

The Intermediary



*A Bridge between the Dispute Resolution Commission
and North Carolina's Certified Mediators*

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*From the Chair
By
Judge W. David Lee*

I hope all of you will have a Happy Holiday Season and that you are looking forward to what this new year will bring! Doubtless, as conflict resolvers, we all hope it will be year of peace as well as renewed optimism and prosperity.

I hope all you were pleased to find the new rule changes that the Commission stuffed in your email stockings a few days ago. Our Supreme Court adopted revised program rules and Standards of Conduct on October 6, 2011, with an effective date of January 1, 2012. If you have not received copies, please let the Commission's office know as soon as possible. Some of the changes relating to reporting requirements and deadline extensions were significant, so I trust that all of you will read and study the new rules and Standards carefully before you mediate in the new year. The reporting requirements, in particular, were revised in the wake of comments that Commission members and staff received from certified mediators to the effect that it was often difficult for them to obtain the signatures of those designated to file closing documents on their Reports of Mediator and even more difficult to obtain a reliable date from parties by which their closing documents would be filed with the court. These requirements, they insisted, were simply not practicable. The Commission heard you and asked the Court to make appropriate adjustments. I hope that all of you working in the trenches will continue to share your concerns, comments and ideas with the Commission.

I thought I would take an opportunity in my first message of the New Year to convey some very positive and exciting news. At its January meeting, the Commission will have an opportunity to meet and to honor two young women who have achieved great success mediating. Leah Leone and Valoree Hanson swept the Jeffrey S. Abrams National Mediator Competition held at the University of Houston Law Center on November 10-12, 2011, earning first and second places respectively. This is only national competition in the country where law students are judged on their mediation skills.

Ms. Leone and Ms. Hanson are law students at North Carolina Central

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University School of Law and represented the school at the competition. They competed against students from a number of law schools from across the nation, participating in five rounds of mediation conducted over a two-day period. Ms. Leone and Ms. Hanson were coached by Professor Mark Morris who directs the law school's Dispute Resolution Institute. Some pictures from the competition appear later in this edition.

Not only are we proud of Ms. Leone and Ms. Hanson, but Professor Morris as well, and I note for the record here that he is a former member of this Commission and former chair of its Standards, Discipline and Advisory Opinions Committee. As Professor Morris had to say of this protégé's success, "Placing first in any national competition is an achievement. Taking first and second place is just extraordinary. The secret to my coaching success is great students. I am extremely proud of Ms. Leone and Ms. Hanson for what they have done and for the way they represented our law school and the Dispute Resolution Institute, and I look forward to defending the title next year."

The Commission looks forward to hosting Professor Morris and Ms. Leone and Ms. Hanson at its January meeting and to recognizing their achievement. For those who are not familiar with Central Law School's Dispute Resolution Institute, you can learn more by visiting the Institute's website at <http://law.nccu.edu/academics/institutes/dri/>. Like Professor Morris, the Commission hopes to see many more such North Carolina champions in the future!

Again, on behalf of the Commission, I wish all of you a safe, happy and productive New Year and I trust that you will return from your holiday festivities re-charged and ready to mediate! ♦



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Mediation Rules Revised

On October 6, 2011, the Supreme Court adopted revisions to the rules for mediated settlement conference programs operating in North Carolina's trial courts, including the rules for: the superior court's Mediated Settlement Conference Program, the district court's Family Financial Settlement and District Criminal Court Mediation Programs, and the Clerk Mediation Program. **The revised rules are effective January 1, 2012.** In addition, the Court also revised the Standards of Professional Conduct for Mediators and the Rules for the Dispute Resolution Commission effective the same date.

Clean copies of all revised rules and revised MSC and FFS Reports of Mediator will be posted after December 31, 2011, on the Dispute Resolution Commission's website at www.ncdrc.org. To view the rules, click on "Program Information", then click on a program by name, and then click on "Program Rules". Copies showing the revisions, *i.e.*, with strike-throughs and underlining, will be posted on a temporary basis on the Commission's home page and may be accessed from the menu on the left by clicking on "Newly Adopted Rules Effective 1.1.2012". Copies of the revised rules are also available from the Commission's office by calling (919) 890-1415.

