediator certification and certification renewal applications. This Committee also investigates, and reviews complaints filed by court staff, litigants, attorneys, and others related to mediator moral character, conduct, or fitness to practice.

Mediator Certification and Training Committee: Judge Tyson, Chair. This Committee considers issues that arise in connection with mediator training programs and mediator certification or certification renewal applications which relate to an applicant's education, training, and/or professional experience. This Committee also makes recommendations on rule changes regarding certification requirements for mediator and mediator training programs. This Committee is also responsible for overseeing the Commission's continuing mediator education reporting requirement and with making recommendations on certification fees.

Civil Subcommittee: Judge Farris, Chair. This Committee is charged with helping to ensure that all of North Carolina's mediation programs operate effectively and efficiently through the civil courts. The committee considers recommendations and amendments to program enabling statutes and rules to achieve that end.

Criminal Subcommittee: Judge Farris, Co-Chair, and Ms. Estle, Co-Chair. This Committee is charged with helping to ensure that all of North Carolina's mediation programs operate effectively and efficiently through the criminal courts. The committee considers recommendations and amendments to program enabling statutes and rules to achieve that end.

New Media Committee: Thomas Claire, Chair, from July 1 – September 30, 2020. Judge Hill, Chair, from October 1, 2020 – June 30, 2021. This Committee is charged with overseeing Commission outreach to judges and court staff, lawyers, mediators, and the general public. Specifically, this Committee is tasked with maintaining the Commission’s website at www.ncdrc.gov; maintaining the Commission’s page on Juno, the NCAOC’s internal website; and with implementing and maintaining the Commission’s new social media platforms on Twitter and LinkedIn.

B. Ad Hoc Committees

The Commission also establishes ad hoc committees to address specific matters or issues that arise and are more temporary in nature. This fiscal year the Commission operated with four Ad Hoc Committees:

Ad Hoc eCourts/Statistics Committee: Kinsley Craig, Chair, from July 1 – September 30, 2020. Ms. Greene, Chair, from October 1, 2020 – June 30, 2021. This Committee is charged with providing guidance to the NCAOC, as they proceed to implement a state-wide Integrated Court Management System over the coming years. The Committee is responsible for creating accurate workflows for all Commission programs to provide the ICMS vendor a basic understanding of the Commission programs. The Committee also makes recommendations to the NCAOC’s system analyst of what data the Commission would like to receive on mediation once the ICMS is in place.

Ad Hoc Long Range Planning Committee: Ms. Nease Brown, Chair. This Committee makes recommendations to the full Commission on matters regarding future planning, and growth for the Commission.

Ad Hoc Video Observation Committee: Diann Seigle, Chair, from July 1 – September 30, 2020. Mr. Wijewickrama, Chair, from October 1, 2020 – June 30, 2021. This Committee was established to create guidelines and make recommendations to the full Commission regarding the use of observation videos for application purposes. Each applicant must observe two mediations if applying as an attorney and observe five mediations if applying as a non-attorney.

Ad Hoc Attendance Review Committee: Mr. Soni, Chair. This Committee is charged with investigating the benefits of in-person and remote mediation. The attendance Rule flipped from in-person mediation conference to remote conferences in June of 2020 due to safety concerns surrounding COVID-19. The Supreme Court adopted new attendance rules with the understanding the Commission could request the rules revert back to the in-person requirement at a time deemed safe to do so. Based on feedback received from litigants, mediators, attorneys, and other interested stakeholders, Chair Gorham created this

ad-hoc committee to thoroughly investigate the attendance issue. Feedback included comments that remote mediation provided unexpected benefits to mediation, such as access to justice and low-cost benefits to parties. The committee is comprised of four Commission Members, three Ex-Officio Members, and three members of the public, all of whom either engaged in the practice of mediation or directs a mediation program. The Committee has been tasked to review the pilot remote training program, the observation requirements, and Rule 4 attendance for all programs. The Committee makes recommendation to the full Commission on all findings.

