



The Intermediary

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



From the Chair
By Judge William A. Webb

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RENEWAL IS UPON US! COMPLETE YOUR CME!

Thanks to each of you for the service you provide as a mediator to the courts and the citizens of North Carolina! July 1, 2017, marks the beginning of the certification renewal period for fiscal year 2017-18— twenty-five years since the first mediators were certified— and ends on September 30, 2017. There are two significant changes to the renewal process this year that I want to bring to your attention.



CME must be completed prior to renewal

FIRST, as you know, the Commission adopted the DRC Continuing Mediator Education Policy in 2016, requiring active mediators to complete 2.0 hours of approved CME annually. The Policy becomes effective for this fiscal year's (2017-18) renewal period. **Importantly, you must complete the 2.0 hours of CME PRIOR TO RENEWAL.** As a practical matter, this means that if you have not completed your CME, you will be blocked from accessing the online renewal application when you try to log on.

How can you determine if you have completed the required 2.0 hours? Sponsors of approved programs are responsible for reporting attendance to the Commission. Commission staff enter that information on the individual profiles of mediators. You can access your profile at any time during the year by clicking on the Commission's logo at www.ncdrc.org, and entering your email address and security question answer. If you have completed 2.0 hours, the CME radio button will be checked "Y." If you have not, "N" will be checked. If you have completed only 1.0 hour, that will NOT be noted on your profile, but you may call the office and staff can pull up that information for you.

As of the date of this newsletter only 369 of the Commission's approximately 1400 certified mediators have completed their CME. For this fiscal year's renewal only, there will be a 30 day grace period, through October 31, 2017, within which you may complete your CME and renew your certification. However, although CME can be completed up to and including October 31, 2017, the Commission encourages you to satisfy this requirement as soon as you can, because late fees will be assessed for renewal applications filed after September 30, 2017.

The Commission is committed to encouraging and developing low-cost or free CME programs that are informative, engaging, and of excellent quality. To this end, the Commission's Vice Chair, Lorrie Dollar, has offered her Instructional Design team at AOC to help in this effort, by videotaping live, approved programs for posting online. This will be an ongoing effort.

As a reminder, the policy is narrowly drawn at this time. Approved content must relate to: enabling legislation, program rules, Standards of Conduct, advisory opinions, or recent case law involving mediation. (Click here.) Credit is awarded for 1.0 or 2.0 hours only; portions of hours are not eligible for credit. There is no carry-over of CME credit to the following fiscal year and CME completed that falls outside of the policy will not be approved for credit.

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To find programs that are approved for CME credit, go to the website and click on “CME Information” on the left-hand menu. When you open that page, click on “CME Opportunities.” ([click here](#)). You can also review the Policy and other implementation documents. If you have already completed your mandatory CME hours, I hope that you found the program(s) informative and instructive.

Certificates will be printed

SECOND, after you complete your online renewal, including completing the application, updating your profile information, and designating the districts (and counties, if applicable) in which you wish to receive referrals by court appointment or party selection, you will be prompted to **PRINT YOUR CERTIFICATE(s)**. The Commission will no longer send renewal letters and stickers to its mediators. Thanks to Maureen, the Commission’s administrative assistant, for this great idea, who, with Leslie, Harriet and the technology folks at AOC implemented this efficient, cost-saving measure. The Commission strives to use its resources --- your certification fees--- wisely and efficiently, and this new renewal initiative meets that goal. As a reminder, the Commission is funded 100% by certification fees, which have not increased since 2001!

Commission staff are available to answer your questions about CME and renewal, and to help you with the completion of your online renewal application as needed. For those of you who prefer to renew with a hard copy application, please contact staff. We look forward to keeping each of you on the Commission’s list of certified mediators who are available to serve in North Carolina’s court-ordered mediation programs. Thank you, again, for your continued service to the courts and the litigants of this state.

What’s next for the Commission?

In this newsletter you are invited to comment on amendments to several program rules and policies (see page 16). The Commission has also approved a Social Media Policy for your review. And, as is mentioned elsewhere, we are excited to roll out the Commission’s LinkedIn page and Twitter account—soon! We look forward to your feedback on these sites. And, as we’ve reported before, the website will soon be redesigned.

In addition to outreach through social media, I am excited to announce that the Commission will be developing educational outreach materials about conflict resolution for dissemination to the Commission’s stakeholders—the public, self-represented litigants, attorneys, our mediators. As Chair, my vision and hope is that this Commission can bring the benefits of conflict resolution strategies in lieu of litigation into the living rooms and minds of our citizens across the state, and that mediation can become a household term. Staff will work with the New Media Committee, with the help of the Instructional Design team at AOC, to create and disseminate videos, public service announcements and the like. Other initiatives may follow as we chart a course toward advancing the use and increasing the understanding of mediation, arbitration, and other forms of conflict resolution for resolving disputes between individuals, groups, businesses, agencies, and governmental bodies.

These are exciting times at the Commission and I urge and invite you to contact staff with ideas or feedback that you might have going forward. And, mark your calendars: October 19, 2017, is Conflict Resolution Day.

**The
North Carolina
Dispute Resolution Commission
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The Honorable Jesse B. Caldwell, III
The Honorable Gary S. Cash
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Upcoming Commission Meetings

All mediators are reminded that Commission meetings are open to the public. If you wish to attend, please let Commission staff know so that seating is assured.* The next regularly scheduled meeting is scheduled for Friday, September 14th - 15th, 2017, in Morehead City. The following meeting is scheduled in Raleigh on December 8th, 2017. For information about Commission meetings and minutes are regularly posted on the Commission's website at www.ncdrc.org. From the menu on your left, click on "Missions and Operations", then, from the next menu, select "Meeting Information".