The Rules were adopted by the Court upon recommendation of the Commission, the Alternative Dispute Resolution Committee of the State Judicial Council and the State Judicial Council. Copies of the revised rules have been forwarded to court staff and summaries of the changes provided to *Lawyer's Weekly* and newsletter editors for appropriate NCBA sections.

Brief summaries of the revisions applicable to each program follow. A fuller explanation of the changes was provided in Commission Chair W. David Lee's memos, which accompanied the emails transmitting the link to the revised rules. The Commission trusts that all mediators will review the revised rules and Standards carefully before they commence mediating in the New Year.

Mediated Settlement Conference (MSC) Program Rules

- MSC Rule 1.C.(6) and the comment to that same Rule were revised to provide senior resident superior court judges with some guidance in addressing motions to dispense with mediation, particularly in instances where concerns about a party's ability to pay his/her mediator's fees or to travel to and from the conference are raised;
- MSC Rule 2.C was amended to assist court staff in better managing letters from mediators seeking appointments to mediate in a judicial district when they reside outside the district or a county contiguous to the district. Beginning with the 2012/13 renewal period, mediators will be asked to collectively forward their letters addressed individually to each district to the Commission's office. Receipt of such letters will then be noted on the Commission's master list;
- MSC Rule 3.C was revised to permit a senior resident superior court judge to extend a deadline for completion of a mediation conference upon the judge's own motion, upon stipulation of the parties or upon suggestion of the mediator. This change is being accompanied by a withdrawal of Form AOC-CV-835, *Motion And Order To Extend Completion Date For Mediated Settlement Conference Or Other Dispute Resolution Procedure*;
- MSC Rules 4 and 6 were revised substantially, especially with regard to reporting requirements. Attorneys or parties who have agreed to file closing documents in cases settled at the conference will no longer be required to sign Reports of Mediator indicating their acceptance of that obligation. In addition, when a case is settled before, at or during a recess of a mediation, the parties will no longer be required to provide a date by which their consent judgment or voluntary dismissal will be filed with the court. In place of these requirements, revised MSC Rule 6.B.(4)(b) provides that when an agreement is reached upon all issues, a mediator shall advise the parties that MSC Rules 4.C.(2) (agreement at the conference) or 4.C.(3) (agreement prior to conference or during a recess) requires them to file their consent judgment or voluntary dismissal with the court within 30 days or within 90 days if the state or a political subdivision is involved or before expiration of the mediation deadline, whichever is longer and indicate on his/her *Report of Mediator* that the parties have been so advised;
- MSC Rule 6.B.(4)(a) was also revised to require mediators to also file Reports of Mediator in cases that are pending before the court, but mediated voluntarily;
- New MSC Rule 4.F prohibits any stenographic, audio or video recording of a mediation by any participant whether done surreptitiously or with agreement of the parties;

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- MSC Rule 6.B.(5) prohibits party-selected mediators from delaying to schedule or hold a conference because one or more of the parties has not paid an advance fee deposit pursuant to their fee arrangement with the mediator;
- MSC Rule 6.B.(6) was revised to eliminate the requirement that mediators distribute an evaluation form at the conclusion of mediation;
- MSC Rule 7.A was revised to clarify that a party-selected mediator has a duty to provide mediation services free or at a reduced rate when a court has determined that a party is unable to pay the mediator's fee, regardless of any other agreements the party-selected mediator may have with the parties; and
- New MSC Rule 8.J. permits certified mediators who demonstrated professional licensure in order to satisfy certification requirements, to thereafter, relinquish their licensure, provided their decision to do so is entirely voluntary and not at the insistence or suggestion of their licensing authority.

