

**MINUTES**  
**Custody Mediation Advisory Committee**  
**July 7, 2023**

The Custody Mediation Advisory Committee (CMAC) held a hybrid in-person/WebEx meeting on Friday, July 7, 2023. The Honorable J. Corpening called the meeting to order at Noon.

*CMAC Members:*

Judge Jay Corpening, Committee Chair  
Judge Samantha Cabe  
Cheryl Howell  
Rick Igou  
Valerie Laney  
Judge Christine Walczyk  
Marci Ward

*NCAOC Staff:*

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 March 24, 2023, meeting were shared in advance. After review, the minutes were unanimously approved without changes on a motion from Rick Igou and seconded by Marci Ward.

**Abuse/Neglect/Dependency (A/N/D) Cases to Custody Mediation**

Stephanie Smith reported that, over the last ten years, the most frequent request for permanency mediation by the Court has been to resolve visitation issues prior to the entry of a final order. Sometimes this can be addressed in custody mediation per N.C.G.S. 7B 905.1(d). Other times, permanency mediation is more appropriate given the number of parties, the complicated issues, etc.

In an effort to meet the growing need and to expand the reach of the permanency mediation program with limited funding, Stephanie consulted with the NCAOC Legal Department to inquire whether the statute would allow custody mediators to facilitate permanency mediations. She was advised that it is allowable as long as custody mediators follow the statutory rules governing permanency mediation.

In order to expand the permanency mediation program, Stephanie has drafted amended rules for the program. These rules describe a virtual mediation model that has already been successfully tested in Chatham and Durham Counties. Due to budgetary constraints, custody mediators, with extra hours built into their positions, would be trained to work with contract permanency mediators. Stephanie asked the committee to review the *Authority of the Mediator* section on page 5 of the Uniform Rules:

**Authority of the Mediator**

*The mediator, with input from the parties or their attorneys, shall determine if the mediation can proceed when a person who has been ordered or invited to attend*

*Custody Mediation Advisory Committee – July 14, 2023*

*mediation does not appear. However, a represented parent or caretaker may not participate in mediation without the presence of their attorney or substitute attorney nor can a parent or caretaker participate without the presence of their guardian ad litem if one has been appointed.*

*During the session, the mediator may release any parties or attorneys, with their consent, if the mediator determines that the session can continue without their presence.*

Stephanie shared that professionals will often ask to leave when discussions or caucuses do not require their presence. The ability to do so decreases resistance to permanency mediation. No CMAC member was concerned with the permanency mediator having this authority.

Rick noted that the goals include providing a non-adversarial setting (page 1) and suggested that training for professionals involved in permanency mediation could be helpful. Stephanie agreed that training could be useful.

Rick asked if districts that use permanency prior to adjudication would be covered by these rules. Stephanie replied that budgetary constraints require her to focus resources on the greatest need which will in turn allow the program to grow. District 26, where permanency mediation has been utilized prior to adjudication for decades, will continue to be supported in that practice.

Judge Cabe offered that parent attorneys, Department of Social Services, and perhaps other interested stakeholders should have an opportunity to review the rules and provide feedback. Judge Corpening added that Guardian ad Litem and other “end users” could also provide valuable feedback. Lori Cole suggested sharing the draft rules with Family Court judges and Family Court Administrators. She added that it could be made clear that permanency mediation will not take place at the petition phase, except in District 26. Judge Walczyk pointed out that there would be overlap between permanency mediation and some family court staff responsibilities, so it would be important to clarify who is responsible for forms, etc.

Stephanie will share the draft rules with the recommended stakeholders and report back to CMAC in November.

### **Custody Mediation Program Update**

New mediators in District 10, 20A, and 26 are currently being trained, and District 12 will need to hire a new mediator soon.

