

MINUTES
Custody Mediation Advisory Committee
March 24, 2023

The Custody Mediation Advisory Committee (CMAC) held a hybrid in-person/WebEx meeting on Friday, March 24, 2023. The Honorable J. Corpening called the meeting to order at Noon.

CMAC Members:

Judge Jay Corpening, Committee Chair
Sheila Eley
Michelle Hamilton
Kristen Hirsch
Rick Igou
Valerie Laney
Judge Christine Walczyk

NCAOC Staff:

Joseph Kyzer
Stephanie C. Smith
Kari Marvin
Stephanie Satkowiak
Lori Cole

Welcome & Approval of Draft Minutes

Judge Corpening called the meeting to order and welcomed everyone. The draft minutes from the November 18, 2022 meeting were shared in advance. After review, the minutes were unanimously approved without changes on a motion from Sheila Eley and seconded by Rick Igou. Judge Corpening welcomed new members Valerie Laney and Joseph Kyzer.

Custody Mediator Qualifications

The July 15th, 2022 CMAC meeting focused on proposed HB 607 that expanded custody mediation educational requirements to include Juris Doctorate degrees. As a result of the meeting, the CMAC recommendation was for the current statutorily required educational degrees to remain in place. Judge Corpening reported that Judge Heath listened to the recommendation and that section of HB 607 was removed from the bill. Judge Corpening will speak with Ryan Boyce and Joseph Kyzer to see if changes to custody mediator requirements are included in the technical corrections bill.

Custody Mediation Program Update

Stephanie Smith reported the Dispute Resolution Commission invited the Custody Mediation Program to participate in a meeting with judicial delegates from Ghana to discuss ADR programs. Stephanie shared that while they were primarily interested in labor disputes, they were impressed with the custody mediation program's orientation video.

New mediators were hired to serve in District 16A/20A and District 10, while interviews are taking place in District 19D. Several districts have unusual staffing patterns due to redistricting, but the AOC has tried to be creative in creating positions that are efficient, cost-effective, and make sense from a district standpoint. The spring training will be held April 24-25 at the NCJC. As part of the training, implementation of Odyssey in the pilot

districts will be discussed since the noticing to orientation task has been a challenge for the local implementation teams.

Stephanie is exploring the option of expanding A/N/D case referrals to custody mediation for resolution of visitation issues before the issuance of an order. Next steps would include training some custody mediators to conduct these mediations remotely and then slowly expand access this service. Stephanie explained that all parties to the action are typically ordered to attend and crucial to the session. Judge Corpening sees an opportunity for this to be a valuable resource, as mediation could provide a more nuanced approach to visitation that goes beyond setting minimum terms.

Kari Marvin shared survey results regarding how custody mediation services are being delivered. Only a few districts offer in-person orientation. Since July 1, 2022, more than 7,000 people have completed the English Self-Directed Orientation, and there have been 215 Spanish users. Self-Directed orientation is being used by 46% of the districts. One-third of districts are offering orientation through a live online presentation, and about 15% of districts offer hybrid options, i.e., attend in-person if you haven't completed the Self-Directed orientation by a certain date. Similar to orientation delivery, most districts are conducting the majority of mediation sessions online. For 51% of the districts, all mediation sessions are online. In the remaining districts, there is a hybrid of delivery services, with 24% defaulting to in-person while 11% default to online. In 14% of the districts, it is a combination of mediator assessment and parent choice.

Kari also discussed the increase in failure to appear (FTA) cases between Fiscal Year 2018-19 and 2021-22, with an 8% increase (+1,289) at the statewide level. This increase was coupled with a corresponding decrease in cases mediated, indicating that the FTA cases are bypassing the Custody Mediation Program. FTA can close a case for not completing orientation or one mediation session. Mediators were sent district level information to compare with the statewide information. Some districts have a very low FTA rate (number of disposed cases that are FTA) while other districts were much higher than the state rate of 26%. With rates ranging from 1% to 45%, mediators were asked to examine what practices or policies might impact their FTA rates. Initial feedback for challenges that lead to higher FTA rates include insufficient or incorrect party information, parties not completing Parent Education in order to proceed in custody mediation, non-compliance with Local Rules, and parties experiencing mental health and substance misuse challenges. Policies and practices that help curb FTA cases include making connections with the local bar and paralegals, mediator discretion whether to meet online or in-person, multiple communication methods for appointment reminders (calling, texting, emailing), offering rescheduling opportunities, having uniform processes in all counties within a district, and ordering cases to mediation from the bench/judges sending cases to mediation if they bypassed mediation without a waiver. It was also noted that some cases have multiple FTA entries, and for some of the cases the parties also fail to appear for court. Judge Corpening suggested it may be helpful to look at the number of cases that have an FTA rather than the gross number of FTA entries. Odyssey codes differentiate between FTA for orientation and FTA for mediation session, which will provide important data when looking for remedies.

Kristen Hirsch suggested it may be helpful to look at the FTA rate for districts based on whether they check for service. Judge Corpening inquired whether a text or other reminder system could be utilized. Kristen has experimented with sending reminder emails to attorneys and parties. Attendance did improve, and she felt it saved time overall. Stephanie indicated it would be helpful if clerks collected email information, particularly in the Odyssey pilot districts, but currently that is not uniform in the pilot counties. Stephanie Satkowiak noted that the Tibera system used for DV e-filing automatically notes when service is complete, and she inquired if Odyssey can be leveraged to perform the same function.

Domestic Violence Update

Stephanie Satkowiak indicated that research with partner University of North Carolina (UNC) has entered the second phase, including interviews with court personnel and law enforcement in 10 e-filing counties and 10 non-e-filing counties. The National Center for State Courts is considering partnering with UNC to expand the research. The Children's Law Center in Guilford and Forsyth provide Guardian ad Litem representation for children identified in DV pleadings. Stephanie has linked them with professional researchers to understand the impacts of their program. Stephanie is exploring offering training to students at the NC State Veterinary school so they can help identify and report indicators of family violence. She is also exploring adding information to the bench card that includes abuse to animals within DV cases. Stephanie was asked to present on DV in New Hanover for 70 judges, paralegals, and attorneys. Underscoring the importance of DV training, one firm has already indicated they will make changes to ensure that inability to pay for legal services will not be a barrier for DV representation.

Family Court Update

Lori Cole reported that De Maca Adams joined Court Programs to fill the vacant Court Management Specialist position. Duties were shifted following DeShield's departure and now Lori is assigned to family court programs. The family court conference is set for April 26-28 at Great Wolf Lodge in Concord with 85 attendees registered, including 35 judges. During NCAOC budget requests, Court Programs requested staffing for the three new family court "expansion" districts (Districts 4, 19A, and 19C), 14 positions in understaffed districts, and six navigator positions so that the Access & Visitation (A&V) Coordinator roles can become permanent.

District 19D hired a family court administrator. Buncombe filled their A&V coordinator position in February. Mecklenburg is still searching, exploring ways to supplement the salary with local funds.

Conclusion

Judge Corpening acknowledged Sheila Eley's upcoming retirement and presented her with a letter from Director Heath thanking her for her service on CMAC since 2015. Judge Corpening concluded the meeting at 1:15 p.m. The next hybrid meeting will be held Friday, July 14th at Noon.