Family Financial Settlement (FFS) Program Rules

- A new comment to FFS Rule 1.C.(6) is intended to provide both clarification and guidance to courts in addressing motions to dispense with mediation, particularly in instances where concerns about a party's ability to pay his/her mediator's fees or to travel to and from the conference are raised;
- FFS Rule 2.C was amended to assist court staff in better managing letters from mediators seeking appointments to mediate in a judicial district when they reside outside the district or a county contiguous to the district. Beginning with the 2012/13 renewal period, mediators will be asked to collectively forward their letters addressed individually to each district to the Commission's office. Receipt of such letters will then be noted on the Commission's master list;
- FFS Rule 3.C was revised to permit a district court judge to extend a deadline for completion of a mediation conference upon the judge's own motion, upon stipulation of the parties or upon suggestion of the mediator. This change is being accompanied by a withdrawal of Form AOC-CV-835, *Motion And Order To Extend Completion Date For Mediated Settlement Conference Or Other Dispute Resolution Procedure*;
- FFS Rules 4 and 6 were revised substantially, especially with regard to reporting requirements. Attorneys or parties who have agreed to file closing documents in cases settled at a conference will no longer be required to sign Reports of Mediator indicating their acceptance of that obligation. In addition, when a case is settled before, at or during a recess of a mediation, the parties will no longer be required to provide a date by which their consent judgment or voluntary dismissal will be filed with the court. In place of these requirements, revised FFS Rule 6.B.(4)(b) provides that when an agreement is reached upon all issues, a mediator shall advise the parties that FFS Rule 4.C.(2) (agreement at conference) or 4.C.(3) (agreement prior to mediation or during recess) requires them to file their consent judgment or voluntary dismissal with the court within 30 days or before expiration of their mediation deadline, whichever is longer and indicate on his/her *Report of Mediator* that the parties have been so advised;
- FFS Rule 6.B.(4)(a) was revised to require mediators to also file Reports of Mediator in cases that are pending before the court, but mediated voluntarily;
- New FFS Rule 4.D prohibits any stenographic, audio or video recording of a mediation by any participant whether done surreptitiously or with agreement of the parties;
- FFS Rule 6.B.(5) was revised to add language providing that a party-selected mediator may not delay scheduling or holding a conference because one or more parties have not paid an advance fee deposit;
- FFS Rules 6.B.(6) and (7) were revised to eliminate requirements that mediators distribute an informational brochure before mediation and an evaluation form at the conclusion of mediation;
- FFS Rule 7.A was revised to clarify that a party-selected mediator has a duty to provide mediation services free or at a reduced rate when a court has determined that a party is unable to pay the mediator's fee, regardless of any other agreements the party-selected mediator may have with the parties; and
- New FFS Rule 8.K. permits certified mediators who demonstrated professional licensure in order to satisfy certification requirements, to thereafter, relinquish their licensure, provided their decision to do so is entirely voluntary and not at the insistence or suggestion of their licensing authority.

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Clerk Mediation (Clerk) Program Rules

- Clerk Rule 3.C was revised to permit a clerk to extend the deadline for completion of mediation upon his/her own motion, upon stipulation of the parties, or upon suggestion of the mediator. This change is being accompanied by a withdrawal of Form AOC-G-308T, *Motion And Order To Extend Completion Date For Clerk Program Mediation*;
- New Clerk Rule 4.D prohibits any stenographic, audio or video recording of mediation by any participant whether done surreptitiously or with agreement of the parties; and
- Clerk Rule 6.B.(6) was revised to eliminate the requirement that mediators distribute an evaluation form at the conclusion of mediation.

District Criminal Court Mediation (DCC) Program Rules

- DCC Rule 4.C was revised to permit a court to extend the deadline for completion of mediation upon its own motion or upon suggestion of community mediation center staff;
- New DCC Rule 4.E prohibits any stenographic, audio or video recording of mediation by any participant whether done surreptitiously or with the agreement of the parties; and
- DCC Rules 6.B.(4) and 7.B.(7) were revised to eliminate requirements that mediators distribute an informational brochure prior to mediation and an evaluation form at the conclusion of mediation.

Prelitigation Farm Nuisance Mediation (Farm Mediation) Program

The Supreme Court also adopted revisions to the Farm Mediation Rules effective January 1, 2012. Since the Farm Mediation Rules had not been updated for a number of years, the revisions were intended to bring those Rules current with other mediated settlement conference program rules. Copies of those Rules may be obtained through the Commission's web site or office. Revised Farm Mediation Program forms implementing the changes are still under construction and will be available in the near future.

