



The Intermediary

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



From the Chair
By Judge Gary Cash



Until recently, I could not have told you the difference between tweeting, snapchatting or sending an instagram. Though I am still not sure that I fully comprehend the distinctions between these three forms of social media, I have lately, as the Commission's chair, been forced to confront the rapidly changing landscape of modern communication.

Last winter the Commission was contacted by Scott Sutton. Scott is a communications and change management professional who was seeking a summer internship that would permit him to complete his master's degree in negotiation and conflict resolution through Creighton University's School of Law. Commission staff had several conversations with Scott about ways that he could both complete his degree requirements and be of assistance to the Commission. They finally settled on a plan. Scott would do a comprehensive review of the Commission's website with the goal of determining whether it was meeting the needs of the Commission's various constituent groups -- mediators, court staff, attorneys, pro se parties, and the general public. In addition to exploring how well the website was working, Scott was also tasked with reaching out to these constituent groups about social/new media. Did they use new media channels like Twitter and Snapchat? Were they interested in having the Commission communicate with them using these new tools?

Scott's initial contact with the Commission was welcomed by our staff. Staff has been concerned for a while about the Commission's website. As our Director, Leslie Ratliff, put it, "we have been adding rooms to the website over time, but somewhere along the way the floor plan seems to have gotten lost." She was concerned that the Commissions' web-

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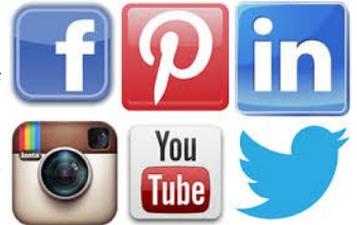
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site is no longer very navigable, especially for first time or infrequent users. Staff was also concerned that the Commission was not doing enough to look toward the future. As Scott’s findings bear out, younger professionals are far more likely to communicate using social media than those of us over 50. Many of our mediators are part of the baby boomer generation and will likely be retiring over the next decade or so. The Commission needs to take steps to ensure that it can communicate effectively with those who take their place.

Scott Sutton’s arrival heralded the start of a busy summer at the Commission’s office. With the help of Commission staff and AOC Technology staff, Scott designed a survey which all certified mediators were asked to complete. Staff also recruited volunteers to participate in two focus groups that Scott conducted. Lastly, 14 volunteers were recruited to participate in an in depth interview with Scott. The Commission is very grateful that so many were willing to make time in their busy schedules to work with him. Scott’s research culminated in a comprehensive report and both short and long recommendations. In essence, Scott’s *NC DRC New Media Research Report (Report)* is nothing less than a road map for improving communications between the Commission and its constituent groups. The Executive Summary to Scott’s *Report* appears on page 11 of this newsletter.



Over the next several months, the Commission’s New Media Committee will be working to implement Scott’s recommendations. We have already submitted documents for posting on the AOC’s internal

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website, “*Juno*”, which will be available to judges and court staff. One of Scott’s findings was that court staff felt the Commission was not making information about mediation sufficiently accessible to unrepresented parties. The documents posted on *Juno* will help court staff access information that they can, in turn, pass along to unrepresented parties to facilitate their participation in mediation. The second phase of implementation will involve temporary changes to the Commission’s website designed to make navigation easier. I say “temporary” changes because the AOC is planning a major facelift and reorganization of www.nccourts.org that will eventually include the Commission’s materials. The temporary phase will allow us an opportunity to do some experimenting. During the temporary phase, the Commission will also begin using new/social media to communicate with mediators.



As we go through this process of change and growth, I ask our community of certified mediators to keep two things in mind. First, the Commission is very much aware that many mediators may be uninterested in or uncomfortable with social/new media as a method of communication. So, if you do not know the difference between Twitter and Flickr, don’t be concerned. The Commission will continue to disseminate all important information by email or US mail. The changes to the website and the use of social/new media will supplement, not replace, these more traditional forms of communication. Second, please be patient. Scott’s research revealed that those who frequently use the Commission’s website know where to find the materials they need. It is the new and infrequent users who find the site confusing and hard to navigate. If you are a frequent user and the changes disorient you, just spend some time reacquainting yourself with the site or call the Commission’s staff for assistance. We trust that the final product will be easier for everyone to use.

I doubt that I will ever do much instagramming or snapchatting but, after reading Scott’s *Report* and listening to his presentation at the August Commission meeting, I am more aware than ever that the ways we communicate are rapidly evolving. If the Commission is to be a truly effective communicator, it must, at least to some degree, keep up. It is not enough to have a website with good content; that content must be easily navigated. And, it is no longer enough to simply have a website. The Commission must be willing and able to accommodate those who prefer to receive their information through alternative means. The Commission is grateful to Scott for providing us with a roadmap to the future. We hope you will support our efforts to keep pace in a rapidly changing world, and that, as you begin to see some of the enhancements I have mentioned above, you will let us know your thoughts. Perhaps you can even tweet your suggestions to us in the near future.



NEW ADVISORY OPINION

The Commission has adopted a new Advisory Opinion the text of which appears in full below. 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 Advisory Opinion from the Commission. Written Advisory Opinions carry the full authority of the Commission and 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](#). Opinions can be searched using the "Ctrl +F" function".

