

DISPUTE RESOLUTION COMMISSION



NEWS AND UPDATES

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DRC NEWS and UPDATES!

Chief Beasley's Order, issued March 13, 2020, remains in effect. The Chief's Order contains an emergency directive that all superior court and district court proceedings be scheduled or rescheduled, for a date no sooner than April 12, 2020, unless the proceeding will be conducted remotely. Additional exceptions to this directive are listed within the Order of the Chief Justice of the Supreme Court of North Carolina. Therefore, all mediations under a DRC program shall be conducted remotely, if all parties agree. If all parties fail to provide their consent to conduct mediation via electronic means, the matter shall be rescheduled after April 12, 2020.

Dispute Resolution Commission Meeting Update

Pursuant to the DRC Rules, Rule 4(d), the chair of the DRC may call a meeting of the Executive Committee under DRC Rule 1(c)(1) to act for the Commission and make decisions on matters which require action before the next DRC meeting can be held. DRC Chair, Judge William A. Webb, called a meeting of the Executive Committee as the Dispute Resolution Commission's meeting, scheduled for March 20, 2020, had been cancelled due to the impact of the coronavirus and the date to reschedule is uncertain at this time. The matters covered in the Executive Meeting were as follows:

Mediator Dues. At the November 8, 2019 meeting, the Commission voted to increase mediator fees by \$25 per certification, however, due to the implementation of the Integrated Court Management System (ICMS), eCourts, the AOC is not able to update the DRC's Mediator operating system to implement the dues increase. The Executive Committee voted unanimously to suspend the increase in mediator dues until ICMS has been implemented.

Court-Appointed Admin Fee Increase. At the November 8, 2019 meeting, the Commission voted to increase the court-appointment administrative fee by \$25, from \$150 to \$175. The proposed rule change was posted for 30 days, and no comments were received. The Executive Committee voted unanimously to adopt the change to MSC and FFS Rule 7, increasing the court-appointed admin fee to \$175. This rule change will be submitted to the Supreme Court, with the other adopted proposed rule changes over the past year, in the upcoming months.

CME Documents allowing for Podcasts. At the November 8, 2019 meeting, the Commission voted to approve updating and modifying all CME documents to allow CME credit to come from programs as well as podcasts. The modified documents were posted for 30 days, and received a number of comments that were considered and implemented. The Executive Committee voted unanimously to adopt the changes to all CME documents.

Proposed AO-19. At the November 8, 2019 meeting, the Commission voted to approve AO-19 addressing the inability for a mediator to act as a Parenting Coordinator for one of the parties to the mediation, in the future. The AO was posted for comment. The Executive Committee voted unanimously to adopt Proposed AO-19. (AO-19 has been posted to the Advisory Opinion webpage and is listed on page 2-3 of this newsletter.)

**Advisory Opinion of the
NC Dispute Resolution Commission
Advisory Opinion No. 40 (2020)**

(Adopted and Issued by the Commission on March 24, 2020)

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. Later, the Policy was revised to provide that an Opinion be issued in instances where a mediator is disciplined publicly. In adopting the Policy and amendments thereto and issuing opinions, the Commission seeks to educate mediators and to protect the public.

Concern Raised

Mediator contacted the Commission to ask if a mediator may, after the conclusion of a mediation, whether successful or unsuccessful, thereafter serve in the role of a parenting coordinator for the parties if either assigned by the presiding judge or selected by the parties themselves.

Advisory Opinion

May a Mediator act as a parenting coordinator for the parties after conducting a mediation involving the same parties out of the same cause of action.

No.

Standard 7. Conflicts of Interest: A mediator shall not allow any personal interest to interfere with the primary obligation to impartially serve the parties to the dispute.

- (c). A mediator who is a lawyer, therapist, or other professional and the mediator’s professional partners or co-shareholders shall not advise, counsel, or represent any of the parties in future matters concerning the subject of the dispute, an action closely related to the dispute, or an outgrowth of the dispute when the mediator or his/her staff has engaged in substantive conversations with any party to the dispute. Substantive conversations are those that go beyond discussion of the general issues in dispute, the identity of parties or participants, and scheduling or administrative issues. Any disclosure that a party might expect the mediator to hold confidential pursuant to Standard 3 is a substantive conversation.