9. COMMISSION BUSINESS in FY 2020-2021

The full Commission met via remote technology four times this fiscal year: August 7, 2020, December 2, 2020, March 5, 2021, and June 25, 2021. Notice of meeting dates and locations were posted on the Commission’s website in advance of meetings. Minutes from the meetings are also archived on the Commission’s website, www.ncdrc.gov.

During this fiscal year, the Commission and its Committees undertook a number of projects designed to improve operations of the Mediated Settlement Conference (MSC), Family Financial Settlement (FFS), Clerk (Clerk), Farm Nuisance (Farm), and District Criminal Court (DCC) Mediation Programs and to facilitate the work of our State’s courts and mediators. Goals met during this fiscal year and other projects undertaken by the Commission are highlighted below.

A. Commission Sponsored Amendments to Statutes.

During this fiscal year, NCAOC’s Governmental Affairs Office assisted the Commission in advancing its legislative priorities. An NCAOC Omnibus bill introduced during the long legislative session in 2020 included Commission-recommended amendments to **G.S. §7A-38.2**, the statute that created the Commission, **G.S. §7A-38.1**, the statute that created the mediated settlement conference program, and **G.S. §7A-38.3B**, the statute that created the clerk mediation program. Senate Bill 255 passed the house and senate and was signed into effect by Governor Cooper on June 10, 2021. The amended legislation now includes the following language:

1. **G.S. §7A-38.2(c)**, The Dispute Resolution Commission shall consist of 18 members: five judges appointed by the Chief Justice of the Supreme Court, at least two of whom shall be active superior court judges, and at least two of whom shall be active district court judges; one clerk of superior court appointed by the Chief Justice of the Supreme Court; two mediators certified to conduct superior court mediated settlement conferences

and two mediators certified to conduct equitable distribution mediated settlement conferences appointed by the Chief Justice of the Supreme Court; one certified district criminal court mediator who is a representative of a community mediation center appointed by the Chief Justice of the Supreme Court; a district attorney appointed by the Chief Justice of the Supreme Court; a court management staff member appointed by the Chief Justice of the Supreme Court; two practicing attorneys who are not certified as mediators appointed by the President of the North Carolina State Bar, one of whom shall be a family law specialist; and three citizens knowledgeable about mediation, one of whom shall be appointed by the Governor, one by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121, and one by the General Assembly upon the recommendation of the President Pro Tempore of the Senate in accordance with G.S. 120-121. Commission members shall serve three-year terms and shall be ineligible to serve more than two consecutive terms. Members appointed to fill unexpired terms shall be eligible to serve two consecutive terms upon the expiration of the unexpired term. The Chief Justice shall designate one of the members to serve as chair for a two-year term. Members of the Commission shall be compensated pursuant to G.S. 138-5.

2. **G.S. §7A-38.2(m)**, Members of the Commission and its employees are immune from civil suit for all conduct undertaken in the course of their official duties.

This section is effective when it becomes law and applies to conduct occurring on or after that date.

3. **G.S. §7A-38.1(i)**, Inadmissibility of negotiations. – Evidence of statements made and conduct occurring in a mediated settlement conference or other settlement proceeding conducted under this section, whether attributable to a party, the mediator, other neutral, or a neutral observer present at the settlement proceeding, shall not be subject to discovery and shall be inadmissible in any proceeding in the action or other civil actions on the same claim, except:

(1) In proceedings for sanctions under this section;

(2) In proceedings to enforce or rescind a settlement of the action;

(3) In disciplinary hearings before the State Bar or the Dispute Resolution Commission; or

(4) In proceedings to enforce laws concerning juvenile or elder abuse.

As used in this section, the term "neutral observer" includes persons seeking mediator certification, persons studying dispute resolution processes, and persons acting as interpreters.