Advisory Opinion of the NC Dispute Resolution Commission Advisory Opinion Number No. 32 (2016)

Adopted by the Commission on May 20, 2016

Revisions Adopted August 19, 2016

(No comments received; subject to final approval by DRC 11/18/16)

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 protect the public.

Concerns Raised

A court-appointed DRC certified mediator in a Family Financial Settlement (FFS) Program case asks for guidance in a situation involving a pro se Chinese speaking plaintiff and a pro se English speaking defendant. Plaintiff has indicated that she will bring a family member to act as an interpreter for her and all parties agree to that arrangement. Mediator specifically asks for guidance about the following concerns:

- 1. May the mediator permit the family member of the pro se plaintiff to serve as her interpreter at the mediated settlement conference?**
- 2. If the parties choose to summarize their terms on a Mediation Summary form (AOC-DRC-18) at the conclusion of the conference, in what language should the document be drafted?**
- 3. What are the recommended best practices for the mediator to follow to ensure that it is clear that the Mediation Summary was the product of a mediation involving at least one non-English speaking party?**

Advisory Opinion

1. May the mediator permit the family member of the pro se plaintiff to serve as her interpreter at the mediated settlement conference?

Standard IV “Consent” provides in part: “A mediator shall make reasonable efforts to ensure that each party understands the mediation process, the role of the mediator and the party’s options within the process.” Standard IV(C) provides: “If a party appears to have difficulty comprehending the process, issues or settlement options or difficulty participating in a mediation, the mediator shall explore the circumstances and potential accommodations, modifications or adjustments that would facilitate the party’s capacity to comprehend, participate and exercise self-determination.” In this inquiry, the pro se plaintiff needs the services of a language interpreter as an accommodation, and wishes to bring a family member to the mediated settlement conference to act as her interpreter.

While the Administrative Office of the Court (AOC) maintains a list of trained and qualified language interpreters, and provides language interpreters in some court proceedings, the AOC does not provide them free of charge for mediated settlement conferences. (AOC interpreter staff can be reached at (919) 890-1407 or OLAS@nccourts.org). Many parties needing language accommodation are unable to afford the services of a trained and qualified language interpreter, and as here, elect to bring a family member/friend to the mediated settlement conference to act as an interpreter. The mediation process belongs to the parties and a party needing language accommodation is permitted to and responsible for, deciding who his/her interpreter should be. The mediator may permit the family member/friend to attend the conference and serve as interpreter for the party needing the accommodation, subject to the mediator’s exercise of his/her professional judgment that the family member/friend can interpret sufficiently to provide reasonable assurance of the party’s understanding during the conference, and unless doing so would not be in compliance with the applicable program rules. This accommodation facilitates the party’s capacity to understand the mediation process, the role of the mediator and the party’s options within the process as contemplated by Standard IV.

It is important that the thoughts and ideas of each party are heard and understood by the other party(ies) and the mediator. A literal word by word recitation is rarely possible since there is not a one-to-one correspondence between words or concepts in different languages. However, the mediator should clarify that the interpreter will relate as completely as possible all that is said during the conference and not just a summary and should encourage the interpreter not to engage in conversation with a party separate and apart from the specific statements made and/or questions asked.

A mediator’s duty under Standard IV does not, however, create a duty on the mediator to explore the availability of a trained and qualified language interpreter; rather it is the responsibility of the party needing the accommodation to make the decision as to the need for an interpreter and who the interpreter should be. If the mediator, in the exercise of his/her professional judgment is not satisfied that the interpreter can provide reasonable assurance of the party’s understanding during the mediation process, the mediator should recess the mediation, encourage the party needing accommodation to locate another individual who is able to provide reasonable assurance, and reschedule the conference.

Caveat—If a mediator is conducting a mediation for the Industrial Commission (IC), s/he should be sure to follow the IC’s protocol on the use of interpreters.

2) If the parties choose to summarize their terms on a Mediation Summary (AOC– DRC-18) at the conclusion of the conference, in what language should the document be drafted?

Since both parties are pro se in this case, the Commission recommends that any matters resolved at the mediated settlement conference be summarized on AOC-DRC-18, Mediation Summary, or a similar form. Advisory Opinion 28 (2013) advises that the parties may prepare the Mediation Summary or the mediator may act as a scrivener. The Summary is not a binding agreement and neither the parties nor the mediator should sign it. The

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STILL TIME TO RENEW FOR FY 2016-17: The FY 2016-17 renewal period ended on September 30, 2016. The certification(s) of mediators who failed to renew have now lapsed and their contact information has been removed from the Commission's website. Mediators who still wish to renew may do so online at www.ncdrc.org. A late fee will be assessed.

UPDATE ON WEBSITE: The Commission is working with AOC to restructure its website so that the information is more easily accessible. Be sure to read Judge Cash's "From the Chair" article and Scott Sutton's Executive Summary of the in-depth research that was conducted this past summer about the efficacy of the website and the introduction of social media as an additional tool for the Commission to communicate with its stakeholders. And, please note that many of the forms in the Mediator Toolbox are now fillable, including sample mediation agreement forms.

COMPLAINTS: The Commission received four complaints during the third quarter of 2016. Two complaints were referred to the Commission's Grievance and Disciplinary (GDC) Committee and two were referred to other agencies. Two decisions of the GDC, one relating to a mediator who was disciplined and one relating to a certification applicant whose application was denied, have been appealed and are set for hearing before the full Commission.