**Due to time constraints, the Commission can no longer take questions or comments from the public at its meetings. If you wish to make a comment, please email the Commission at DRCMediators@nccourts.org.*

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The Commission encourages all mediators who are facing an ethical dilemma or who have a question about rule interpretation to contact the Commission’s office and request guidance. If time is of the essence, mediators may seek immediate assistance from Commission staff over the telephone or by e-mail. If time is not a factor, mediators may request a written opinion from the Commission. Written Advisory Opinions are issued when the Commission believes that a question and the Commission’s response may be of interest to the wider mediator community. To view the Advisory Opinions Policy, [click here](#). Advisory opinions adopted by the Commission can be accessed [here](#).

**Advisory Opinion of the
NC Dispute Resolution Commission
Advisory Opinion Number No. 33**

Adopted by the Commission on November 18, 2016

N.C. Gen. Stat. §7A-38.2(b) provides, “[t]he administration of mediator certification, regulation of mediator conduct, and certification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department.” On August 28, 1998, the Commission adopted an Advisory Opinions Policy encouraging mediators to seek guidance on dilemmas that arise in the context of their mediation practice. In adopting the Policy and issuing opinions, the Commission seeks to educate mediators and to protect the public.

Concern Raised

Certified attorney mediator requests advice concerning her plan to mail a holiday card to many of the attorneys in her geographic area and to include a mouse pad with the mediator’s website printed thereon. The mouse pads have already been purchased at a cost of approximately \$1.60 each. If the mediator is not allowed to distribute the mouse pads as an advertising tool in this way, she asks if she may donate the mouse pads to an organization of attorneys which may be made available to attendees at a meeting of the organization.

ADVISORY OPINION

(1) May the mediator distribute items of small monetary value, such as mouse pads, pens, calendars, calculators or post-it notes, as an advertising tool, either by mail or otherwise?

The inquiry occurs with regular frequency and has a broad application for mediators who contemplate making gifts to prospective clients as a part of their promotional efforts or to regular clients as a “thank you” for previously selecting them to mediate their cases.

In responding to this inquiry, the Commission first looks to Standard VII.H of the Standards of Professional Conduct for Certified Mediators:

VII.H. “A mediator shall not give or receive any commission, rebate or other monetary or non-monetary form of consideration from a party or representative of a party in return for referral or expectation of referral of clients for mediation services, except that a mediator may give or receive de minimis offerings such as sodas, cookies, snacks or lunches served to those attending mediations conducted by the mediator and intended to further those mediations or intended to show respect for cultural norms.

A mediator should neither give nor accept any gift, favor, loan or other item of value that raises a question as to the mediator’s actual or perceived impartiality.”

Based on the facts of the inquiry, the mediator is using the mouse pads as an advertisement for mediation services. Therefore, the mouse pads will be given in return for referral or expectation of referral of clients for mediation services. Such gifts are not permitted under Standard VII.H, regardless of their monetary value.

Section VII.H carves out an exception to the rule against gift-giving, as follows:

VII.H...”except that a mediator may give or receive de minimis offerings such as sodas, cookies, snacks or lunches served to those attending mediations conducted by the mediator and intended to further those mediations or intended to show respect for cultural norms.”

The facts presented to the Commission in this Advisory Opinion do not fall within the exception set out in Standard VII.H and, thus, the giving of the mouse pads is not permissible.

The Commission cautions certified mediators that the giving or receiving of gifts or other items of monetary value outside the context of the mediation may be perceived by participants or the general public as affecting the mediator’s impartiality. The purpose of Standard VII is to emphasize the responsibility each mediator has to protect the impartiality necessary to serve in that capacity.

(2) May the mouse pads be donated to an organization of attorneys which may be made available to attendees at a meeting of the organization?

Again, the Commission looks to Standard VII of the Standards of Professional Conduct for Mediators and determines that the result is the same. The Commission concludes that the mouse pads are intended to be an advertising tool regardless of whether they are distributed by mail or donated to an attorney organization.

The people who would receive the mouse pads at the conference are attorneys and as such are in a position to exercise significant influence over the selection of mediators for their clients’ cases. The Commission concludes that the mouse pads to be donated to an attorney organization and made available to attendees at a conference of that organization are things of value creating an expectation of referral of clients for mediation services, and further, that they do not fall within the exception set out in Standard VII.H.



BEFORE THE GRIEVANCE AND DISCIPLINARY COMMITTEE

Disciplinary Action Taken

Public Admonishment Issued

The NC State Bar suspended the license of an attorney mediator for forging a Substitute Trustee's signature on a Substitute Trustee's deed and other documents in a foreclosure proceeding. The attorney also compelled a legal assistant to notarize the signature. Due to several extenuating and difficult circumstances, a consent order was issued suspending the license (rather than disbarment) and the suspension was stayed upon certain conditions. Staff investigated the matter and determined that the attorney mediator had notice of the grievance before the State Bar prior to filing the renewal application for FY2016-17. The mediator did not report the grievance on the renewal application, although the evidence showed that the attorney mediator had filed her response to the grievance with the State Bar only 9 days prior to the date the mediator filed for certification renewal. The Committee was very concerned about this failure to disclose and determined to issue the mediator a letter of public admonishment.

Denial of Certification

The Full Commission denied a mediator's application for certification in the district criminal court mediation program (DCC) at a hearing held on November 17, 2016. The Commission's Decision held that the applicant's failure to disclose two criminal misdemeanor convictions for DWI and failure to disclose a misdemeanor conviction of resisting a public officer on his application were violations of DCC Rule 7.E, and that certification of the applicant would serve to discredit the District Criminal Court Mediation Program, the Commission, and the courts, in violation of DRC Rule IX.D(2)(e). Pursuant to DRC Rule IX.E(13), the applicant may reapply after two years from the date of the Commission's Decision.