Standards of Professional Conduct for Mediators (Standards)

- Revisions to Standard III.C.(1) clarify that when a mediator is subpoenaed by a party pursuant to MSC/FFS Rule to testify about attendance at mediation, the mediator shall limit his/her testimony to providing only the names of those who attended either physically or by electronic means. When a mediator is subpoenaed by a party pursuant to MSC/FFS Rule 5 to testify about a party's failure to pay a mediator's fee, s/he shall limit his/her testimony to identifying the debtor and indicating the amount owed;
- Revisions to Standard III.C.(2) place a duty on a mediator who is also a lawyer to report a lawyer participant in mediation to the State Bar or the court in situations where the lawyer made statements or engaged in conduct during mediation that would be reportable under C.(2), *i.e.*, statements or conduct that present a threat to public safety; and
- Revised Standard VIII places a duty on mediators, when they believe the statements or actions of any participant in mediation, including those of any lawyer engaged in professional misconduct, jeopardize or will jeopardize the integrity of the mediation process, to try and persuade the offending party to refrain and to take any remedial action necessary. If unsuccessful, the revised Standard requires the mediator to take additional appropriate action, including, but not limited to, terminating the conference, if necessary. The revised rule also places an obligation on attorney mediators to report attorney participants in mediation to the State Bar or court when their statements or conduct threaten public safety consistent with Standard III.C.(2).

The Supreme Court also revised its Rules for the Dispute Resolution Commission enforcing the Standards. Copies of those Rules are available through the Commission's office. Questions about the revisions, rules or programs may be addressed to the Commission at (919) 890-1415. The Commission is responsible for certifying and regulating mediators and helps to support mediated settlement conference programs operating in North Carolina's trial courts. ♦



CME Opportunity in Greensboro

No Dispute About it: Dispute Resolution is Here to Stay

2012 NCBA Dispute Resolution Section Annual Meeting

Friday, February 24, 2012

Grandover Resort and Conference Center, Greensboro

The North Carolina Bar Association's Dispute Resolution Section is holding its annual meeting on February 24. Included among the topics to be covered during the CLE portion of the meeting are: mediating employment disputes, collaborative divorce, North Carolina case law effecting mediation, district court arbitration and mediator ethics. A panel of experienced mediators will also discuss their best and worst days in mediation and the most important moments in their development as mediators.

A number of Dispute Resolution Commission members will be participating in the program as speakers or panel members, including Commission Chair W. David Lee and members Ann Anderson, Jacqueline "Jackie" Clare, Lynn Gullick, and J. Anderson "Andy" Little.

The Commission encourages all mediators to attend and notes that the annual meeting is a great way to satisfy the Commission's expectation that all certified mediator's complete at least three hours of continuing mediator education (CME) yearly. While the Commission does not mandate CME, it does require mediators to report on their educational efforts annually during the certification renewal period.

For more information on the upcoming program, contact the NC Bar Association at (800) 228-3402, or (919) 677-8745, or visit their website at www.ncbar.org/CLE.

Did you know that the Commission's website has information to help you meet the Commission's expectations for CME? By going to www.ncdrc.org and clicking on "Ethics/Complaint/Continuing Education" and then selecting, "Continuing Education for Mediators", mediators can view:

- Lists of prominent websites dedicated to mediators and mediation;
- Lists of professional mediation organizations operating in North Carolina;
- Commission members' favorite books on dispute resolution; and
- A sampling of mediation blogs.♦



NCCU School of Law Students Win Abrams Mediator Competition

By Mark W. Morris

North Carolina Central University law students Leah Leone '12 and Valoree Hanson '12 took first and second place, respectively, in the Jeffrey S. Abrams National Mediator Competition, held November 10 – 12, 2011, at the University of Houston Law Center in Houston, Texas. Sponsored by Jeffrey Abrams, an accomplished Houston mediator, the competition is one of the only contests in the country where students are judged on their mediation skills. Leone and Hanson participated in five rounds of mediation over two days, acting as mediators in the law center's Tom Newhouse Mediation Advocacy Competition. (The Abrams competition is designed to run in parallel with the Law Center's Newhouse Mediation Competition, where University of Houston students participate in mediation as advocates or clients. These intramural participants serve as the parties to the mediation rounds for the national competition.) Leone and Hanson prevailed over a field that included student mediators from, among others, Benjamin N. Cardozo School of Law, University of California–Hastings College of the Law, Seton Hall University School of Law, Texas Southern University Thurgood Marshall School of Law and Quinnipiac University School of Law.

For her first place finish, Ms. Leone received the Champion Mediator trophy and the Frank Evans Mediator Scholarship award of \$2,000. "It was a great experience," she said. "It was an opportunity to combine preparation and my training, but I also had to rely on my own sense of who I am, to trust myself and what I think of as my strengths. The results affirmed that mediation is something on which I should focus my talents. Normally, you associate competition with tension and stress, but the Abrams Competition was enriching. The people, their professionalism and collegiality, made it great fun."