FY 2015-2016 MSC and FFS PROGRAM SETTLEMENT RATES: The AOC has released FY 2015-2016 statistics for the MSC, FFS, and Clerk mediation programs (see pages 18-19). In the MSC Program, of the cases mediated, 58.6% settled. In the FFS Program, 68.6% settled. 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 64.7% in the MSC Program and to 70.8% for the FFS Program. The Commission considers the latter percentages to be more representative of the true impact of the MSC and FFS Programs, believing that the order to mediate serves as a catalyst for these early settlements. These rates are consistent with the settlement rates over the last several fiscal years. Less than twenty matters before Clerks were mediated statewide. The Commission thanks AOC staff member Stephanie Nesbitt for her assistance in compiling the statistics. Copies of annual caseload statistics are posted and archived on Commission's website.

FY 2015-2016 CERTIFICATIONS: During the fiscal year ending on June 30, 2016, the Commission issued approximately 1800 certifications, held by just shy of 1600 mediators, as several hundred mediators hold dual or triple certifications. Total certifications were: 1,305 active MSC, 90 inactive MSC; 340 active FFS, 21 inactive FFS; 147 active Clerk, 13 inactive Clerk; and 40 District Criminal Court.

CLERK MEDIATION PROGRAM COMMITTEE ESTABLISHED: The DRC and NCBA Dispute Resolution Section have agreed to establish a joint Clerk Mediation Program Committee to explore ways to encourage clerks to better utilize the Clerk Mediation Program. Three clerks have expressed an interest in establishing pilot sites in their counties and the Committee will be working with these clerks. Stephanie Nesbitt of the AOC and Bill Wolcott of the Section will serve as joint chairs of the new Committee.

CME OPPORTUNITIES : DRC APPROVED PROGRAMS



Lessons Learned from DRC Advisory Opinions

When: December 16, 2016

(Video Replay - in person attendance)

Where: Boone, NC

Sponsor: Watauga County Bar Association

CME Credit Hours: 2.0

** This is a part of a six-hour program, "Criminal Law Update and Negotiation and Mediation", approved for 6.0 hours of CLE. For additional information and/or to register, email: aduvoisin@nclandlawyer.com*

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.](#)



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.](#)

The New and the Notable in Mediation 2015 Selected from 2015 Dispute Resolution Section Meeting, January 30, 2015.

When: On Demand

Sponsor: NC Bar Foundation

CME Credit Hours: 1.0

** This sessions addresses new Advisory Opinions (including one providing guidance on confidentiality and inadmissibility), revised Standard III.D, recent revisions to Advertising Guidelines, and news/revised forms on the DRC Website.*

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

question arises, “In what language should the Mediation Summary be drafted?” Since English is the primary language used in North Carolina’s courts, it is recommended that the Mediation Summary be drafted in English. The mediator should then read the Summary to the parties, ask the trained and qualified interpreter or the family member interpreter to interpret its terms for the non-English speaking plaintiff, facilitate a discussion to ensure that all parties understand the terms of the Summary and afford them an opportunity to make any necessary corrections.

3) What are the recommended best practices for the mediator to follow to ensure that it is clear that the Mediation Summary was the product of a mediation involving at least one non-English speaking party?

The pro se parties may take the Mediation Summary to an attorney/attorneys of their choice to have them prepare a binding contract for the parties’ signatures or they may bring the Summary to the court and seek entry of an appropriate order. To alert the court to the language access issue, it is recommended as a best practice that the mediator add a provision at the end of the Mediation Summary indicating that the Summary was read to the parties and interpreted for the non-English speaking party. When the Mediation Summary is presented to the court for entry of a memorandum of judgment in that court proceeding, the court may then utilize the services of a qualified translator and/or interpreter pursuant to policies and procedures adopted by AOC which may provide said services at no cost to the parties in order to complete the necessary examination to ensure that all parties understand and agree to the terms of the memorandum of judgment prior to entry by the court.

The Commission suggests that the following or similar language be added to the Mediation Summary (AOC-DRC-18) when a mediator is conducting a mediation involving a non-English speaking party:

“This Mediation Summary was drafted in English, read to the parties by the mediator in English, and interpreted by _____ (name) for _____ (the non-English speaking party) in the following language: _____.”



The Commission congratulates member Lucas Armeña on receiving his Master’s of Science Degree in Emergency Management and Business Continuity. Mr. Armeña has been a member of the Commission since 2013 and chairs the Commission’s New Media Committee. He is an avid user of new/social media and frequently tweets about his work with the Commission.

Mr. Armeña is one of the founders of Airlas, LLC, (an acronym for Air, Land and Sea), a new company which focuses on emergency management; unmanned systems, including drones, driverless cars, and unmanned submersibles; and policy and regulation relating to unmanned systems.

Mr. Armeña lives in Fletcher, North Carolina and was appointed to the Commission by Governor Pat McCrory. The Commission congratulates Mr. Armeña on his graduation and wishes him much success with his new enterprise.





Judge Gary Cash, chair, presents Lynn Gullick with a plaque recognizing her six years of service to the Commission. Ms. Gullick served as both the Commission's Vice-Chair and as Chair for the Standards and Advisory Opinions Committee. Ms. Gullick resides in Greensboro.