Private Letter of Warning Issued

A mediator was selected by a pro se party and a state agency to mediate a pre-litigation public records dispute pursuant to N.C. Gen. Stat. 7A-38.3E. Several days prior to the scheduled conference, the pro se plaintiff informed the mediator that he would seek a determination from the court that he was indigent. The mediator became upset and refused to hold the mediation unless the plaintiff paid an advance deposit. Plaintiff then raised concerns about the mediator's ability to be impartial, and the mediator withdrew as mediator. The mediator argued that since the mediation was pre-litigation, it was "voluntary", and therefore, he was not bound by program rules regarding a party's inability to pay the mediator fees. N.C. Gen. Stat. 7A-38.3E clearly incorporates the MSC Program Rules, which include Rule 7.D requiring a mediator to accept the amount ordered by the court as payment from an indigent party to a mediation. Although the Grievance and Disciplinary Committee did not find the rule violation to be intentional, it did conclude that had mediator reviewed the public records statute, he would have learned that he could not refuse to conduct the mediation on the basis of the plaintiff's alleged inability to pay. The committee issued a private letter of warning, the mediator appealed, and then withdrew his appeal prior to the scheduled hearing.

CME OPPORTUNITIES : DRC



APPROVED PROGRAMS

**Updates and Opinions that Impact
Workers' Compensation for Mediators
(2017)**

Where: On Demand

Sponsor: NC Bar Foundation

CME Credit Hour: 1.0

For more Information, [click here.](#)

**Ruminations: Regulations, Rulings, and
Reconsiderations**

**Selected from 2016 Dispute Resolution Section
Meeting, February 19, 2016**

When: On Demand

Sponsor: NC Bar Foundation

CME Credit Hours: 2.0

For more information and/or to register, [click here.](#)

**The Standards of Professional
Conduct for Mediators (2017)**

Sponsor: NC Bar Foundation

Where: On Demand

CME Credit Hour: Each Course 1.0

For more information on each program,
click on the "More Information" option.

Volume I (Preamble and Standard 1) [More Information](#)

Volume II (Standards II and III) [More Information](#)

Volume III (Standard IV and V) [More Information](#)

Volume IV (Standard VI and VII) [More Information](#)

Lessons Learned from DRC Advisory Opinions

Where: On Demand

Sponsor: Watauga County Bar Association

CME Credit Hours: 1.0

To view Program, [click here.](#)

Mediation is Not Vegas

Where: On Demand

Sponsor: NC Bar Foundation

CME Credit Hours: 1.0

For more information and/or to register, [click here.](#)



**Mediation in Family Law Cases:
Ethics and Practical Tips**

When: On Demand

Sponsor: NC Bar Foundation

CME Credit Hours: 1.0

For more information and/or to register, [click here.](#)

Standards of Conduct for Mediators

Where: On Demand

Sponsor: NC Association of Professional Family Mediators

CME Credit Hours: 2.0

To view Program, [click here](#)

All certified mediators are required to complete two hours
of CME prior to renewing their certification for FY 2017-18.
To view the NCDRC's CME Policy [Click here.](#)

To find all NC Bar Foundation approved CME On Demand
courses, [click here](#), from the drop down box, click on the
"Certified Mediators Education (CME) on Demand" option.

NCDRC MSC CERTIFIED MEDIATOR BOB BEASON RECEIVES ELNA B. SPAULDING FOUNDER'S AWARD

ON MARCH 6, 2017, Grace Marsh, Executive Director of the Elna B. Spaulding Conflict Resolution Center (CRC) in Durham, NC, presented long-time mediator and trainer, Bob Beason, with the ***Elna B. Spaulding Founder's Award*** at the Annual Partners for Peace Celebration. Attended by several hundred people, the well-planned, enjoyable event was held at the historic Hill House in Durham, NC.

Ms. Marsh stated, "This award honors those individuals who demonstrate the trailblazer spirit of the late Ms. Spaulding, who in 1968, during a period of racial tension and national unrest, was able to bring both black and white women together to form Women in Action for the Prevention of Violence." Recipients of the award embody strength, creativity, resilience, and a commitment to work to improve the communities in which they live.

As the press release for the event stated, "Peacemaking is a natural fit for Bob who lives by the philosophy 'seek to understand before you seek to be understood.'" Tom Stern, member of the board of the CRC, also a NCDRC certified mediator in the MSC Program, applauded the recognition of Bob, and recognized Rene Stemple Trehy who has been business partners with Bob and a co-trainer for decades, to make some remarks. Among other accolades, she noted, "Bob is a natural. Bob quickly hones in on the issues with his sharp instinct and wise intellect, all strongly ballasted with his passion for the process. He sharply sifts through the details for the benefit of the big picture, and all the while embracing the people. With warm cookies and a big smile."

For decades Bob has been and remains a pillar of the dispute resolution community in North Carolina. He was one of the two mediators named to the original NCDRC, and he chaired the Committee that developed the Standards of Professional Conduct for Mediators. He has mediated more than 3000 cases and has co-trained over 2000 professionals in the art of mediation and for certification by the NCDRC. Bob has taught mediation and negotiation at Duke Law School since 1995 and has been a leading voice on numerous boards and committees, including the N.C. Dispute Resolution Commission, NCBA Dispute Resolution Section, Durham Dispute Settlement Center, the Child Custody Mediation Advisory Committee and the Mediation Committee for the Family Law Section of the NCBA. Rene noted that Bob also served as a moderator at Pilgrim United Church of Christ during a year-long mediation process that led to the congregation becoming "open and affirming" of the full inclusion of LGBT persons in the church's life and ministry.

Bob accepted the award with characteristic grace and humor, and said he felt humbled by the recognition. Bob joins the ranks of esteemed past recipients of the Founder's Award who include, but are not limited to: Julius Chambers, Mayor Bill Bell, Rabbi John Friedman, and the Honorable Marcia Morey, to name only a few. Bob was gracious and humbled by the award.

The website states that the mission of the Elna B. Spaulding Community Resolution Center is to help people to resolve conflict through communication, cooperation, and understanding. "Our goal is to help people to listen with an intent to understand each other and work cooperatively to reach a mutual agreement." Mr. Stern notes that the CRC strives to provide conflict resolution services throughout the wider community, with a particular focus on poor and underserved communities. CRC projects include Durham's "People's Court" (mediations of district criminal court cases); Durham Public Schools "Truancy Court"; Peer Mediation in Public Schools; and the Juvenile Justice Project (restorative justice for juvenile offenses). For more information about the Center, contact Grace Marsh at 919-680-4575, or gmarsh@crc-mediation.org. See *interview on page 9*.