No settlement agreement to resolve any or all issues reached at the proceeding conducted under this subsection or during its recesses shall be enforceable unless it has been reduced to writing and signed by the parties against whom enforcement is sought or

signed by their designees. No evidence otherwise discoverable shall be inadmissible merely because it is presented or discussed in a mediated settlement conference or other settlement proceeding.

4. **G.S. §7A-38.3B(i)**, Agreements. – In matters before the clerk in which agreements are reached in a mediation conducted pursuant to this section, or during one of its recesses, those agreements shall be treated as follows:

(1) Where as a matter of law, a matter may be resolved by agreement of the parties, a settlement is enforceable only if it has been reduced to writing and signed by the parties against whom enforcement is sought or signed by their designees.

(2) In all other matters before the clerk, including guardianship and estate matters, all agreements shall be delivered to the clerk for consideration in deciding the matter.

This section is effective when it becomes law and applies to settlement agreements reached on or after that date.

B. Newly Adopted Observation Video.

The Commission adopted a new Observation Guidelines providing an option for all MSC applicants to complete one observation by viewing an observation video created by the NCBA Dispute Resolution Section. Additionally, the Commission approved Guidelines to allow applicants to complete their observation requirements through the use of remote technology, for the duration of the pandemic.

C. Mediator Education Provided Statewide.

The Commission, working through the Mediator Certification and Training Committee, reviewed and approved a number of continuing mediation education courses. The courses were taught all over the state, by a number of different sponsors. Commission staff also provided several courses for mediators to attend and meet their annual educational requirement. The Commission has approved educational courses to be offered live, via webinars, and by podcasts. COVID-19 has delayed the production of podcasts; however, they will be produced and available when it is safe to do so.

D. Renewal Application and Self-Reporting Continuing Mediator Education (CME).

The Commission adopted a mandatory Continuing Mediator Education Policy during fiscal year 2015-2016, which became effective during the FY 2017-2018 renewal period. The policy requires each active, certified mediator to annually complete two hours of approved CME which relates either to program enabling legislation, the N.C. Supreme Court's

program rules, Standards of Professional Conduct for Mediators, grievance procedures of the Commission, and/or updates in case law involving mediation. In FY 2018-19, the NCAOC technology team created a new application that provides each mediator a list of CME courses available for credit. The mediator may now self-report their completed course online anytime throughout the year and renew their certification(s) without delay.

E. Advisory Opinions Adopted and Updated.

The Commission adopts Advisory Opinions in response to mediator requests for assistance in resolving ethical dilemmas and rule interpretation questions or upon request of a Commission member. Advisory Opinions may also be issued in situations where discipline has been imposed and the Commission wishes to alert other mediators to the circumstances involved. Two (2) Advisory Opinion was issued this fiscal year.

1. **Advisory Opinion 41.** Mediated Settlement Conference Rule 4(b) requires the attorney or party to the action contact the lienholder to notify them of the mediated settlement conference. However, until the lienholder attends the mediation, they are considered a nonparticipant. The mediator holds no duty to the lienholder prior to the mediation and is precluded from discussing the mediation with a nonparticipant under Standard 3. Confidentiality. Once the lienholder is invited to participate in the mediation, and the lienholder attends the conference, they become a participant at the mediation. As a participant to the mediation, the mediator may disclose information regarding the mediation to the lienholder, so long as the information was not communicated in confidence to the mediator under Standard 3(b).

2. **Advisory Opinion 42.** A party who will not be physically present at a mediated settlement conference is responsible for arranging electronic signing capacity and if that cannot be done, for providing written verification of someone with authority to sign on the party's behalf. The mediator is not required to determine the legal adequacy of the written verification provided. However, if a party who will not be physically present at the time the final agreement is to be signed has not made arrangements for electronic signature or provided written verification that the party's designee has authority to sign on the party's behalf, the mediator shall encourage the party or party's attorney to notify all other parties of the lack of ability to execute a final agreement prior to commencing the mediation. After full disclosure, the parties may commence the settlement conference.