Commission Works to Facilitate Participation of Parties Lacking Attorneys

Court staff often find that they must spend an inordinate amount of time on the telephone with unrepresented parties who have questions about their referral to mediation and the mediation process. Court staff has relayed this concern to the Commission and the Commission has taken steps to remedy the situation. Parties visiting the Commission's website at www.ncdrc.org will now see a tab on the left-hand menu labeled, "Information for Parties Without Attorneys". Visitors accessing that option may download comprehensive *Guides To MSC/FFS Mediation for Parties Not Represented by Attorneys*. These Guides describe the mediation process and the steps involved in participating. Also posted under this tab is a *Guide to Selecting a Mediator*, which provides information to parties on accessing and using the Commission's database of certified mediators. The Commission has now also posted links to program brochures and the Guides on the AOC's internal website, *Juno*, making these materials very accessible to court staff. The Commission invites both court staff and mediators to refer unrepresented parties to these materials. The Commission also reminds mediators and court staff that it has brochures on the MSC, FFS, Clerk, and District Criminal Court Mediation Programs available at no charge and that can be shared with unrepresented parties. Copies of the brochures can be obtained by calling the Commission's office at (919) 890-1415.

Ethics Corner

WHAT DO YOU THINK?

This new column for The Intermediary poses a scenario that has been the subject of a previously adopted DRC advisory opinion. Thirty-two advisory opinions have been adopted since 2001, and hopefully this column will help refresh mediators' recollection of older opinions. The Commission invites you to consider the inquiry and determine what you consider to be the appropriate analysis. Click here to read the advisory opinion, AO 23 (2012).

Concern Raised:

A mediator was contacted by an investigator from the NC State Bar who told the mediator that he was investigating a grievance filed against an attorney by the attorney's client. The grievance involved conduct that the client alleged occurred at a superior court mediated settlement conference. The investigator explained that he wanted to talk to the mediator about what had occurred at the mediation. May the mediator talk with the investigator about what happened at the mediated settlement conference?

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MEDIATION

They wouldn't settle. So I ate them.

Thanks!

The Commission thanks all certified mediators who renewed their certifications for FY 2016/17 and looks forward to the contributions you will make to our programs in the new fiscal year.

The Commission would also like to express its gratitude to those mediators who retired this year. This body has been grateful for your contributions through the years and will miss your participation.

Following is the Executive Summary from Commission intern Scott Sutton's NC DRC New Media Research Report. Scott spent the summer with the Commission evaluating its website and helping members and staff explore whether use of social/new media could help the Commission communicate more effectively with its many constituent groups. Scott's research involved surveying all certified mediators and conducting focus groups and interviews with mediators, court staff, attorneys, and others. As Judge Cash noted in his From the Chair piece on the first page of this newsletter, the Commission will be working over the coming months to begin to implement Scott's recommendations.

Executive Summary of NC DRC New Media Research Report

By Scott A. Sutton

Every year, thousands of North Carolinians are either ordered by the courts to participate in mediated settlement conferences or voluntarily engage in mediation to resolve disputes. The world of alternative dispute resolution in North Carolina involves many different people – mediators, attorneys, litigators, pro se parties, training organizations, program administrators and court staff – and many of them rely on the N.C. Dispute Resolution Commission (DRC) for information and/or support. This research project defined the information needs of the DRC's core audiences, evaluated the effectiveness of current DRC communications (especially the website), and explored the value of the DRC using social media tools to communicate with its constituencies.

The research shows there are six core audiences that seek information from the DRC: certified mediators, potential applicants for certification, attorneys, court staff, pro se parties and the general/interested public. Each one has unique needs and different preferred methods of receiving communications. DRC staff and the current communications are successfully meeting the basic information needs of each of its core audiences, with the exception of the general/interested public.

Certified mediators are the primary audience for the DRC and need the broadest range of communications, which can be categorized as informational (key updates), transactional (downloading forms) or developmental (CME opportunities). Although 73 percent of certified mediators are satisfied with the amount and content of information from the DRC, areas for improvement include increasing professional development information and ensuring communications are inclusive to non-attorney mediators. Nearly 82 percent of certified mediators surveyed said they have visited the website within the past year. The top two reasons for visiting the site were downloading forms, rules or other documents and applying/renewing for certification. With almost 2,300 total views in the first seven months of 2016, the Mediator Toolbox is the second most visited page on the DRC website after the main landing page. There is a need to improve ease of access to resources on the DRC website, not only to reduce frustration for mediators but also to reduce the volume of telephone calls with DRC staff seeking information which is available online. This also will conserve staff time and other resources, thereby resulting in cost-savings to the DRC.

About 40 percent of current mediators say they use social media for professional purposes, with the most popular social media channel being LinkedIn followed by Facebook and Twitter. Those who use social media are eager for the DRC to use it as well, citing advantages such as real-time engagement, the ability to reach broad audiences cheaply and quickly, and the desire to “keep up with the times.” Certified mediators who do not use social media professionally often have negative or neutral feelings toward the DRC using social media out of fear that it would replace traditional forms of communication (such as the website or email) or that it would open up ethical or reputational issues.

Potential applicants for certification come to the DRC for information on the value of becoming certified, for

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resources to help them through the process and to create their online profiles. Research shows that this audience's needs are being met by current communications; however, one continued challenge is finding mediators who are willing to be observed. Given that 95 percent of people aged and younger, and 75 percent of those between 30 and 40 years old, use social media, it is apparent that social media will be a preferred method of communication among future mediators.