Grace Marsh presents Bob Beason with the Elna B. Spaulding Founder's Award.

Photo: Supplied by Grace Marsh.

A CONVERSATION WITH BOB BEASON

On the occasion of Bob's receipt of the Elna B. Spaulding Founder's Award, the Commission's Executive Director, Leslie Ratliff, talked with Bob about his reflections on the beginnings of mediation, the Commission, his mediation practice, and his visions then and now. The Commission celebrates and thanks Bob for his long and stalwart support of the Commission and its work, and for his commitment and contribution to the development and success of dispute resolution in North Carolina. Bob was originally certified as a mediator in the MSC Program in 1992 and was one of the nine original members of the Commission.



Leslie -- Has court-ordered mediation evolved in NC in the ways that you expected? Had envisioned? Had hoped?

Bob -- When I first began to mediate it was all so new and I don't recall that I really had any preconceived notions or expectations of how things would evolve or end up. I did appreciate early on what a great tool the mediation process was and the potential it had for settling cases. I actually started mediating five years before the establishment of the MSC Program. In that sense, I have always had a great deal of faith in the mediation process and its future, but I don't think that I ever anticipated it would become as integral a part of our litigation process as it has.

Has anything surprised you?

Just how big mediation has become in North Carolina's courts and how large a role it now plays in litigation.

North Carolina's court based mediation programs grew quickly. Do you think mandatory referral is largely responsible for that?

It certainly helped that referral to the Mediated Settlement Conference and Family Financial Settlement Programs became mandatory after a few years. However, I truly believe the process would have caught on anyway. Lawyers know a good thing when they see it even if they sometimes take awhile to change.

Some 20 plus years ago, UNC-Chapel Hill's then Institute of Government (now School of Government) conducted an in depth study of the pilot MSC Program. They found that the pilot largely met its statutory charge to make the courts more efficient and cost effective and improved the parties' experience with the litigation process. Specifically, the study found that mediated settlement shaved about seven weeks from filing-to-disposition time in contested cases whether the cases settled or not and helped judges to better manage their dockets. They also found that litigants were positive about their experiences in mediation. If this study were replicated today, do you think the results would be similar, better?

I think that if the study were replicated today, the results would be at least similar or reflect even more positively on the mediation process and our programs. The Programs are clearly settling cases. Today many cases are even being mediated before they can be filed, which is, I suppose, optimal in terms of saving the court time and the taxpayers' money. As I recall, the UNC study was inconclusive in terms of whether mediation helped to save the parties' time and money. I believe mediation is very cost effective for parties. And, that is true whether a case settles or not. Even when a case does not settle in mediation, the attorneys have a much clearer picture of where things stand and they are generally in a better position after the mediation to know whether it can settle and how.

Over the years have you observed an increase in the level of commitment attorneys have to the mediation process and in their willingness to prepare for mediation? What about the parties' awareness?

I have always been pleasantly surprised and impressed by the number of lawyers who took mediation training, even though they had no interest in serving as mediators. They came for the sole purpose of learning how to better represent their clients in mediation. Attorneys take their opportunity to mediate very seriously these days and the vast majority of those I deal with are well prepared for their conferences. I think over the years, I have seen a steady rise both in the level of commitment to mediation and the opportunity it represents and in the level of preparation involved. NC attorneys have really embraced mediation and should be commended for that.

I think it continues to be very important that mediators go over MSC/FFS 6.B material carefully with the parties at the beginning of the mediation (the description of the mediation process and the role of mediator). Even if their lawyer has talked with them, about the process, clients can still have misconceptions about the process and your role as mediator. Setting that "settlement tone" is critical.

There was some resistance to the NC party pay approach to mediation initially. With the benefit of hindsight, are there any aspects of the NC approach to mediated settlement conferences that you would change?

I think you are referring to the fact that some felt that if the court was going to order a mediated settlement conference, it should pick up the tab for the process. I personally believe that the party pay approach has been one of great strengths of our mediation programs for a number of reasons. Most especially, expansion of the programs was not tied to taxpayer dollars, so we avoided the need to continually return to the legislature to seek funding. In essence, party pay provided a sense of stability and continuity that might have been absent otherwise. Of course, having the mediator serve as the case manager was very efficient in that extra staff did not have to be hired by the courts or extra responsibilities absorbed by court staff who were already too busy. Lastly, party pay meant that we very quickly developed a cadre of high quality mediators in our State. Some of the best lawyers and retired judges in North Carolina became certified early on and have remained with the programs. Realistically, I don't believe we would have such a strong cadre of mediators, but for party pay. Moreover, concerns about the cost to the parties have not been borne out from my experience. A good mediator can help parties settle their case more quickly than they would have otherwise and, as a result, the parties avoid the costs associated with protracted litigation.

You were an original member of the Commission. Few states have an independent ADR Commission and most operate their programs out of their AOC equivalent. Do you think having an independent Commission has served our programs and state well?

Absolutely! The establishment of a Commission meant that all the stakeholders could be involved in the development of policy and rules – judges, lawyers, mediators, and interested members of public. I believe the involvement of mediators, in particular, has been critical to the Commission's success. It is so important that the Commission hear the perspective of those who are on front lines providing mediation services and that it have the benefit of their experiences. I would hope that will never change.

Technology has so come to dominate our society the last 10 years or so. Do you think virtual mediation or tools like FaceTime will eventually replace face-to-face mediation?

I may not be the best person to answer that question as I have, to some extent, studiously avoided the use of tools like FaceTime or Skype for mediation. I am a fan of low tech, at least in the mediation arena, and really believe people need to be together in the same room. Technology is great, but much is lost in translation when a person appears on a screen rather than actually sitting across the table from you. The communication just isn't the same, body language, tone, eye contact are all affected.

Do you think that voluntary mediations will eventually eclipse the court ordered programs, in the sense the attorneys and parties may be starting to recognize the value of mediating really early?