Upon the adoption of the Rule 4 Amendments to the Program rules, requiring all parties to conduct mediations through the use of remote technology, the Commission temporarily suspend Advisory Opinion 2, and placed warnings on AO, 19, 24, 25, and 35, as they are in conflict with the current Rule 4 attendance requirements.

F. Program Rules, Policies, and Guidelines of the Commission Continuously Reviewed.

The Commission completed an extensive review of rules for the Dispute Resolution Commission, Mediated Settlement Conference Program, Family Financial Settlement Conference Program, Clerk Mediation Program, District Criminal Court Mediation Program, and the Standards of Professional Conduct for Mediators and undertook some revisions. The rule revisions adopted by the Commission this fiscal year were submitted to the Supreme Court of North Carolina for review on August 12, 2020. On November 17, 2020, the Supreme Court adopted amendments to the Mediated Settlement Conference Program, Family Financial Settlement Conference Program, and the Clerk Mediation Program rule sets. The amended rules went into effect on November 23, 2020. The adopted amendments include the following:

1. The ability for a person to be excused from the requirement to attend a mediation with the consent of all persons required to attend the mediation and the mediator.

The Commission provided additional rule revisions, adopted by the Commission this fiscal year, to the Supreme Court of North Carolina for review on March 18, 2021. As of July 1, 2021, the rules remained pending before the Supreme Court.

The Commission reviewed and approved amendments to the Mediated Settlement Conference Program and the Family Financial Settlement Conference Program Training Guidelines. The Commission updated the Guidelines to include for an hour of technology training. The Guidelines are pending as of July 1, 2021 and will go into effect at such time the North Carolina Supreme Court adopts similar proposed amendments to the program rules.

The Commission adopted a pilot remote training program allowing trainers who are certified by the Commission to provide mediator training through the use of remote technology during COVID-19. The pilot program is set to expire on July 1, 2022.

The Commission regularly reviews its policies, procedures, and guidelines for consistency with each other and with statutory and rule amendments and revises them as needed. All policy revisions were posted for comment to the Commission's website.

G. Regulatory Role Fulfilled.

During this fiscal year the Commission addressed a few regulatory concerns, including denying certification to individuals whose certification applications raised ethical concerns and investigating complaints. The Commission continues to take seriously its charge to regulate mediator and mediator trainer conduct thereby protecting the public, encouraging ethical conduct on the part of its certified mediators, and ensuring that program rules are being followed, while balancing the due process rights of its certified mediators against whom complaints may be filed.

H. Review of District Criminal Court Program.

During this fiscal year the Commission began an investigation into the viability of the District Criminal Court Program (DCC). The program has been state funded in the past, and currently operates on a defendant-pay based system. The Community Mediation Centers handling DCC cases are reporting difficulty in collecting the mediation fees, where cases are continued to multiple court dates and creating excess work for court staff. The Commission began discussions with several community mediation centers and the Mediation Network of North Carolina, to determine all options for reinvigorating this program. The Criminal Subcommittee is working with other stakeholders for a permanent solution for the DCC program.

I. Communications and Outreach Improved.

This fiscal year the Commission, working through its New Media Committee, continued to make significant strides in improving communications and outreach. The committee and Commission staff work regularly with an NCAOC consultant to enhance the Commission's website at www.ncdrc.gov. The Commission utilizes media platforms including Twitter and LinkedIn on a regular basis and will be providing podcasts as soon as practicable. In addition, staff published a newsletter after each Commission meeting.

J. Research and Development.

This fiscal year, the Long Range Planning Committee embarked on a project with the Commission's approval to research and investigate Online Dispute Resolution Programs around the country. Commission staff worked in collaboration with staff from the Administrative Office of the Courts to create a questionnaire that was distributed to several jurisdictions around the country who operate ODR program(s). Interviews were conducted with a few jurisdictions, including programs that operate in Utah, Texas, Iowa, New Mexico, Arizona, and Ohio. Additionally, our team has been in communication with the

National Center for State Courts for assistance and information on how to develop an ODR program. The cost of such a program is currently under evaluation.

