

# DISPUTE RESOLUTION COMMISSION

NEWS AND UPDATES

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DRCMediators@nccourts.org

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## WELCOME NEW COMMISSIONERS

**The Honorable Phyllis Gorham** was appointed chair of the Commission by Chief Justice Cheri Beasley on October 1, 2020. Judge Gorham is the first woman to chair the Commission, and is the senior resident superior court judge in New Hanover and Pender Counties.



**Zachary Bolen** was appointed by Senate Pro Term Phil Berger on June 29, 2020, for a three-year term. Mr. Bolen is a licensed attorney and NCDRC certified superior court mediator. The main focus of his legal practice is employment law and workers' compensation matters. Mr. Bolen replaces Thomas Clare, who rotated off the Commission on September 30, 2020.

**The Honorable Lisa Johnson-Tonkins** was appointed by Chief Justice Cheri Beasley on October 1, 2020, for a three-year term. Ms. Johnson-Tonkins is the Clerk of Superior Court in Guilford County. She began her career with the NCAOC as an Assistant District and was elected Clerk in 2014. Ms. Johnson-Tonkins replaces the Honorable Susan Hicks, who rotated off the Commission on September 30, 2020.



**Ketan Soni** was appointed by Chief Justice Cheri Beasley on October 1, 2020, for a three-year term. Mr. Soni is a licensed attorney out of Charlotte. He is a past chair of the family law section of the Mecklenburg County Bar and is NCDRC dually certified mediator. He teaches Family Financial training with RSR. Mr. Soni replaces Judge William A. Webb, who rotated off the Commission on September 30, 2020.

**Jayne Zanglein** was appointed by Chief Justice Cheri Beasley on October 1, 2020, for a three-year term. Ms. Zanglein started the Agricultural Mediation Program in North Carolina and Virginia and over saw those federally certified centers for 10 years. She taught at Western University, has written numerous articles on dispute resolution and is an expert in employee benefits, and is a volunteer district criminal court mediator (certified) for Mountain Mediation Services in Jackson County. Ms. Zanglein replaces Diann Seigle, who rotated off the Commission on September 30, 2020.



**The Honorable John M. Tyson** was reappointed for a three-year term by Chief Justice Cheri Beasley and recently voted by Commissioner members as Vice Chair of the DRC.

**Charlot Wood** was reappointed for a three year term by the State Bar President Colon Willoughby.

## Newly Adopted Amendments to the MSC, FFS and Clerk Rules

On Wednesday, November 17, 2020, the Supreme Court of North Carolina adopted amendments to Rule 4 of the [MSC](#), [FFS](#) and [Clerk](#) Rules. These changes became effective on November 23, 2020.

**[MSC Rule 4](#) Duties of Parties, Attorneys, and Other Participants in Mediated Settlement Conferences (a) Attendance. (4) Excusing the Attendance Requirement.** Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of all parties and persons required to attend the conference and the mediator.

**[FFS Rule 4](#) Duties of the Parties, Attorneys, and Other Participants in Mediated Settlement Conferences (a) Attendance. (3) Excusing the Attendance Requirement.** Any party or person may be excused from the requirement to attend a mediated settlement conference with the consent of all parties and persons required to attend the conference and the mediator.

**[Clerk Rule 4](#) Duties of Parties, Attorneys, and Other Participants in mediation (a) Attendance. (7) Any person may be excused from the requirement to attend a mediation with the consent of all parties required to attend the mediation and the mediator.**

## Holiday Gift Giving Reminder!

During this holiday season, DRC staff would like to remind all mediators of [AO 36\(2018\)](#) regarding gift giving.

AO 36 refers to Standard 7(h) the gift rule:

A mediator shall not give any commission, rebate, or other monetary or non-monetary form of consideration to a party, or representative of a party, in return for a referral or due to an exception or a referral of clients for mediation services.

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 impartiality. However, a mediator may give or receive de minimis offerings such as sodas, cookies, snacks, or lunches served to those attending a mediation conducted by the mediator, that are intended to further the mediation or show respect for cultural norms.

## CONFLICT RESOLUTION DAY 2020!

The Dispute Resolution Commission held its annual Conflict Resolution Day on Thursday, October 15, 2020, via WebEx. The morning started out with a Welcoming video by Chief Justice Cheri Beasley, and past Commission chairs, Judge Ralph Walker, J. Anderson Little, Judge W. David Lee, and Judge Gary Cash and Leslie Ratliff, past executive director. Two CME (CLE) programs were presented by four experienced mediators; Jacqueline Clare, Thomas Clare, Robert Beason and Rene Trehy. To see the Chief's, past chairs and Ms. Ratliff's video, please visit the [DRC's Articles and News webpage](#).



## COMMISSION SEEKS COMMENT

At the recent December 2, 2020, meeting, the Commission approved changes to the below documents. All items have been posted to the [Commission Seeks Comment webpage](#). **Comments will be accepted until January 20, 2021.** Send all comments to [DRCMediators@nccourts.org](mailto:DRCMediators@nccourts.org).

**MSC, FFS and District Criminal Court Rule 8** - Modification to the rule provides a mediator who received a notice of a grievance from a professional licensing body additional time to report said notice to the DRC.

**Advisory Opinion A-2020** - This AO provides guidance to the mediator that they owe no duty to the lienholder and should be cautious not to disclose confidential information to the lienholder until such time the lienholder becomes a participant in the mediation.

## REVISION MADE TO THE DRC ADVERTISING POLICY!

The Commission has revised the Advertising Policy. To view the Policy in its entirety, please visit the [DRC Policies and Guidelines webpage](#). The following amendment was added to the policy:

*The Commission approves the use of terms that accurately reflect your past career(s) and experience(s). For example, a Judge who is no longer active may use the terms "District Court Judge – Retired" or "Retired District Court Judge" on letterhead, business cards and the like. Use of the term "Judge" without a qualifier may be perceived as using the prestige of your past position to advance your personal business interests and is not allowed.*

## NC COURT OF APPEALS RECENT OPINION REGARDING MEDIATION AGREEMENTS

The NC Court of Appeals recently published an opinion in the matter of [Mitchell v. Boswell, No. COA19-1077 \(N.C. Ct. App. Nov. 3, 2020\)](#). The decision was authored by Judge Hunter Murphy. Judge McGee and Judge Brook concurred.

The opinion provides "that [N.C.G.S. § 7A-38.1\(l\)](#) does not permit authorized agents to sign on behalf of a party. In adopting the language of N.C.G.S. § 7A-38.1(l), the General Assembly unambiguously omitted the authority to sign by authorized agent as it has included in other statute of frauds contexts." *Id.* The Court of Appeals held that "[t]he failure of the parties to sign the mediated settlement agreement renders it unenforceable as a matter of law." *Id.*

Please note, this opinion speaks directly to the superior court mediation program legislation, N.C.G.S. § 7A-38.1(l). However, the family financial program legislation, N.C.G.S. § 7A-38.4A(j), and the clerk mediation program legislation, N.C.G.S. § 7A-38.3B(i)(l), also contain the same language. This case may have a significant impact on your mediation practice, especially during COVID-19 where the Rules provide for remote attendance for all mediation settlement conferences.

Please review this case carefully and do not hesitate to contact DRC staff with any questions or concerns.

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