

MINUTES
Custody Mediation Advisory Committee
July 30, 2021

The Custody Mediation Advisory Committee (CMAC) met online via WebEx on Friday, July 30, 2021. The Honorable J. Corpening called the meeting to order at Noon.

CMAC Members:

Judge J. Corpening, Committee Chair
Sheila Eley
Cheryl Howell
Rick Igou
Judge Christine Walczyk
Marci Ward

NCAOC Staff:

Ryan Boyce
Stephanie C. Smith
Kari Marvin
DeShield Greene
Tara Minter

Welcome & Approval of Draft Minutes

Judge Corpening welcomed everyone to the meeting and reminded members that the meeting is being live streamed from a link on the Secretary of State's website to satisfy the state's open meeting requirements. Sheila Eley noted a correction for the March 19th draft minutes, changing the next meeting date from July 31 to July 30 in the Conclusion section. With that stated correction, she made a motion to approve the minutes, it was seconded by Rick Igou and subsequently approved by all members.

Custody Mediation Program Update

Stephanie Smith shared that the new mediator in District 23 is the sixth mediator to complete his 40-hour training online in addition to the observation and co-mediation requirements. There was a training in March on Trauma-Informed Court Practices, and the mediators attended the virtual international Association of Family Conciliation Courts (AFCC) conference in lieu of an in-person fall training.

Whether orientation and mediation sessions are hosted in-person or online is a local decision, and often Chief District Court Judges (CDCJ) want to know how the work is being done in other districts. Kari Marvin shared the results of the July Custody Mediation Workplan Survey. Orientations are largely taking place online, with slightly more than half of the districts using the Self-Directed Orientation and another 34% of districts hosting live online ZOOM sessions where the parties can ask questions. Similarly, almost all mediation sessions continue to be held on ZOOM. Mediators have been encouraged to discuss criteria standards with their CDCJ moving forward for when to offer in-person orientation/mediation sessions and when to offer online orientation/mediation sessions.

The Fiscal Year 2020-21 statewide statistics were shared. The total statewide caseload was 18,052 cases, with 14,625 cases disposed by the Custody Mediation Program; 40% of the cases disposed were not mediated, while 60% of the cases disposed were mediated. There was a significant increase in Failure to Appear cases. Drafts were written for 46% of the cases mediated, and 28% of the cases mediated were closed with a Parenting Agreement. Both the draft rate and the cases closed with a Parenting Agreement reveal

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slight declines over the previous two years. Mediators have reported difficulty in getting parents to return signed Parenting Agreements and intake forms. These changes are likely related to operating online rather than in person, and may also be attributed to the effects of the pandemic on the parties, i.e., stress, confusion, being overwhelmed, etc.

Orientation attendance increased slightly from the year before, with 17,870 in attendance compared to 16,891 the year before. Almost 60% attended by utilizing the Self-Directed Orientation, and 286 parties used the Spanish Self-Directed Orientation. Close to 40% attended Orientation through a live online ZOOM session hosted by the local Custody Mediation Office.

District 10 and District 26 topped the charts for the highest totals in cases mediated. District 12, District 18, and District 25 rounded out the top five. In District 25, they had 180 cases that were sent back to Custody Mediation by a judge. For perspective, the next highest total for cases sent back to Custody Mediation by a judge was 42 in Wake.

The statewide Parenting Agreement Template was put on hold as Bert Barber focused on timely technology needs related to Odyssey. Bert has now resumed work on the Parenting Agreement Template and there will be project updates at the next CMAC meeting in November.

Legislative Request

Ryan Boyce was contacted by NC House Representative Dennis Riddell regarding concerns shared by several of his constituents that the goals of the Child Custody Mediation Program had not been sufficiently explained. Representative Riddell shared language he was considering for a bill that would require mediators to hand the parties copies of NCGS 50-13.01 and 50-13.2. Ryan provided Representative Riddell with a link to the Orientation Book, *Putting Children First*, suggesting the language in the book is geared towards helping parents understand the Custody Mediation Program and may be more useful than statutory language. Rick Igou stated he likes the idea of a brochure rather than handing out the statute. The NC Dispute Resolution Commission has generated brochures that explain each of their programs and Rick frequently distributes them to parties.

Stephanie explained that Orientation is mandatory and the goals of the program are infused throughout the video, booklet, and mediator presentation. Steps have been taken to make Orientation easy to access whether in person or online. Stephanie has specific concerns about the following language in NCGS 50-13.01: “Encourage both parents to share equitably in the rights and responsibilities of raising their child, even after dissolution of marriage or unwed relationship.”

Judge Corpening shares the same concerns as Stephanie around the word “encourage” at the start of every sentence in NCGS 50-13.01 because it is not what mediators do. Mediators create a positive environment for the parents to develop an agreement that works well for them and their child(ren). He explained that NCGS 50-13.1 (b) outlines the goals of the Custody Mediation Program and those goals can be included in the

Orientation book. Judge Corpening also stated that he doesn't want to "go down the rabbit hole" of handing out statutory language to court participants for all their filings, i.e., child support, equitable distribution, etc.