K. Celebrated Conflict Resolution Week, October 11-17, 2020.

The Commission in collaboration with the NCAOC's Custody Mediation Program and the Dispute Resolution Section of the North Carolina Bar Association (NCBA) received a proclamation from Chief Justice Beasley, declaring October 11-17, 2020, as Conflict Resolution Week in North Carolina. The Section, Custody Mediation and the Commission co-sponsored a webinar program on Thursday, October 15, 2020, featuring continuing mediation education and continuing legal education courses, including remarks from Supreme Court Chief Justice Cheri Beasley who personally thanked all the individuals who work and practice ADR within the state of NC. Remarks from prior DRC Chairpersons and the former DRC Director were also replayed during the presentation. The Commission is proud to engage in educational outreach about alternatives to litigation for resolving conflicts, including mediation, arbitration, collaborative law, etc.

10. PLANS & GOALS FOR FISCAL YEAR 2021-2022

In FY 2021-2022, the Commission will focus on the following projects, among others:

A. Engage in Long Range Planning. In an effort to maintain the Commission's place in promoting ADR across the State, the Commission intends to continue its focus on long range planning in FY 2021/22.

B. Celebrate Conflict Resolution Day, October 21, 2021. The Commission is honored to co-sponsor a celebration of Conflict Resolution Week on October 21, 2021. The Commission has teamed up with the AOC Custody Mediation Program and the Dispute Resolution Section of the NCBA to provide two hours of continuing mediation education and 3 ½ hours of continuing legal education, including technology credit. The training courses will include a brief message from the Chief Justice of the Supreme Court of North Carolina, Paul Newby, AOC Director, Judge Heath, and DRC Chair, Judge Phyllis Gorham. The program will be provided via WebEx as a live webinar and will be recorded and posted for future views.

C. Continue Website Overhaul. The Commission and its staff will continue to work with NCAOC website designers and consultants to fully overhaul, update the appearance, streamline content, and enhance the functionality of the Commission's website, www.ncdrc.gov.

D. Expand outreach through social media and other channels. The Commission will embrace and expand its outreach to Commission stakeholders and the public through the Commission's Twitter and LinkedIn accounts. The Commission hopes to record and disseminate videos and public service announcements about NC's mediation programs, the Commission, and mediation as an effective conflict resolution process.

E. Continue efforts to introduce legislation of importance to the Commission. The Civil and Criminal District Court Subcommittees will continue to work with NCAOC to address concerns and introduce rule modifications and new legislation as necessary to move the Commission forward.

F. Encourage certification of all mediators working in the District Criminal Court Program. The Commission will continue to work with the Mediation Network of North Carolina (MNNC), local community mediation centers, local district attorneys, and chief district court judges to encourage local community mediation centers to adopt the NC Supreme Court Rules for the District Criminal Court Mediation Program and seek mediator certification of mediators affiliated with the centers from the Commission to conduct mediations in cases in the District Criminal Court Program. Currently eleven (11) community mediation centers require their mediators to be certified by the Commission. By encouraging certification, certified mediators serving the district criminal courts will be bound by the enabling legislation, DCC program rules and the N.C. Supreme Court's Standards of Professional Conduct for Mediators, thereby insuring uniformity among programs, and accountability of center mediators.

G. Ensure informative, accessible, and affordable CME opportunities. The Commission and its staff will continue to work in partnership with the NCBA, the NCAOC, the NC State Bar, and other organizations and individuals to ensure that a wide variety of CME approved programs are available which are accessible and affordable to certified mediators who must comply with the Commission's Mandatory CME Policy.

H. Submit approved amendments to the Commission Rules, program rules and the Standards of Professional Conduct for Mediators to the NC Supreme Court for review and adoption. The Commission hopes to adopt, post for comment, review comments, and finalize all such amendments for submission to the Supreme Court of NC during the 2021-2022 fiscal year.