No. Mediating early, even pre-litigation, can sometimes result in a settlement, but most parties are not ready to settle early on. First, they may not have the information they need to settle until discovery is complete and second, parties often need some time to come to grips with the reality of their situation, what their options are, and the potential outcomes. That usually does not happen overnight. It's a process and a case and the parties typically need to "mature" a bit before settlement is possible.

Bob, you chaired the Commission subcommittee which developed the original Standards of Professional Conduct for Mediators. There have been tweaks but surprisingly few major changes to those original Standards through the years. What do you think will be the biggest ethical challenges facing mediators in the future?

I agree the Standards have held up well! Probably many of those mediating today have no idea of the hard work that went into the Standards. Work on the Standards actually began in 1993 with the NCBA's Dispute Resolution Section. That was during the pilot MSC Program and before the establishment of the Commission. There was a lot of thinking and drafting between 1993-1995, but nothing really jelled. The Commission was established in 1995 and one of the first things the Commission's then Chair, Judge Ralph Walker, did, was to charge its new Mediator Conduct and Ethical Standards Committee with developing standards of conduct for mediators. Judge Walker asked me to chair that committee probably because I had been involved in that early Section effort. Back then, the concept of mediator ethics was somewhat uncharted territory and the committee struggled. To tell you the truth, at one point the committee had a full draft of some Standards, Andy Little (whom I first cursed for the idea) suggested we restart focusing on the work of Professor Robert A. Baruch Bush, we threw that early draft out and did start over again. We had worked hard on that early draft and tossing it was not an easy thing to do! Andy Little had suggested we look at Baruch Bush's work. Baruch Bush was a Hofstra law professor who developed the concept of transformative mediation and was a pioneer in mediator ethics. He had interviewed a number of mediators working in Florida about ethical dilemmas they had faced. Baruch Bush organized those dilemmas into categories and developed ethical standards around the categories. We used that work as a guide to developing what eventually became our Supreme Court's Standards of Professional Conduct for Mediators. As you suggest, the Standards have held up well and I am proud of the hard work that went into them. I've been working in this arena for a long time. Many folks worked hard on the original set of Standards and I am proud of what we accom-

Meet the New DRC Commissioners

LeAnn Nease Brown, Esq.



Chief Justice Mark Martin recently appointed Chapel Hill attorney, LeAnn Nease Brown, as a MSC certified mediator member to serve on the Commission for a term ending September 30, 2019. Ms. Brown graduated from UNC at Chapel Hill (B.A. 1977, M.S. 1981, J.D. 1984). Ms. Brown is a member manager of Brown and Bunch, PLLC, and practices in the areas of civil and commercial litigation. She served as a member of the Board of Governors of the NCBA, Chair of the CLE and Membership Committees, and as Chair of several sections: Antitrust and Trade; Zoning, Planning and Land Use; and effective July 1, Dispute Resolution. Ms. Brown also served as a trustee of the NC State Bar Client Security Fund. She is certified by the DRC in both the MSC and FFS Programs, and served as an ex officio member of the Commission from 2013-2016. Ms. Brown is an active member of the UNC School of Law Alumni Association, and is currently serving in her second term. She also assisted the law School's ABA Self-Study Committee from 2013-14. Ms. Brown's other civic activities included service as a Board Member of the Dispute Settlement Center of Orange County for two separate five year periods. She received the Pro Bono Impact Award from Business Leader Media in 2008.

Kevin Marcilliat, Esq.

Late last fall, Governor Pat McCrory appointed Raleigh attorney, Kevin Marcilliat, to serve on the



Dispute Resolution Commission, as a citizen knowledgeable about mediation. Mr. Marcilliat was reared in Dothan, Alabama; graduated from Auburn University, in Auburn, Alabama; and earned his law degree from Campbell University Norman Adrian Wiggins School of Law in 2012. Mr. Marcilliat practices with the Roberts Law Group, PLLC, in Raleigh, NC, a firm devoted 100% to criminal defense. He is passionate about his work and says, "What drives me most about criminal law is that as a defense lawyer, I am often the only person standing between my client and a jail cell." He has successfully represented clients across the state and in the federal courts on a wide range of felony and misdemeanor matters. Mr. Marcilliat has been married to his wife, Lauren, for 7 years, and is the proud father of two sons, James and Ethan.

Charlot Wood, Esq.

State Bar President Mark Merritt recently appointed Charlot Wood, an attorney who is not a mediator, to the Dispute Resolution Commission to complete the term of retired Commission member Mark Spence. Ms. Wood was born in Virginia, but raised in North Carolina from the age of 10. She graduated from Meredith College and Wake Forest University School of Law. She has practiced with Bell, Davis & Pitt, P.A. in Winston-Salem, N.C., since licensure. As a litigator who has handled employment, construction, business, personal injury and workers' compensation cases, Ms. Wood has participated in scores of mediated settlement conferences and says that, "I have a deep appreciation for the benefit of having a well-trained and experienced mediator."

She has earned numerous awards including *The Best Lawyers in America in Commercial Litigation and Workers' Compensation and Employment Law, 2008-*



2017. Ms. Wood has been active in local and statewide bar associations and in local community groups, including the *Yadkin County Smart Start Partnership, Inc.* and the *Yadkin Family YMCA.* Ms. Wood sought the appointment and the Commission is delighted to have an attorney with her experience of and appreciation for the value of the mediation process to litigants and the court system overall.

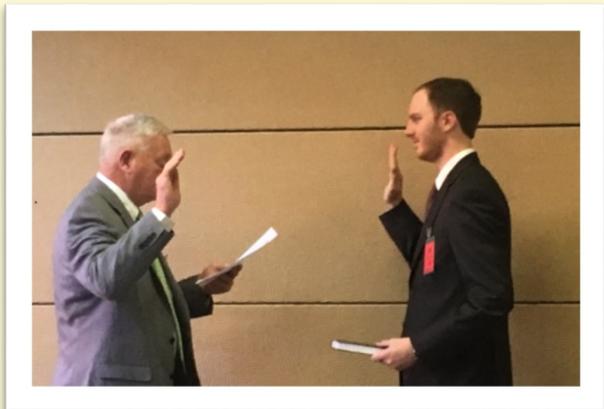
Welcome New Commission Chair and Commission Members



**Judge William A. Webb is sworn in
as the new Commission Chair**



**LeAnn Nease Brown is sworn in as a
new Commission Member**



**Kevin Marcilliat is sworn in as a new
Commission Member**



**Charlot Wood is sworn in as a new
Commission Member**

Thank you Judge J. Douglas McCullough for swearing
in the new chair and Commission members.

plished.