Ryan stated that he would work with the legislative team to educate Representative Riddell about mandatory Orientation and the messaging parents receive. Ryan will share with Representative Riddell that if statutory references are needed they can be added to the Orientation book to avoid any legislative mandate about mediators distributing statutes. Stephanie mentioned there used to be links to the appropriate statutes on the NCCourts Custody Mediation webpage. Judge Corpening offered his assistance to work with the legislative team or talk to Representative Riddell if it would be helpful.

Domestic Violence Screening Protocol

Stephanie shared that filming will begin next week for the educational video for opt-in parties. The video is designed to educate parties who are opting-in to mediation about the parameters of mediation, emphasizing that the mediator cannot act as an advocate. The pilot screening in Durham has been in place for over a year. Stephanie is exploring better ways for parties to opt-in rather than in open court.

Parenting Agreements Revising DVPOs

Stephanie reported that mediators have been trained to ensure that drafted Parenting Agreements do not conflict with contact provisions in a DVPO. However, with NCGS 50B-7(b) in effect, some mediators have been asked to draft Parenting Agreements that include provisions that conflict with the DVPO. CMAC members were asked to advise how mediators can navigate these challenging situations and whether the training/guidance should be updated. Cheryl Howell explained that the reason for the statutory change is to allow the judges to change and update DVPO provisions during full hearings. Stephanie indicated that cases are particularly difficult for mediators when parties are self-represented and/or when the protected party is not working with an advocate. Stephanie reported that having the DV screening protocol statewide will help address this issue.

Nisha Williams shared her perspective as a family law attorney and in her work with the NC Coalition Against Domestic Violence. She feels survivors should be empowered to create Parenting Agreements that work best for them, even if it conflicts with the DVPO, especially considering the custody provisions in a Parenting Agreement last until the child is 18 years of age. Nisha feels the information provided to survivors who choose to "opt-in" in the pilot project helps prepare them to engage in mediation from an informed and empowered position.

Judge Walczyk shared that mediators shouldn't feel alone in this because judges also struggle with the same issues. Because law enforcement personnel only have access to the DVPO and not the Parenting Agreement, she is concerned that parties could be arrested for violating a DVPO if the Parenting Agreement language superseded the DVPO.

Kari shared the Statewide Template clause with language indicating it is not the intent to have the Parenting Agreement supersede the DVPO. Judge Walczyk said the mediators use similar language in Wake. She encouraged mediators to help judges by being very clear with language about whether the Parenting Agreement is meant to supersede the DVPO. Cheryl offered that the language could be misleading, with parents believing the DVPO is still in effect when the Parenting Agreement has intentionally or unintentionally superseded it.

Judge Walczyk doesn't think mediators should shoulder the burden of determining whether the DVPO and Parenting Agreement match; rather, it is the judge's responsibility to compare the DVPO and the Parenting Agreement and then make the decision to sign it, reject it, set a hearing, etc. Judge Corpening agreed with Judge Walczyk and said that mediators should identify Parenting Agreements that conflict with the DVPO and should include the DVPO when submitting the draft Parenting Agreement for signature.

Judge Corpening concluded the conversation by saying that mediators should have conversations on a regular basis with their CDCJ to help set policies and procedures for the Custody Mediation Program at the district level.

Family Court Update

DeShield Greene reported that the Family Court Advisory Commission (FCAC) Uniform Parentage Act (UPA) subcommittee is waiting to see what the NC Bar Association presents in the legislative long session (Summer 2023) to determine if FCAC will support the proposal. In the meantime, the subcommittee is educating itself about the UPA and its impact on NC laws in order to provide information to the full FCAC membership.

Wade Harrison gave a presentation at the June 11, 2021 FCAC meeting on the use of referees in child support and custody matters after custody mediation efforts are unsuccessful. The FCAC discussed Rule 53 and will continue to examine and explore how referees could be used and whether Rule 53 needs to be tweaked. Judge Corpening added that the Conference of Chiefs voted to create a committee to examine a rewrite of Rule 53. He indicated referees could be particularly helpful in equitable distribution matters and that Mr. Harrison is involved with that group as well.

The pandemic highlighted the lack of communication the courts have with self-represented litigants. The FCAC discussed resources available to self-represented litigants, noting it is difficult to provide resources to communities with limited internet access. It was recommended that a list of community resources be developed. Lori Cole is working with the Community Outreach Coordinator at NCDSS to help identify and share resources for self-represented litigants in custody matters.

DeShield and Lori are working on a district court manager guide that will address management of general and civil cases; it will include case management of custody cases and custody mediation.

Human Trafficking

Tara Minter reported that the registration link is open for the NC Human Trafficking Commission conference being held Sept. 15-16. Tara is participating in the Demand Reduction Taskforce meetings. The group's purpose is to create a plan for NC to prevent people from soliciting human trafficking survivors. The U.S. Dept. of State's 2021 Trafficking in Persons report has been released, including a section outlining the pandemic's impact on human trafficking.

New Business

Judge Walczyk suggested that the CMAC should review the statutes regarding service and notice requirements in light of the upcoming Odyssey implementation. Judge Corpening agreed it is an important issue and asked that it be included on the next agenda. He asked Ryan if someone from the NCAOC Odyssey roll-out team could attend the next meeting, and Ryan confirmed someone from Brad Fowler's group would join.

Conclusion

The next meeting will be held November 19 at Noon. Judge Corpening concluded the meeting at 1:23 p.m.