I. The Commission will continue to interface and work with: 1) other agencies and organizations with mediation programs, 2) the NC State Bar, 3) the Dispute Resolution Section of the NCBA, and others as necessary to promote dispute resolution in North Carolina and the programs that the Commission helps to support.

J. Continue regulatory oversight. The Commission shall continue to ensure that only qualified individuals of good moral character become certified as mediators, and to investigate and promptly address complaints regarding mediator conduct, character, and fitness to practice.

K. Continue Commission operations. The Commission and its staff shall continue to operate the Commission's office efficiently and cost-effectively while serving the needs of mediators, court personnel, attorneys, and the public, as those needs relate to North Carolina's mandatory court mediation programs.

L. Communicate regularly with mediators. The Commission and its staff shall continue to inform the Commission's certified mediators about amendments to enabling legislation, program rules, Standards, newly adopted advisory opinions, case law involving mediation, and other matters relevant to their service as mediators to our courts, through its newsletter, email announcements, website postings, potential social media channels, and the like.

11. CONCLUSION

As it has done every year since its creation in 1995, Commission members and staff worked diligently this fiscal year to ensure that the Mediated Settlement Conference, Family Financial Settlement, Clerk, Farm, and District Criminal Court Mediation Programs operated effectively and efficiently. The Commission strives to meet its charge of ensuring effective and ethical mediator performance through its consistent application of the rules regarding certification and by insisting on high ethical standards through its regulatory authority. In the coming fiscal year, the Commission pledges to continue its work to make the mediation process responsive to the changing needs of our State's court system and its citizens through innovation and thoughtful re-evaluation of the mediation process and the role and work of mediators.

MEDIATION SETTLEMENT CONFERENCE ACTIVITY: FINAL FY 01JUL2020 -- 30JUN2021 (COMPILED 26JUL2021)													
(NO EVENTS DATES PRIOR TO 01JUL2017 ARE CONSIDERED)													
DISTRICT	BEGIN PENDING	ENTRIES	ORDERED OR SENT TO MEDIATED SETTLEMENT CONFERENCE (OMSC)	VOLUNTARILY SUBMITTED TO MEDIATION SETTLEMENT CONFERENCE (VMSC)	ORDERED OR SUBMITTED TO OTHER SETTLEMENT PROCEDURE (MEDO)	TOTAL CASELOAD	ORDERED EXEMPTED FROM ADR (MEDE)	REPORTED ALL ISSUES RESOLVED AT ADR (MEDA)	REPORTED IMPASSE (NOT RESOLVED) AT ADR (MEDI)	REPORTED SETTLED PRIOR TO OR DURING ADR RECESS (MEDS)	DISPOSED WITHOUT ADR SESSION (MEDB)	CASES COMPLETING PROCESS	END PENDING
01	43	0	0	0	0	43	0	19	10	0	0	29	14
02	83	41	40	1	0	124	0	12	15	0	6	33	91
03A	114	128	122	6	0	242	0	50	44	25	15	134	108
03B	149	108	108	0	0	257	0	43	19	0	7	69	188
04	150	28	27	1	0	178	0	41	26	0	43	110	68
05	366	352	352	0	0	718	0	58	23	5	167	253	465
06A	76	25	25	0	0	101	0	3	2	0	0	5	96
06B	26	34	34	0	0	60	0	8	0	0	0	8	52
07A	103	48	48	0	0	151	1	4	15	14	12	46	105
07BC	177	172	169	2	1	349	1	57	37	26	32	153	196
08A	25	38	38	0	0	63	0	15	13	3	9	40	23
08B	129	132	132	0	0	261	0	25	22	20	77	144	117
09	108	89	89	0	0	197	0	50	24	0	41	115	82
10	275	1	0	0	1	276	1	137	95	0	22	255	21
11A	80	103	95	8	0	183	1	29	36	11	11	88	95
11B	543	252	252	0	0	795	26	54	30	0	9	119	676
12	400	223	223	0	0	623	30	95	74	78	0	277	346
13A	52	119	119	0	0	171	0	26	9	0	31	66	105
13B	510	244	244	0	0	754	0	14	16	8	119	157	597
14	175	241	241	0	0	416	1	83	44	41	63	232	184
15A	130	82	82	0	0	212	3	17	27	0	39	86	126
15B	53	98	95	3	0	151	1	29	17	2	41	90	61
16A	31	31	27	4	0	62	1	10	6	1	1	19	43
16B	35	3	3	0	0	38	0	16	10	1	0	27	11
17A	58	22	22	0	0	80	0	8	3	2	0	13	67
17B	43	1	1	0	0	44	0	0	0	0	0	0	44
18	469	361	361	0	0	830	0	119	57	0	42	218	612
19A	148	160	160	0	0	308	0	34	28	1	1	64	244
19B	36	0	0	0	0	36	0	17	4	2	0	23	13
19C	79	96	95	1	0	175	0	38	19	31	10	98	77
19D	145	36	36	0	0	181	0	26	23	1	28	78	103
20A	27	41	35	6	0	68	0	22	6	3	10	41	27
20B	115	160	137	22	1	275	2	60	62	0	50	174	101