Ms. Hanson, who took home the Finalist Mediator trophy and the Jeffrey S. Abrams Mediator Scholarship award of \$500, reported, "The learning curve was exponential. I came away from the competition a much better mediator than I was when we landed in Houston. It would have taken months to gain the experience, the learning, and the feedback that I acquired in the condensed time frame of the competition environment. I am very grateful to all of the people who worked so hard to put on the competition and to the lawyers and mediators who judged it."

The students were coached by Mark W. Morris, a professor at Central University School of Law and Director of the school's Dispute Resolution Institute. This is the second year the Abrams competition has been held and the first year that Central participated. To see more photos from the competition, flip the page.



Left to right: Valoree Hanson, Professor Mark Morris & Leah Leone



More Photos

From the Abrams Competition in Houston:



Jeffrey S. Abrams and Leah Leone



Leah Leone and Valoree Hanson



Leah Leone, Professor Mark Morris and Valoree Hanson, pose with Jeffrey Abrams and competition judges the Hon. Frank Evans, and Tom Newhouse.



Commission Publishes Annual Report

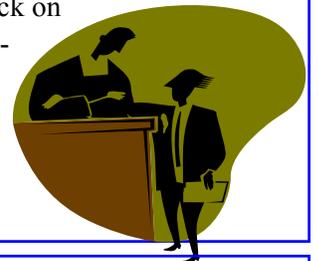
This past month the Dispute Resolution Commission published its Annual Report for Fiscal Year 2010/11. It was the 16th such report published by the Commission since its inception in 1995. The Report describes the activities and projects undertaken or completed by the Commission during the 2010/11 fiscal year and discusses tentative plans for the upcoming fiscal year.

Any mediator or member of the public wishing to review the Annual Report may contact the Commission's office to request a copy or visit www.ncdrc.org (click on, "Mission and Operations" and then click on "Annual Report").

Copies of the Annual Report are distributed, among others, to members of the legislature, judges and court staff, Commission appointing authorities, the State Bar, NCBA officials, and other agencies or organizations operating in North Carolina that draw from the Commission's list of certified mediators, including the NC Industrial Commission, the NC Office of Administrative Hearings, and the federal trial courts. Copies are also distributed to various mediation commissions, offices and officials around the country who have expressed an interest in what is happening in the dispute resolution arena here in North Carolina. ♦

Court Ordered Arbitration Rules Revised

The Rules for the district court Arbitration Program were revised by the North Carolina Supreme Court on October 6, 2011, with an effective date of January 1, 2012. Administrative Office of the Court (AOC) staff will be distributing the revised rules to court staff before the first of the year and will ask them to, in turn, notify their qualified arbitrators of the changes. Copies of the revised Arbitration Rules will also be posted on the court's website after January 1st. To read or to download a copy of the Rules go to www.nccourts.org and click on the "Citizens" option from the screen, then click on "Court Programs and Management Services" from the menu on your left, then click on "Arbitration" from the next menu that appears, then from the next menu select "Arbitration Resources", then from the screen that appears, select "Rules for Court Ordered Arbitration". The revised Rules will necessitate some changes to program forms and those forms are still under construction. Anyone with questions about the new Rules, may contact AOC Associate Counsel Tammy J. Smith at (919) 890-1308. ♦



AOC Publishes Caseload Statistics

The NC Administrative Office of the Courts has now published caseload statistics for the Mediated Settlement Conference (MSC) and Family Financial Settlement (FFS) Programs for FY 2010/11. Copies of the caseload statistics are available on the Commission's website at www.ncdrc.org; click on "Program Information"; click on either "MSC Program" or "FFS Program"; then click on "Program Statistics"; then select "2010-2011 Program Statistics". Additional copies are available upon request from the Commission's office at (919) 890-1415. Statistics are presented by individual judicial districts.