I have particularly strong feelings about the Standard relating to self-determination. I guess if I had to flag an ethical challenge for the future it would probably be that Standard. Attorneys often ask mediators, particularly those who are experienced trial attorneys or former judges, to give an opinion on how they think a judge or jury would decide a dispute. Originally, Standard V on self-determination prohibited the giving of such opinions. Later, that Standard was revised to allow mediators to respond under certain conditions. Specifically, the party or parties had to have actually requested the opinion, the mediation had to be near impasse, and the mediator had to have first done all s/he could to help the parties evaluate the dispute and resolve it themselves. If those conditions were met, the revised Standard permitted the mediator to give his/her opinion on how judge or jury would view the conflict. I opposed that change and to this day I will not respond to such requests. Mediation should be about the parties and their efforts to settle their dispute. I don't believe it is ever right for a mediator to inject his/her personal opinions or views directly into the process. If a mediator is concerned and feels the parties need to look critically at some issue or point, s/he should ask tough questions, not insert his or her views. But... that is my two cents. Admittedly, this a controversial area and there can be considerable pressure on mediators to give parties and their lawyers what they ask for.

You have been a successful mediation trainer for many years. What do you love most about being a trainer? I believe that you recently curtailed your training efforts; is this permanent?

I do enjoy training and have appreciated having the opportunity to work in that area for many years. It gives me a great deal of satisfaction to know that so many of individuals I had a hand in training are out there contributing to our programs, courts, and even the lives of our State's citizens. If I had to choose one aspect of training that I have particularly enjoyed, it would be teaching would-be mediators how to be truly active listeners. I believe the ability to actively listen and really, truly hear people is the mark of a good mediator and even the genius of the mediation process. When people feel they have been heard, they can more easily begin to move forward and to think in terms of settling their dispute.

As you said, I have taken a hiatus from training. Bob are you coming back as a trainer? Will Renee come back?

Rene (Trehy) and I have talked about more training, we both loved it., but go tired of the administration involved in the course. I'd love to teach again if the administrative piece was taken care of.

We are getting more advisory opinions all the time. Do you think the 40-hour training requirement is still sufficient for would-be mediators?

Yes. More would be better, but I think 40 hours is adequate. In my view the MSC Rule 8.C and FFS Rule 8.D observation requirements are also a critical part of training. In that sense, would-be mediators are really getting substantially more than 40 hours of training. I always try to debrief with those who observe me and I hope all mediators are doing that. That said, I believe the real key to being a good mediator is getting experience. I think the more mediations most mediators conduct, the better they typically get. They get more exposure to the many situations that can arise, the ethical dilemmas that can occur, and the types of personalities that can be involved. Temperament is key too. I am not sure you can successfully train someone to be a good mediator if they have the wrong temperament. It helps to be a people person, to be a patient person, and to be a really, good listener. I want to also mention that I think CME (continuing mediator education) is critical and I was glad to see the Commission adopt a CME requirement. As you suggest, advisory opinions are being issued all the time and completion of CME is critical if a mediator want to remain current ins his/her understanding of the program rules and the Standards.

Do you see mediation as a separate profession or as an extension of your work as an attorney?

I certainly see myself to be a mediator and I view mediation as a separate profession. In fact, I don't identify myself to people I meet as a lawyer anymore. I am a mediator. I think mediation is evolving as a separate profession.

Bob, you are recognized as one of the most successful and respected mediators in NC. What about you or your approach to your work has made so successful – do you think it is your personality, how you relate to conflict, your people skills, the way you conduct your mediations. Perhaps I am wrong, but I have always thought of you as being a calm, more laid back sort of person? Is that part of your success?

I strongly believe that it really helps to like people and to enjoy working with people. I very much consider myself to be a people person, and I think that more than anything that has been key to my work as a mediator and to the success I have been fortunate to enjoy. I think I am also a patient person. Not to say that you are wrong, but there are those out there who would not necessarily describe me as "laid back". That said, I do bring cookies and I have given up the jacket, but I do always wear a tie!

I understand you always start your mediations by describing you role as, “being there to help the parties have a difficult conversation”. How do the parties react to that?

That is a phrase that I heard at a conference years ago. I don't even recall now who said it. I thought it was a good way to start things off – it was an acknowledgement that I understood that conflict was difficult and that this would not be an easy day for the parties. It was also a way of acknowledging that this was **their** conversation and my role was only to help facilitate it. I think it sets a good tone. I don't know that I recall any parties commenting on the phrase, but observers will sometimes ask about it.

Bob, thanks so much. I have known you for many years and it has been a real honor to talk to you today.

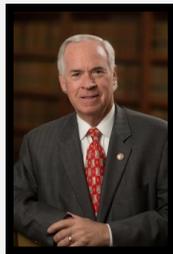
I enjoyed it, Leslie. I hope your readers will find my comments helpful.

DRC CERTIFIED MEDIATORS HONORED

(If you have news to share, please contact Commission Staff.)

Chief Justice’s Professionalism Award

Chief Justice Mark Martin presented Melvin F. Wright, Jr., Executive Director of the Chief Justice’s Commission on Professionalism (CJCP), with the CJCP Award for Meritorious and Extraordinary Service at a April 28, 2017, Commission on Professionalism’s retirement reception, held in his honor. Wright will retire from his position effective August 1, 2017.



This award was established by the CJCP to recognize and honor members of the legal profession who exhibit the highest professional standards throughout their careers, and by their conduct, make special contributions to the furtherance of professional standards and to the cause of equal justice under the law, often through the exercise of personal courage. Wright the seventh recipient of the award.