A mediator who is a lawyer, therapist, or other professional may not mediate the dispute when the mediator or the mediator’s professional partners or co-shareholders has advised, counseled, or represented any of the parties in any matter concerning the subject of the dispute, an action closely related to the dispute, a preceding issue in the dispute, or an outgrowth of the dispute.

This Standard provides a bright line rule on what will be considered a conflict of interest for a mediator. A conflict arises when a mediator acts as a professional in any capacity with one of, or both of, the parties in any matter concerning the subject of the dispute, before or after the mediation. The mediator may not mediate a case if the mediator has previously engaged in a professional relationship with one or both of the parties, if the matter to be mediated involves the same dispute, is an action closely related to the dispute, or is an outgrowth of the dispute. Additionally, the Standard prohibits a mediator from engaging in a professional relationship with one or more of the parties to a mediation, after a mediation has concluded, if the new professional relationship involves the same dispute, is an action closely related to the dispute, or is an outgrowth of the dispute. The relationship is considered professional when the person providing services obtains confidential or private information from the party requesting services.

The Parenting Coordinator is granted authority pursuant to NCGS § 50-92. The statutory language contained in NCGS § 50-92 does not specifically reference advising, counseling or representing the parties. However, a Parenting Coordinator is often immersed within the family dynamics throughout the duration of the PC's appointment. The Parenting Coordinator is acting as a professional and may be asked to make decisions based on their knowledge of the family and their surrounding circumstances. The intent of Standard 7(c) is to avoid a conflict by disallowing a mediator from engaging in a past or future, professional relationship with a party where the mediator has gained, or is able to gain, confidential information from a party during the mediation process. In the event a mediator gains confidential information during a family financial mediation, the information could influence the mediator/parenting coordinator's decision-making process in the future, thus affecting the PC's ability to remain neutral. Additionally, the Association of Family and Conciliation Courts issued *Guidelines for Parenting Coordination* (2019) that provides, "[a] professional shall not act as a PC with co-parents or others directly involved in the parenting coordination process if they previously provided professional services to the same parties....This includes, but is not limited to, service as a confidential mediator, court evaluator, child's attorney, guardian ad litem, child advocate, therapist, consultant, co-parenting counselor or coach." (Association of Family and Conciliation Courts, 2019). The Commission recognizes the Association of Family and Conciliation Courts as providing best practices for parenting coordinators.

The DRC continues to uphold the premise that mediators should not be in a position where they could benefit or profit from knowledge they learned in mediation. The Commission believes that later employment or the prospect of such employment arising out of a mediation creates a financial conflict or the appearance of a conflict. See AO 15 (2008) where a mediator was prohibited from becoming the administrator of the estate which was the subject of the mediation. See also AO 17 (2010), AO 20 (2011) and AO 21 (2012), where the Commission determined that a mediator may engage in roles supportive of the resolution of the dispute being mediated, even for pay, such as arbitrating, acting as a notary or reviewing documents.

Commission staff is working to keep all certified mediators up-to-date on newly signed orders, filing deadlines, and helpful hints on how to conduct distant mediations during this difficult time. On the [DRC website](#), staff has created a "Important Information for Mediators to Know" which contains information about state, federal, N.C. Business Court, and N.C. Industrial Commission mediations. It is recommended that mediators check the page frequently for newly posted information. Additionally, staff has posted a number of articles, provided by mediators, on how to conduct mediations through remote technology and Guidelines for Notaries.

The DRC office is closed during this time, however staff is working remotely. The phones have been forwarded to Tara Kozlowski and you may email us at DRCMediators@nccourts.org, we will do our best to respond as quickly as possible.

Supreme Court of North Carolina Adopts Revised Mediation Rules

In conference on January 23, 2020, the Supreme Court adopted orders amending seven rule sets that affect mediation in North Carolina. These orders were **effective on March 1, 2020**.

SAVE THE DATE CONFLICT RESOLUTION DAY 2020!

The Dispute Resolution Commission is planning its annual reception for Conflict Resolution Day on **Thursday, October 15, 2020. More information to follow!**

MEDIATOR RENEWAL FY 2020-21

Mediator renewal will begin on July 1, 2020 and run until September 30, 2020. Mediators may now self-report their CME at any time by logging into their Mediator Profile and enter their course(s). To find more information on CME, please visit the [Continuing Mediator Education page](#).

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