Attorneys come to the DRC website for several reasons: to search for a mediator to mediate cases in which they are involved and to find program rules, forms, and occasionally review advisory opinions issued by the Commission for use in their litigation practices. Several attorneys who participated in the focus groups and who are not certified mediators indicated that they use social media in their practices and expressed support for the Commission initiating social media platforms.

Court staff rely on both the website and direct telephone calls with DRC staff to meet their information needs and to have their questions answered. Court staff are often looking for program information, including rules and forms, as well as occasionally verifying a mediator is in good standing before assigning him or her to a case. Court staff are very appreciative of how helpful the DRC staff are, but report that it can be challenging to quickly find relevant information on the website. Court staff also often find themselves searching for information on behalf of pro se parties, and believe that having clearer instructions from the DRC and an easier website to navigate would reduce this burden for them. Although court staff do use social media in professional capacities – such as a “closed” (to the public) Facebook group for the NC Judicial Support Staff organization – they did not see value in using social media to connect with the DRC.

Pro se parties rely on the website, court staff and DRC staff to help them navigate DRC programs and the mediation process. The website includes information for pro se parties, but it is lengthy, detailed and could be hard to understand if one is not familiar with the judicial system or has limited English proficiency. Staff field many phone calls from people needing assistance, and take time to walk callers through each step and show them where online resources reside. Making information clearer and more succinct, as well as making it easier to find online, will reduce the burden on court and DRC administrative staff. Given that nearly two thirds of all Americans use social media, and the average person uses social media for 1.5 hours a day, it is evident that pro se parties are likely to turn to social media channels to try to find helpful information about mediation, in particular in North Carolina's court-ordered mediation programs.

An important question for the NC Dispute Resolution Commission to answer is: What is the role of the DRC in educating the **general public** and the **litigating public** about the mediation process, its benefits and the availability of resources? This research showed there is great enthusiasm among mediators – especially non-attorney mediators – and partner organizations for the DRC to serve as a general authority on mediation and clearinghouse for information on alternative dispute resolution in North Carolina. And the consensus is that DRC communications are currently lacking in this area.

The DRC website shows up high in Google search results for N.C. mediation topics, but 45 percent of people who visit the DRC website's main page leave without clicking on any other links. Some of this is due to people going to the “Find a Mediator” application (which is on a different state government site), but many of these exits could be because a Google search brought someone to the page and they didn't find the information they needed.

Of note, the 10th most popular page on the DRC website links to the Mediation Network of North Carolina. This suggests that people are coming to the DRC website searching for information on additional ADR resources not strictly related to DRC programs. This finding is also backed up by anecdotal evidence from DRC staff, who report that the

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second or third highest volume of calls they receive result in referrals to non-DRC mediation resources. Ties to partner organizations, such as the Mediation Network of North Carolina and North Carolina Industrial Commission, should be strengthened to allow easier access to the right resources for the litigating public.

In conclusion, this project found that DRC communications, including the website, are fundamentally sound and contributing to a high level of trust and goodwill from certified mediators, court staff and partner organizations. The research also revealed improvement opportunities with all audiences, but especially with pro se parties and the general/interested public. It is clear that enhancing the DRC website and extending existing DRC information into social media are necessary to increase the effectiveness and efficiency of DRC communications with all audiences, help keep DRC costs low and close the information gap with the general/interested public.

The DRC thanks Scott Sutton for his hard work and is grateful to have his *NC DRC New Media Research Report*. Mediators should expect to see changes in www.ncdrc.org in the next several months and during that same period, the Commission will begin to experiment with new media, including LinkedIn and Twitter. Over the long term, there will be additional changes to the website as the AOC plans and implements cosmetic, navigational, and content improvements to www.nccourts.org and Commission materials are updated accordingly. It will be a long road, but, at the end, the Commission anticipates that it will have a much improved ability to communicate. The Commission will appreciate mediator feedback at all stages of this journey.

Reminder!!!

As we move into the holiday season, we often think about those whom we need or want to thank. Mediators often want to express their gratitude to those who gave them mediation work during the year or to remind others, who did not, of their availability. While the Commission understands and appreciates that such impulses are laudable, they can be misconstrued by others and even lead to ethical complaints.

The Commission reminds all mediators that Standard VII.H provides that, “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 of 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.”

This Standard, in essence, creates a bright line prohibiting gifts outside the conference and intended for any purpose other than furthering the mediation or observing cultural norms.

**Mediator
Certification Training
Opportunities**



**Upcoming Mediator
Certification Training**

The programs listed below are intended for those interested in mediator certification training and are not eligible for CME credit. CME approved activities can be found on page 7 of this newsletter.

Superior Court Training

Carolina Dispute Settlement Services: 40-hour superior court mediator training course. For more information or to register, Call (919) 755-4646, or visit their web site: www.notrials.com.

Mediation, Inc.: 40-hour superior court mediator training course, January 31 - February 4, 2017, in Charlotte. 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

Success Consulting and Mediation, formerly Atlanta Divorce Mediators, Inc.: 40-hour family mediation , February 23 - 27, 2017, in Atlanta, GA, and July 13-17, 2017, in Atlanta, GA. For more information, contact Melissa Heard at (770) 778-7618 or visit their web site at www.mediationtraining.net.