MEDIATION SETTLEMENT CONFERENCE ACTIVITY: FINAL FY 01JUL2020 -- 30JUN2021 (COMPILED 26JUL2021)													
(NO EVENTS DATES PRIOR TO 01JUL2017 ARE CONSIDERED)													
DISTRICT	BEGIN PENDING	ENTRIES	ORDERED OR SENT TO MEDIATED SETTLEMENT CONFERENCE (OMSC)	VOLUNTARILY SUBMITTED TO MEDIATION SETTLEMENT CONFERENCE (VMSC)	ORDERED OR SUBMITTED TO OTHER SETTLEMENT PROCEDURE (MEDO)	TOTAL CASELOAD	ORDERED EXEMPTED FROM ADR (MEDE)	REPORTED ALL ISSUES RESOLVED AT ADR (MEDA)	REPORTED IMPASSE (NOT RESOLVED) AT ADR (MEDI)	REPORTED SETTLED PRIOR TO OR DURING ADR RECESS (MEDS)	DISPOSED WITHOUT ADR SESSION (MEDB)	CASES COMPLETING PROCESS	END PENDING
21	812	347	347	0	0	1159	0	78	51	0	33	162	997
22A	125	222	222	0	0	347	0	63	50	17	34	164	183
22B	74	40	28	12	0	114	0	22	13	0	0	35	79
23	45	63	52	11	0	108	1	25	16	1	27	70	38
24	80	77	49	28	0	157	0	23	15	0	36	74	83
25A	149	56	56	0	0	205	0	6	6	0	0	12	193
25B	121	115	114	1	0	236	1	29	20	17	2	69	167
26	794	1115	1066	45	4	1909	4	320	337	227	63	951	958
27A	96	124	111	13	0	220	0	45	55	1	22	123	97
27B	191	86	81	5	0	277	0	15	12	0	4	31	246
28	295	200	182	18	0	495	0	56	36	0	9	101	394
29A	118	67	67	0	0	185	0	13	7	2	0	22	163
29B	86	100	96	4	0	186	0	32	29	3	22	86	100
30A	94	69	66	2	1	163	2	15	13	0	14	44	119
30B	83	43	43	0	0	126	0	17	11	0	22	50	76
Statewide	8116	6193	5992	193	8	14309	76	1978	1487	543	1174	5258	9051

