



## MINUTES

**September 30, 2016 Civil Justice Committee Meeting**

**Duke University Law School**

**Present:** David Levi, Janet Ward Black, Sheila Eley, E.D. Gaskins, Rob Harrington, Calvin Hill, Robert Ingram, Anne Lloyd, Julian Mann, Darrell Miller, Michael Mitchell

**Also Attending:** Gary Cash, Amanda Lacoff, Emily Portner, Evelyn Pursley, Ann Reed, Will Robinson, Danielle Seale, Mildred Spearman, Jon Williams

### **Meeting convened at 10:45**

Gary Cash gave a presentation on mediation.

Hill observed that some cases are required to go to mediation in criminal law. Where Cash helps is in family court, and regularly have complex equitable distribution and visitation issues, mediators handle a lot of the cases and relieves other judges to handle other matters. Saves money and time. Success in Buncombe County.

Cash retired in 2010 as Chief District Judge in Buncombe County, then became a certified mediator. Does about 100 mediations a year. Appointed commissioner of Dispute Resolution Commission in Raleigh.

Commission composed of all different sectors. Statutory commission, primary obligation is to certify and regulate mediators and mediator training programs in state. Certify individuals to be certified mediators. Must have background check before certification, don't have to be attorney. Most mediators want to participate in some program that are promulgated by S. Ct. rules.

Mediated settlement conference program. Says that all Superior Courts shall send triage cases into mediation by certified mediators. District Court division, family financial mediation program, statute says same: family financial cases shall be mediated. Guess about  $\frac{3}{4}$  are being sent to mediation. Varies by culture of the various courts. Any issues of equitable distribution of assets, alimony, sometimes child support, but principally property distributions go to mediation. Separate mediation program for custody. Criminal district court mediation program, misdemeanors for mediation, trespass DA and defendant mediate certain criminal misdemeanors in the program. Defendant in case and prosecuting witness in case.

Levi asked about mediator identity and compensation.

Cash: custody mediators are state employees, all the other programs private, paid by the parties to the mediation. Mediators in community mediation centers for criminal misdemeanors, employees of community mediation center. But 1600 mediators are almost exclusively lawyers in private community. Paid either through court-appointment paid 150 per hour and admin fee, 150 dollars. If selected by parties as mediator, whatever the market will bear.

Levi noted that there was pro-bono mediation in federal court. A certain issue about donating time and not adding costs to litigation in mandatory mediation.

Hill says that there's a sliding scale and not everyone is paying full freight for the mediations.

Presiding judge can waive fees, and certified mediators must waive fee if ordered by the Court.

Study done by UNC School of government showing that mediation less expensive than litigating case.

Cash mentioned volume of pro-se litigation in domestic cases, more with English language barriers, more with mental health and addiction issues. Cash thinks those cases to be mediated.

Levi asked about future of program if the people least able to pay are most likely to have to use mediation.

Cash says that triage is going to be key for the future.

Levi asking whether the state employed mediator should be the model that is expanded out.

Culture will matter. Even with state-paid mediator, some districts may resist.

NCDRC.org helps with educating parties with mediation, etc. Support legislation that would authorize chief district court judges to designate ADR forum in their district, mediation, binding arbitration, etc.

Levi, what do you think of mandatory designation of pro se (primarily) cases to a state-paid mediator.

Cash would think that was a good idea. An efficient way to deal with pro se parties. Predict that local judges would be receptive to that.

Levi maybe pilot program.

Cash commented on the interim report. Wants a vision that goes more than 20 years down the road. Need a broader horizon, because system moves quickly.

Harrington asked about lower level misdemeanor and community mediation center.

Some of those mediators come out of DRC program, and some don't. There was ethical issues with some of those community mediator centers. Want to pull them under DRC certification.

Cash is not asking for anything specific about the interim report, except to simply look long down the road. Cash offers the DRC as help and information resource for the committee.

Levi notes that having an ongoing process, rather than an every few years commission, is the view of most of the Commission.

Harrington asked about Western District federal courts and the state system, same list of people for mediation. Is it same in Eastern District and Middle District? Systems in federal and state close to the same. Cash says that's true in the West, not certain elsewhere.

If coming out of court, have to be certified. District court can choose a non-certified mediator. Cash says the issue is that ethical lapses by non-certified mediator can't be disciplined by DRC.

Eley asked about getting around mandatory mediation. Cash says comes down to what the Chief District Courts are willing to do within their district.

Eley asked whether family court helps. Helps but there's a valley where the community is unsatisfied, then satisfied about 2 years afterward.

Levi observed don't need a special family court to get that kind of management, can be done through management.

Eley, says need strong chief and court management personnel including mediators, then okay.

Levi notes that our report need Chief District Court judge, should feel empowered and responsibility for management of the case in the entire district and should have authority, accountability, and responsibility for this.

Levi says reporting and accountability.

Robinson says that Chief Justice appoints the Chief District Judge.

Hill says that judges have election pressures to make sure they're keeping busy.

Harrington asked about relationship between Clerk of Court and Chief District Court Judge.

Hill says that there's a lot of relationship between Chief District and Clerk in his county, but don't know in other courts.

Robinson said that may suggest that Chief District Court judge may need training on administration of court, and leadership assistance from AOC about best practice of administration.

Seale state wide totals for district court, but not data for each county and district, but database not tracked by judge or by DA.

Very little monetary incentives differential chief district court judge from regular district court judge. Not much in terms of docket relief.

Maybe AOC reports should say more about how the district court judges are doing by district court judge, rather than aggregate.

Gaskins says not widely circulated among the bar, practicing lawyers doesn't look at these spreadsheets.

Cash one judge one case model more efficient.

Mitchell agrees.

**Broke for lunch at 12:00.**

**Reconvene at 12:32**

Levi talked about the schedule for the final report. Report come to the full committee 1<sup>st</sup> part of November, two weeks or so to read to think about and suggestions, then meeting prior to Thanksgiving, and that's the day when we adopt the report in final that meeting. Then Commission meeting in December and that will be all.

Minutes approved.

Robinson suggested adding case numbers and case volume in the civil justice system in civil and district court system.

p. 3 some statistics of AOC for paper storage, etc.

p. 3 case management and tracking, disposition times, case volume, etc. case for need for case management in system, pointing out NC standards for disposition times.

Two weeks for the research.

Talked a little about having a master organization overview of NC court system.

Robinson asked whether we had ideas of where e filing should be implemented first.

Levi whoever bought system maybe should make that decision.

About e-filing, Harrington about asking some general principles about electronic roll out, i.e. Superior Court, etc. Agreed not putting that in.

Mitchell maybe a set date for when e-filing takes place, will be recommended by tech committee.

Robinson add something about fines, fees, and penalties go back to the state.

Harrington: capitalizing clerk of superior court.

Capitalizing and other issues will be deferred to Jim Drennan.

Levi, suggests maybe general editor should identify the problem with pro se filing backing up everything in the system.

Mitchell, something at end with chart form of summary of recommendations.

Chart with principle, recommendation and objective.

**Ended 1:15pm**