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

Mediation, Inc: 40 hour family mediation training course. 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. 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 training course. For more information or to register, contact the www.theADRcenter.org.

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

TEST YOUR KNOWLEDGE!



- ___ 1. AOC will pay for a language interpreter for non-English speaking parties in court- ordered mediated settlement conferences.

- ___ 2. A certified mediator is bound by the Standards of Professional Conduct for Mediators during mediated settlement conferences s/he conducts prior to litigation.

- ___ 3. A mediator may be compelled by the court to testify in an action filed to enforce or rescind a mediated settlement agreement.

- ___ 4. With the permission of both parties, a mediator may prepare a quitclaim deed for pro se parties who have settled their FFS case at the mediated settlement conference.

- ___ 5. The MSC Rules apply in voluntary pre-litigation mediation in public records disputes.

- ___ 6. A clerk of court has the authority to order a mediated settlement conference in a foreclosure action.

- ___ 7. A mediator may discuss what happened at a mediation with an investigator from the NC State Bar who is investigating the conduct of one of the attorneys in the case.

- ___ 8. If the parties cannot agree on a location for the mediated settlement conference, the mediator must schedule it in a location within the county where the action is pending.

- ___ 9. The mediator certification renewal period is from July 1 of a given calendar year through September 30 of that year.

- ___ 10. An attorney or non-attorney mediator who is also a notary public may notarize an agreement resulting from a mediation that s/he conducted.

Answers on Page 17

MEDIATION USED IN CRIMINAL SENTENCING

Excerpted from NEWS KGVO, Missoula, MT, by Peter Christian, October 11, 2016



“Just over a week ago, 43 year-old Eugene Statelen was sentenced to eight years with the Department of Corrections with five years suspended on charges of assault with a weapon and assault on a peace officer.

On December 31, 2014, Statelen was involved in a drunken dispute with his wife, and when Missoula County Sheriff’s deputies responded, Statelen attempted to run them down with his vehicle. Captain Tony Rio shot Statelen in the head and the arm, and the shooting was ruled to be justifiable.

The unusual part of Statelen’s case is that his sentence was not arrived at by a judge or a jury, but was the result of the first ever use of a new criminal mediation program through the Missoula County Attorney’s office. County Attorney Kirsten Pabst said the Criminal Mediation Initiative had been passed in 2009 by the Montana legislature, but had never been used in Missoula.

“Basically, it requires the consent of both parties,” Pabst said. “It requires an open mind to come and sit at the table to discuss ways to resolve a case. The Statelen case was essentially at a standstill and I got together with Mr. Statelen’s attorney to see if it would be worth a try, and it was successful. Captain Tony Rio, the officer who was the victim when Statelen tried to run him down with his vehicle, was really involved with me in the mediation process. The two parties were in separate rooms, and the mediator went back and forth and eventually came to a settlement for the sentencing.”

Pabst said Statelen has been placed in the intensive supervision program, which is not necessarily incarceration, but can be at any time,

“Mr. Statelen is considered to be an inmate in the eyes of the Department of Corrections,” Pabst said.

At his sentencing hearing on October 5, District Judge Robert L. ‘Dusty’ Deschamps said Statelen ‘got a screaming deal’ in his sentence.”

Read More: [Statelen Case First To Utilize Criminal Mediation in Sentencing](#)



True or False Answer Key:

1. F
2. T (Preamble to Standards)
3. F (7A-38.1(I))
4. F (AO 28 (2013))
5. T (7A-38.3E)
6. F (7A-38.3B; Clerk Rule 1.C(1))
7. F (Standard III, AO 23 (2012))
8. T
9. T
10. T (AO 20 (2011))

Upcoming Commission Meetings

All mediators are reminded that Commission meetings are open to the public. If you wish to be present, please let Commission staff know so that seating is assured. The next regularly scheduled meeting is scheduled for Friday, November 18, 2016, in Raleigh, at the NCJC. 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”.