The Commission asks that all certified mediators remember that caseload statistics are based largely on information gleaned from Reports of Mediator. If mediators do not file their Reports or do not file them timely, it can serve to depresses settlement rates for Programs and make them appear much less effective. Moreover, when mediators neglect their case management duties, judges and other court staff do not receive important information they need to effectively manage dockets and move litigation forward. Mediators should also remember that they need to file a Report even when they are notified that a case settled pre-mediation and that, lastly, the new rules require mediators to submit a Report when a pending case is mediated voluntarily, *i.e.*, before a judge actually orders it to mediation. Being a good mediator is about more than just sitting down with the parties and helping them reach a settlement. It is also about being a good case manager. So... please be sure to follow up and submit timely, complete and accurate Reports Of Mediator. Both court staff and the Commission will appreciate your diligence. ♦

Upcoming Mediator Certification Training



SUPERIOR COURT TRAINING

Beason & Ellis Conflict Resolution, LLC: 40-hour and 16-hour superior court mediator training course, April 18 - 22, 2012, in Chapel Hill. For more information or to register, call (919) 419-9979 or (866) 517-0145 or visit www.beasonellis.com.

Carolina Dispute Settlement Services: 40-hour and 16-hour superior court mediator training course, January 23 - 27, 2012, in Raleigh. For more information or to register, contact Dawn Bryant at (919) 755-4646, or visit www.notrials.com.

Mediation, Inc: 40-hour and 16-hour superior court mediator training course, January 12-21, 2012, in Charlotte. For more information or to register, contact Celia O'Briant at (888) 842-6157 or (919) 636-5697 or visit www.mediationincnc.com.

FAMILY FINANCIAL TRAINING

Atlanta Divorce Mediators, Inc: 40-hour family mediation training course. For more information, contact Melissa Heard at (770) 778-7618 or visit www.mediationtraining.net.

Carolina Dispute Settlement Services: 16-hour family mediation training course. See above for contact information.

Mediation, Inc: 40-hour and 16-hour family mediation training course, May 22 - 26, 2012, in Raleigh. See above for contact information.

6-HOUR FFS/MSC COURSE

(Covers North Carolina legal terminology, court structure, and civil procedure)

Mediation, Inc: 6-Hour training course. See above for contact information.

Professor Mark W. Morris: 6-hour course. For more information or to register on-line, visit www.nccourts.homestead.com.

The ADR Center (Wilmington): 6-hour course. For more information or to register, contact John J. Murphy at (910) 362-8000 or e-mail at johnm@theADRcenter.org or visit www.theADRcenter.org.

Judge H. William Constangy (Charlotte): For more information, contact Judge Constangy at (704) 807-8164.

CME and Other Training Opportunities

The NC Bar Association Dispute Resolution Section's Annual Meeting, *No Dispute About It: Dispute Resolution Is Here To Stay*, Friday, February 24, 2012, in Greensboro. For additional information, contact the NCBA at (800) 662-7407 or (919) 677-0561 or [visit http://www.ncbar.org/cle/programs/870DRM.aspx](http://www.ncbar.org/cle/programs/870DRM.aspx).

The NC Bar Association in compliance with FFS Rule 8.A., has agreed to offer the "2010 Basics of Family Law, The Modern Family" online for FFS mediator certification applicants. For a fee of \$50.00 the applicant has up to two weeks to view the program. For more information or to register to watch online, visit www.ncbar.org/cle/programs/videos/721bfl.aspx. (No CLE credit will be given for viewing this program on-line.) The Commission is grateful to NCBA for its cooperation in making this offering available.

The NC Bar Association The 16th Annual Elder Law Symposium, Friday, February 24, 2012, in Southern Pines. Contact the NC Bar Foundation at (919) 677-8745 or (800) 662-7407 or visit www.ncbar.org/CLE.

The NC Bar Association 2012 Workers' Compensation Section Annual Meeting, Friday, February 10 - Saturday, February 11, 2012, in Greensboro. For additional information, contact the NCBA at (800) 622-7407, or (919) 677-0561 or visit www.ncbar.org/CLE.

UPCOMING COMMISSION MEETINGS



Upcoming meetings of the Dispute Resolution Commission are scheduled for Friday, January 27, 2012, and Friday, May 11, 2012, at the North Carolina Judicial Center in Raleigh; and Friday, September 14-15, 2012, in Asheville. Meeting agendas are posted at www.ncdrc.org at least two weeks prior to meetings. All mediators and members of the public are welcome to attend, but the Commission asks that you contact its office and let staff know you will be present, so that seating is assured.



*The NC Dispute Resolution Commission
and Its Staff Wish All Certified
Mediators And Their Families
Happy Holidays!*



Thanks for reading the Intermediary!