FAMILY FINANCIAL ACTIVITY: FINAL 01JUL2020 -- 30JUN2021 (COMPILED 26JUL2021)															
(NO EVENTS DATES PRIOR TO 01JUL2017 ARE CONSIDERED)															
DISTRICT	BEGIN PENDING	ENTRIES	ORDERED TO MEDIATION SETTLEMENT CONFERENCE (MSC)	SUBMITTED TO OTHER SETTLEMENT PROCEDURE (OSP)	VOLUNTARILY SUBMITTED TO MEDIATION SETTLEMENT CONFERENCE (VMSC)	ORDERED TO JUDICIAL SETTLEMENT CONFERENCE (JSC)	TOTAL CASELOAD	REPORTED ALL ISSUES RESOLVED AT ADR (ADRS)	ORDERED EXEMPTED FROM ADR (ADRE)	REPORTED SETTLED PRIOR TO OR DURING ADR RECESS (ADRT)	REPORTED PARTIALLY RESOLVED AT ADR (ADRP)	REPORTED IMPASSE (NOT RESOLVED) AT ADR (ADRI)	DISPOSED WITHOUT ADR SESSION (ADRW)	CASES COMPLETING PROCESS	END PENDING
01	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
02	16	20	20	0	0	0	36	4	0	0	0	0	2	6	30
03A	23	34	34	0	0	0	57	10	0	0	0	8	2	20	37
03B	151	144	144	0	0	0	295	22	4	157	6	8	44	241	54
04	175	5	0	0	5	0	180	21	5	4	1	4	43	78	102
05	271	243	243	0	0	0	514	64	0	0	0	3	105	172	342
06	18	14	10	0	2	2	32	7	2	0	1	4	4	18	14
07	1	9	0	0	9	0	10	3	1	0	1	5	0	10	0
08	12	16	16	0	0	0	28	2	5	0	0	5	0	12	16
09	1	0	0	0	0	0	1	0	0	0	0	0	0	0	1
10	315	233	229	0	3	1	548	79	1	0	5	47	35	167	381
11	190	265	265	0	0	0	455	11	2	1	3	18	104	139	316
12	281	271	271	0	0	0	552	54	4	57	21	24	85	245	307
13	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
14	61	20	11	0	1	8	81	6	3	0	2	7	1	19	62
15A	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
15B	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
16A	18	21	16	0	5	0	39	12	0	2	1	3	2	20	19
16B	92	45	45	0	0	0	137	0	0	0	0	0	0	0	137
17A	14	3	2	0	1	0	17	2	0	0	0	1	0	3	14
17B	91	44	44	0	0	0	135	8	1	0	0	5	27	41	94
18	284	244	244	0	0	0	528	73	0	0	7	11	106	197	331
19A	88	24	24	0	0	0	112	3	0	0	1	2	0	6	106
19B	36	53	43	0	2	8	89	20	6	16	2	8	2	54	35
19C	19	19	19	0	0	0	38	8	0	1	2	4	1	16	22
19D	98	78	75	0	3	0	176	26	4	29	4	20	0	83	93
20A	9	19	19	0	0	0	28	5	0	0	0	6	13	24	4
20B	189	92	92	0	0	0	281	5	0	0	0	6	0	11	270
21	228	80	78	0	2	0	308	13	0	0	2	9	5	29	279
22A	10	73	22	0	51	0	83	31	0	0	15	37	0	83	0
22B	1	2	0	0	2	0	3	2	0	0	0	0	0	2	1
23	36	62	61	0	1	0	98	14	1	1	1	21	22	60	38
24	26	54	54	0	0	0	80	9	1	0	5	7	11	33	47
25	126	129	129	0	0	0	255	47	21	5	7	18	18	116	139
26	1	132	0	0	0	132	133	0	0	0	0	0	0	0	133
27A	4	2	0	0	2	0	6	0	0	0	0	0	3	3	3
27B	85	6	6	0	0	0	91	2	0	1	1	2	27	33	58
28	80	105	105	0	0	0	185	21	0	0	3	10	63	97	88
29A	42	31	31	0	0	0	73	4	0	7	0	0	12	23	50
29B	49	63	35	0	7	21	112	16	0	0	3	17	9	45	67
30	35	43	42	0	1	0	78	11	0	1	4	11	11	38	40
Statewide	3176	2698	2429	0	97	172	5874	615	61	282	98	331	757	2144	3730