MSC Program Statistics

Fiscal Year 2015-2016

MSC <u>Statewide Totals</u>	# OF CASES PENDING AT BEGINNING OF THE FISCAL YEAR	# OF CASES ORDERED TO MSC (AO-CV- 811) OR SENT BY LOCAL RULE (OMSC)	# OF CASES WHICH VOLUNTARILY SUBMITTED TO MSC (VMSC) <small>new as of 1/1/2012</small>	# OF CASES ORDERED/ SUBMITTED TO OTHER SETTLEMENT PROCEDURE SUCH AS Neutral Summary Trial, Arbitration, or Other (AO-CV-816)	DO NOT FILL IN	# OF CASES IN WHICH MOTION TO DISPENSE/ EXEMPT CASE FROM MSC WAS ALLOWED (SUPREME COURT RULE 1.C.6)	# OF CASES REPORTED SETTLED PRIOR TO OR DURING RECESS OF ADR (Report 806, 813 or 817); RELIABLE REPORT THAT CASE SETTLED OUTSIDE/WITHO UT ADR	# OF CASES FULLY RESOLVED IN ADR (Report 806, 813 or 817 indicates the parties reached an "IMPASSE")	# OF CASES NOT RESOLVED (Report 813 indicates the parties reached an "IMPASSE")	# OF CASES DISPOSED WITHOUT ATTENDING ADR (Dismissal, Trial or other type of disposition) CLOSED/ MOOT	DO NOT FILL IN	DO NOT FILL IN
A	B	C	D	E	F	G	H	I	J	K	L	M
County	Begin Pending*	Ordered or Sent to Mediated Settlement Conference (DMSC)	Voluntarily Submitted to Mediation Settlement Conference (VMSC)	Order ed or Submitted to Other Settle ment Procedure (MEDO)	T total Caseload for Fiscal Year	Ordered Exempted from ADR (MEDE)	Reported Settled Prior To or During ADR Recess (MED S)	Reported All Issues Resolved at ADR (MEDA)	Reported Impasse (not resolved) at ADR (MEDJ)	Disposed Without ADR Session (MEDB)	Cases Completing Process	End Pending
District 1 Total	110	74	9	0	193	0	0	17	11	0	28	165
District 2 Total	144	54	0	0	198	0	0	15	16	12	43	155
District 3A Total	103	111	8	1	223	3	34	42	40	28	147	76
District 3B Total	501	66	0	0	567	0	0	37	27	2	66	501
District 4A Total	15	13	6	0	34	0	0	20	11	3	34	0
District 4B Total	80	124	5	1	210	0	1	24	10	49	84	126
District 5 Total	394	0	3	2	399	2	5	69	56	175	307	92
District 6A Total	56	43	0	7	106	0	3	4	7	18	32	74
District 6B Total	72	19	0	4	95	0	0	7	0	0	7	88
District 7A Total	60	42	13	0	115	1	5	7	4	1	18	97
District 7BC Total	171	124	0	1	296	6	6	71	24	14	121	175
District 8A Total	58	38	0	0	96	1	6	15	8	20	50	46
District 8B Total	158	123	0	1	282	6	8	23	20	64	121	161
District 9 Total	95	88	0	0	183	2	0	42	13	26	83	100
District 9A Total	88	31	0	0	119	1	0	7	7	0	15	104
District 10 Total	404	239	1	0	644	15	71	191	103	17	397	247
District 11A Total	312	92	7	1	412	1	4	39	41	28	113	299
District 11B Total	680	219	0	0	899	14	0	66	29	7	116	783
District 12 Total	81	253	0	0	334	25	76	71	43	0	215	119
District 13A Total	208	78	0	0	286	0	3	29	12	30	74	212
District 13B Total	126	112	0	0	238	0	6	8	11	54	79	159
District 14 Total	496	248	0	0	744	1	16	84	40	91	232	512
District 15A Total	146	97	0	2	245	0	0	26	29	15	70	175
District 15B Total	325	127	1	1	454	0	8	34	14	50	106	348
District 16A Total	32	61	4	2	99	1	13	25	18	7	64	35
District 16B Total	33	14	0	0	47	0	1	27	17	2	47	0
District 17A Total	76	31	1	0	108	0	2	9	7	0	18	90
District 17B Total	349	50	2	0	401	0	3	8	10	8	29	372
District 18 Total	309	500	0	0	809	0	0	159	102	145	406	403
District 19A Total	67	108	1	0	176	2	22	38	39	29	130	46
District 19B Total	61	99	1	0	161	2	21	25	14	19	81	80
District 19C Total	58	96	0	0	154	0	14	31	23	26	94	60
District 19D Total	424	51	0	0	475	0	0	18	10	16	44	431
District 20A Total	51	21	3	0	75	0	0	8	4	6	18	57
District 20B Total	73	155	8	6	242	2	0	54	45	62	163	79
District 21 Total	2,227	619	6	13	2,865	0	0	70	65	32	167	2,698
District 22A Total	211	143	0	0	354	3	20	45	41	38	147	207
District 22B Total	367	84	3	0	454	0	6	43	28	2	79	375
District 23 Total	96	69	2	0	167	0	8	19	15	12	54	113
District 24 Total	134	105	21	1	261	4	2	28	17	39	90	171
District 25A Total	366	54	0	0	420	0	0	19	13	8	40	380
District 25B Total	294	91	6	2	393	6	9	37	22	10	84	309
District 26 Total	434	1,022	49	21	1,526	8	241	325	324	72	970	556
District 27A Total	301	136	0	0	437	1	0	64	46	34	145	292
District 27B Total	82	92	6	0	180	1	0	34	23	25	83	97
District 28 Total	457	157	15	1	630	3	17	57	23	55	155	475
District 29A Total	188	33	4	0	225	0	0	6	0	8	14	211
District 29B Total	266	76	4	0	346	0	9	21	24	19	73	273
District 30A Total	153	83	0	0	236	2	0	20	19	9	50	186
District 30B Total	337	83	0	0	420	1	0	24	5	10	40	380
FY 15-16 MSC TOTAL	12,329	6,448	189	67	19,033	114	640	2,162	1,530	1,397	5,843	13,190