Wright is a certified superior court mediator.

Friend of the Court Award

On June 2, 2017, Chief Justice Mark Martin presented the Friend of the Court award to Judge Erwin Spainhour, retired senior resident superior court judge for Judicial District 19A, Cabarrus County. Judge Spainhour has decades of service to the courts and the people of North Carolina.



The Friend of the Court is the highest award given to an individual by the Judicial Branch. Judge Spainhour has served as chair of the N.C. Sentencing and Policy Advisory Commission for many years, is a former president of the N.C. State Bar, and is certified as a superior court mediator. He is also a recipient of the Order of the Long Leaf Pine.

Ethics Corner



WHAT DO YOU THINK?

This section of The Intermediary poses a scenario that has been the subject of a previously adopted DRC advisory opinion. The Commission invites you to consider the inquiry and determine what you consider the appropriate analysis. Click here to read Advisory Opinion 22 (2012).

Concern Raised:

Defendant's attorneys in a high profile products liability case contacted the Commission. They explained that a mediated settlement conference had been held in the case. The parties had not been able to reach a final agreement. However, an offer was on the table at the time the mediator declared an impasse, and they anticipated that negotiations would continue in the near future. Defendant's attorneys had stressed throughout the mediation to the mediator that confidentiality was important to their client given that there were a number of potential plaintiffs who had not filed suit. Following the mediation and much to their client's distress, the plaintiff's attorney spoke with the press and revealed the amount of the settlement offer on the table. Defendant's counsel stated that they understood that mediation was a confidential process. What responsibility did the mediator have to discuss and address the issue of confidentiality of the conference? Did plaintiff's counsel violate any statutes or rules governing the Mediated Settlement Conference Program when he spoke to the press?

REPORTS OF MEDIATOR:

REMINDERS:

- If a case is ordered to mediation, and there is an **ORDER** appointing you to mediate, you **MUST** file a REPORT OF MEDIATOR even when:
 - **Voluntary dismissal is taken; the case is removed to another venue; bankruptcy is filed by a party; the case settles; no mediation has been scheduled; no mediation is held.**
- Your Report must be filed within 10 days of completion of mediation or of the date when you learn that the case has settled, venue has changed, etc., as above.
- **FILE** your Report with the **TCA, TCC, or JA** and NOT THE CLERK. (If you do file it with the Clerk, ALSO provide a copy to the TCA, TCC, JA.)
- Check with your TCAs, TCCs, JAs — can you email a copy of your signed Report?
- Court staff are **REQUIRED** to tabulate outcomes; they **MUST HAVE** your Reports to do so.
- The data **MUST BE ACCURATE** to show the true success of mediation in these programs.
- Be sure to use the **CURRENT** AOC Report of Mediator form, e.g. AOC-CV-813 (7/14).
- Fully **COMPLETE** the Report of Mediator.

COMMISSION SEEKS COMMENT



At its May 12, 2017, meeting the Commission approved a number of rule and policy amendments which are currently posted for comment on its website. Click on the links below and feel free to comment by June 20, 2017.

[DRC Dated and Out of State Training Policy](#): Amends the Policy to provide that applicants for the Clerk Program whose training is more than 10 years old must complete a full 10-hour course to be eligible for certification.

[DRC Policy For Reviewing Matters Relating to Good Character](#)

Amends the Policy to provide a process for review of requests for provisional pre-training approvals.

[DRC Inactive Status Policy](#)

Amends the Policy to require a \$25 reactivation fee for returning to active from inactive status rather than a pro-rata certification fee based upon when a mediator returns to active status.

[MSC Rule 8](#)

Bolded changes represent amendments subject to comment at this time. Amends rule to allow an applicant who has taken a 40-hour course in one program but has not completed the certification requirements in that course, to take the 16-hour course in the course in which s/he seeks certification; removes voluntary CME language; adds Comment.

[FFS Rule 8](#)

Bolded changes represent amendments subject to comment at this time. Amends rule similarly to changes to MSC Program Rule 8.

[DCC Rules](#)

Amendments to Rule 7.E have already been approved, posted, and adopted by the Commission. All other provisions are subject to comment.

[Social Media Policy](#)

The Commission will establish Twitter and LinkedIn accounts. The Commission has been working on a social media policy prior to going live with these social media platforms.

Comment period ends June 20, 2017. Forward your comments to DRCMediators@nccourts.org

TEST YOUR KNOWLEDGE!



- ____ 1. A mediator may have ex parte conversations with a party or an attorney before or outside of the mediation of an FFS case, but must disclose the fact that she had a conversation to the opposing party.
- ____ 2. A seminar program which will discuss mediation skills and theory is eligible for CME credit under the DRC CME Policy.
- ____ 3. A mediator may advertise her services by distributing mouse pads with her contact information on them to attorneys in her county.
- ____ 4. When there is a non-English speaking pro se party in a case, the mediator should contact the Language Services Department at NC AOC, so that they can provide an interpreter for the mediation.
- ____ 5. One party in an FFS case claimed that she had been under duress when she settled her case at mediation. May the mediator voluntarily testify at the request of the judge if his testimony is narrowly focused on his observations that may be relevant to the issue of duress?
- ____ 6. A mediator may excuse the attendance of an insurance adjuster in a mediation of an automobile negligence case.
- ____ 7. If a party refuses to pay his share of the mediator's fee, the mediator may seek payment from his attorney.
- ____ 8. After court appointment pursuant to MSC Rule 2.C, if a mediator learns that one party will claim indigency, she may withdraw from serving as mediator in the case.
- ____ 9. A mediator may be compelled to testify as to statements made and conduct occurring in a pre-litigation mediation of a dispute.
- ____ 10. A complaining party whose complaint is dismissed by the Grievance and Disciplinary Committee may appeal said decision to the Full Commission for a hearing.