Stephanie raised the issue of Parenting Agreements being easily viewable by the public through Odyssey via the public portal. Occasionally there are private details surrounding mental health or substance misuse, and mediators have been trained to include specific background information when there is limited parenting time because it can help the judge understand what prompted the limitations should the case return to court in the future. Stephanie inquired whether mediators should be educating parents in Odyssey

districts about the ease with which anyone can view their Parenting Agreement, including minor children. Stephanie has asked the NCAOC leadership if Parenting Agreements could be made “public not portal” (available only at the courthouse) and was informed that the current emphasis is on transparency and there is currently no statewide plan to treat Parenting Agreements differently than other public court documents, but districts may impose limitations in the Local Rules. Stephanie has also inquired whether parents could control whether their Parenting Agreement is posted on the portal or not, but she has not yet received an answer. Judge Walczyk explained that because each document in a case would need to be separately designated “public not portal,” it would be time consuming and likely not feasible/practical. Judge Corpening added that despite concerns around privacy, Parenting Agreements should include “baseline” information to help the judge understand any unusual arrangements if the case returns on a modification. Cheryl Howell agreed, stating there is no legal support for keeping this type of family information private, and it mirrors what would appear in a litigated order. Judge Walczyk is concerned about having children’s names and birthdays and the names of victims of sexual assault/domestic abuse available on the Odyssey portal for public view. Judge Cabe inquired whether there are any plans to have a system like the federal PACER system, where you need to register and have an access code to view information online. Judge Walczyk explained that “public not portal” in Odyssey is similar to the system Judge Cabe described, and it is being used for domestic violence and juvenile cases, where attorneys of record fill out a form for “elevated access” to those cases.

The Failure to Appear (FTA) rate has increased and draft rates have declined since the Covid-19 pandemic. An obstacle that has always plagued the Custody Mediation program is the inability to routinely track what happens with a case after it closes in mediation without an agreement. Previous research indicates many cases resolve prior to a judicial hearing, often building off the work that began in mediation. Unfortunately, those successes are not reflected in the statistics. Therefore, the program is looking for ways to improve/increase the collaboration between mediators and attorneys. One idea is to share, with permission from the parties, editable drafts that could be used as a building tool for consent orders while allowing the Custody Mediation Program to be credited with a shared draft.

### **Domestic Violence Update**

Stephanie Satkowiak expanded on Judge Walczyk’s comments regarding domestic violence victim’s information being available online. Stephanie indicated that in small counties, it can be easy to identify victims if enough information is available online due to the small population. She shared that the U.S. Department of Justice shut down a similar online system in Michigan and 8 million dollars was needed to rectify the situation.

The Children’s Law Center in Guilford and Forsyth provide Attorney Guardian ad Litem representation for children identified in high conflict custody and domestic violence matters. Stephanie has linked them with UNC researchers to understand the impacts of

their program. She is also working with them to investigate the impact of adverse childhood events (ACEs) and high conflict custody cases. Stephanie suggests that there is an opportunity to share information and data between the Children’s Law Center and the Custody Mediation Program. Stephanie shared that she has accepted a new position at NCAOC with Guardian ad Litem. Judge Corpening thanked Stephanie for her work on the committee and wished her well in her new endeavor.

### **Family Court Update**

Lori Cole reported that the Family Court Advisory Commission (FCAC) met in June and recommended changes to the Divorce from Bed and Breakfast statute that will assist judges in making determinations and findings. However, the proposed changes were not included in the NCAOC budget bill for the legislature so it will have to be brought by individual legislators if it is to move forward. Cheryl Howell added that the NC Bar Association has been working on creating legislation based on the Uniform Parentage Act and plan to introduce it during the next long legislative session. Cheryl also noted that the legislation clarifying how a referee can apply in domestic cases lost steam once a provision was added requiring that all referees must be attorneys. Judge Walczyk asked about the outcome of a bill allowing for divorce in less than a year and another bill proposing an assumption of 50/50 custody. Cheryl explained that neither bill made crossover.

Mecklenburg has had a long-term vacancy for the Access and Visitation (A&V) Coordinator position. The grant cycle is upcoming, and the AOC will have to examine the best deployment of A&V resources because the federal grant has remained static for a number of years.

Judge Corpening shared that in the recent meeting of Chief District Court Judges, Chief Justice Newby expressed that expansion of family court remains one of the goals of the Task Force on ACEs-Informed Courts. To that end, Chief Justice Newby has asked the NCAOC to support any district that wants to become a Family Court. In addition, there will be a goal to transition statewide to the “1 family, 1 judge” model of family court, regardless of the district’s family court status. Lori explained that the AOC requested additional staff members for family court, adding that family court best practices are more likely to be properly utilized when there is adequate staffing to implement the measures.

### **Conclusion**

Judge Corpening concluded the meeting at 1:10 p.m. The next hybrid meeting will be held Friday, November 17<sup>th</sup> at Noon.