FFS Program Statistics

Fiscal Year 2015-2016

FFS Statewide	# OF CASES PENDING AT BEGINNING OF THE FISCAL YEAR	# OF CASES ORDERED TO FFS MSC (AOC-CV-824) OR SENT BY LOCAL RULE (MSC)	# OF CASES WHICH VOLUNTARILY SUBMITTED TO MSC (VMS C) <i>new as of 1/1/2012</i>	# OF CASES ORDERED TO JUDICIAL SETTLEMENT CONFERENCE (AOC-CV-826, SIDE 2)	# OF CASES ORDERED TO OTHER SETTLEMENT PROCEDURE (e.g., Family Law Arbitration, Collaborative Law) (AOC-CV-826, SIDE 1)	DO NOT FILL IN	# OF CASES IN WHICH MOTION TO EXEMPT CASE FROM FFS WAS ALLOWED	FOR CASES REPORTED SETTLED PRIOR TO OR DURING RECESS OF ADR (REPORT 827, 834); RELIABLE REPORT THAT CASE SETTLED OUTSIDE	REPORT 827 OR 834 INDICATES THE PARTIES REACHED "AN AGREEMENT ON ALL ISSUES"	REPORT 827 OR 834 INDICATES PARTIES REACHED "AN AGREEMENT ON SOME ISSUES"	REPORT 827 OR 834 INDICATES PARTIES REACHED "AN IMPASSE"	# OF CASES DISPOSED WITHOUT ATTENDING ADR (Dismissal, Trial, or other type of disposition) CLOSE D/ MOOT	DO NOT FILL IN	DO NOT FILL IN
A	B	C	D	E	F	G	H	I	J	K	L	M	N	O
County	Begin Pending*	Ordered to Mediation Settlement Conference (MSC)	Voluntarily Submitted to Mediation Settlement Conference (VMS C)	Ordered to Judicial Settlement Conference (JSC)	Submitted to Other Settlement Procedure (OSP)	Total Caseload for Month	Ordered Exempted from ADR (ADRE)	Reported Settled Prior to or During ADR Recess (ADRT)	Reported All Issues Resolved at ADR (ADRS)	Reported Partially Resolved at ADR (ADRP)	Reported Impasse (not resolved) at ADR (ADR)	Disposed Without ADR Session (ADRW)	Cases Completing Process	End Pending
District 1 Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District 2 Total	31	21	0	0	0	52	3	0	6	1	6	5	21	31
District 3A Total	18	50	0	0	0	68	0	0	23	1	23	21	68	0
District 3B Total	1,717	381	0	0	0	2,098	18	43	30	3	16	484	594	1,504
District 4 Total	61	1	79	1	0	142	5	1	35	2	6	1	50	92
District 5 Total	373	262	0	0	0	635	0	0	71	0	15	177	263	372
District 6 Total	1	13	0	1	1	16	0	0	7	0	5	0	12	4
District 7 Total	0	0	9	0	0	9	0	0	5	1	1	1	8	1
District 8 Total	13	18	0	0	0	31	1	1	10	0	4	3	19	12
District 9 Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District 9A Total	4	3	0	0	0	7	0	1	4	0	0	0	5	2
District 10 Total	189	301	14	13	0	517	5	1	88	7	60	166	327	190
District 11 Total	176	203	0	0	0	379	2	2	22	4	18	127	175	204
District 12 Total	263	332	0	1	0	596	41	0	55	13	32	198	339	257
District 13 Total	1	0	0	0	0	1	0	0	0	0	0	0	0	1
District 14 Total	95	36	0	0	0	131	0	0	4	9	3	0	16	115
District 15A Total	0	0	4	0	0	4	0	0	0	0	0	0	0	4
District 15B Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District 16A Total	10	20	0	0	0	30	0	3	4	1	7	1	16	14
District 16B Total	91	36	0	0	0	127	0	0	4	7	3	0	14	113
District 17A Total	21	34	0	0	0	55	0	0	15	2	4	8	29	26
District 17B Total	0	0	0	0	0	0	0	0	0	0	0	0	0	0
District 18 Total	479	241	4	0	0	724	3	7	57	12	11	171	261	463
District 19A Total	4	27	30	0	0	61	0	0	21	8	22	8	59	2
District 19B Total	62	96	5	38	0	201	6	40	49	4	25	4	128	73
District 19C Total	4	29	3	0	0	36	0	0	18	0	9	4	31	5
District 20A Total	14	29	0	0	0	43	0	0	18	0	6	12	36	7
District 20B Total	133	156	0	0	0	289	0	0	131	0	0	65	196	93
District 21 Total	0	396	25	0	0	421	8	0	24	8	26	147	213	208
District 22A Total	0	2	52	0	0	54	0	0	19	5	30	0	54	0
District 22B Total	108	1	2	0	0	111	0	0	5	3	1	0	9	102
District 23 Total	2	40	1	0	0	43	3	4	7	2	12	15	43	0
District 24 Total	104	39	2	0	0	145	0	1	20	0	12	11	44	101
District 25 Total	198	127	10	0	0	335	5	2	22	5	31	60	125	210
District 26 Total	771	42	2	79	0	894	1	0	25	1	27	4	58	836
District 27A Total	132	0	10	0	0	142	0	0	3	1	0	21	25	117
District 27B Total	23	75	0	3	0	101	0	0	12	0	0	71	83	18
District 28 Total	31	107	1	0	0	139	0	0	38	1	11	70	120	19
District 29A Total	27	43	0	0	0	70	1	0	4	1	10	12	28	42
District 29B Total	133	8	7	21	0	169	0	0	11	2	22	33	68	101
District 30 Total	0	58	2	7	1	68	0	7	35	9	6	6	63	5
Total FY 2015-16	5,289	3,227	262	164	2	8,944	102	113	902	113	464	1,906	3,600	5,344