Answers on Page 19

Upcoming Mediator Certification Training



Upcoming Mediator Certification Training

Superior Court Training

Carolina Dispute Settlement Services: 40-hour superior court mediator training course, July 31 - August 4, 2017. 16 - hour superior court mediation training course, August 2 - 3, 2017. For more information or to register, Contact Diann Seigle at (919) 755-4646, or visit their web site: www.notrials.com.

Mediation, Inc.: 40-hour superior court mediator training course, August 1 - 5, 2017, in Charlotte. 16 - hour superior court mediator training course, August 3 - 5, 2017, in Charlotte. October 17 - 21, 2017, in Raleigh. 16 - hour superior court mediator training course, October 19 - 21, in Raleigh. For more information or to register, contact Andy Little at (919) 967-6611 or (888) 842-6157, or visit their web site at www.mediationincnc.com.

Family Financial Training

Carolina Dispute Settlement Services: 40 - hour family mediation training course, June 26 - 30, 2017. See above for contact information. 16 - hour family mediation training course, June 27– 28, 2017.

Justice Center of Atlanta: 40 - hour family mediation, July 13 - 17, 2017, in Atlanta, GA, and October 19 - 23, 2017, in Atlanta, GA. For more information, contact Melissa Heard at (770) 778-7618 or visit their web site at www.justicecenter.org

Mediation, Inc: 40-hour family mediation training course, June 19 - 23, 2017 in Charlotte. 16 - hour family mediation training course, June 21 - 23, 2017 in Charlotte. 40-hour family mediation training course, September 19 - 23, 2017 in Raleigh. 16 - hour family mediation training course, September 21 - 23, 2017 in Raleigh. See above for contact information.

6-Hour Training

Carolina Dispute Settlement Services: 6-hour training course. See above for contact information.

Mediation Inc: 6-hour training course, September 9, 2017, in Raleigh. 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.



Ad hoc Clerk Pilot Program Committee Report

Although established by N.C. Gen. Stat. §7A-38.3B in 2006, the Clerk Program has not taken root as an alternative to litigation in matters before the Clerks of North Carolina. Unlike the MSC or FFS Programs, the Clerk Program was established without the benefit of an initial pilot program and evaluation in North Carolina. DRC Chair Judge William Webb has convened a committee, chaired by ex officio member, Stephanie Nesbitt, AOC Court Programs Liaison to the Commission, to consider and make recommendations as to how to structure and implement a pilot in such a way as will be effective and satisfactory to the clerks and the people they serve. The clerks of Ashe, Buncombe, Mecklenburg and Wake counties have agreed to be pilot districts, and to serve on the Committee. Committee members, including Commission staff, attended four regional clerk meetings across the state in January, 2017, and participated in a conversation with the clerks about case types that might be suitable for mediation, and their suggestions, concerns, and ideas about mediation in cases before the clerks.

The NC Supreme Court recently issued an Order waiving the requirements of Clerk Rule 2 and 7 during the pilot period in the four pilot counties only. Clerks will appoint mediators in whom they have and who are accomplished and experienced attorneys in matters before the clerk. Mediators will be asked to forego payment of the administrative fee and the first two hours of mediation services, and to complete a survey at the end of the mediation. If the parties and the mediator wish to continue the mediation beyond two hours, an hourly fee (subject to a cap) can be negotiated. The mediation may be recessed and then reconvened and an administrative fee and travel costs may be discussed. The clerks, committee and the Commission recognize that this involves a significant commitment of time and money by mediators, but believe this is necessary in order to encourage litigants to try mediation and jumpstart the Clerk program. Data collection is also important to determine the viability and effectiveness of mediation in matters before the clerks. The expectation is that, if successful, the pilot will lead to more cases being referred by clerks statewide, and by extension, more opportunities for certified mediators to mediate cases for compensation.

The Commission considers it to be an excellent time to roll-out a pilot Clerk Mediation Program, as demographic data indicates that North Carolina is aging. Here are a few statistics provided by NC DAAS, for 2014:

- North Carolina ranks 9th nationally in total population and in people over 65.
- In 2025, one in five North Carolinians will be 65 or older.
- Our 65 and older population will almost double in the next 20 years.
- By 2019, NC will have more people 60 and over than ages 0-17.
- Beginning in 2030, the oldest of the 2.4 million baby boomers will near age 85.
- The number of adults over 65 with Alzheimer’s disease will increase by 31% by 2025.

True or False Answer Key:

10.	False (DRC Rule IX.D(4))
9.	True (GS 7A-38.1(k); GS 7A-38.4D(j))
8.	False (FFS Rule 8.I; MSC Rule 8.H)
7.	False (FFS Rule 7.D; MSC Rule 7.F)
6.	True (but only with the consent of all parties)
5.	False (Standard III)
4.	False (NCAOC does not provide interpreters in mediated settlement conferences)
3.	False (Standard VIII.H; AO 33 (2016))
2.	False (See DRC CME Policy)
1.	False (FFS Rule 6.A(2))

In Memoriam

Samuel Aycock

Robert C. Cone

Wayne Crumwell

Matthew Hambidge

Marquis Street



FACTS ABOUT FY 2017-18 RENEWAL

- Renewal period runs from July 1, 2017– September 30, 2017
- Complete 2.0 hours of CME prior to accessing renewal application
- Renewals filed after September 30, 2017, assessed \$30 late fee (all active and inactive mediators)
 - Option to pay renewal fee by check or credit card
 - Grace period through October 31, 2017 for CME completion and renewal
- On October 1, 2017, all districts designated for court appointments are deleted upon failure to renew
 - All non-renewing mediators are moved to “lapsed” status on January 1, 2018
 - Return to active status governed by DRC Lapsed Status and Reinstatement Policy



THE COMMISSION EXTENDS ITS GRATITUDE TO:

Retired Judge Charles T.L. Anderson

Lucas Armeña, and

Lynn Gullick

FOR THEIR YEARS OF SERVICE TO THE COMMISSION!!!

COMING SOON!!!

A LinkedIn account for the Commission

The Commission on Twitter



Please review the DRC Social Media Policy (click on link on page 16)