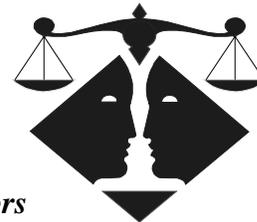


# The Intermediary



*A Bridge between the Dispute Resolution Commission and N.C.'s Certified Mediators*

Volume 3, Issue 9

June, 2003

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## *From the Chair*

*J. Anderson "Andy" Little*

I want to begin by congratulating the NCBA's Dispute Resolution Section on its successful annual meeting held in Wilmington on May 16-17. Not as theoretical as some past programs, insights were offered into how to manage and grow a mediation practice and how to build momentum in mediation even as prospects for settlement flag. It takes a lot of thought and hard work to put one of these programs together. If you were one of the 108 dedicated mediators who attended and enjoyed the program and learned from the speakers, please let Jackie Clare, Lynn Gullick or other members of the Council know.

Though 108 participants is a substantial showing, it is still a small portion of the 1,200 mediators certified in North Carolina. If you attended and were surprised that some of your friends and colleagues were absent, take a moment to mention to them that you enjoyed the program and the opportunity to network with others. Suggest to them that they really should go next year. If you were not present, find someone who was there and ask him/her to tell you more about the program. Next year, let's aim to double attendance! Continuing education is important and we should all be serious about developing our skills.

It is becoming a tradition for the Commission to schedule its spring retreat in tandem with the Section meeting. For those of you who may have missed it, the Commission met on Friday and Saturday morning before the start of the Section meeting. Although it is a little more hectic to do things this way, the Commission believes it is worth the extra effort for at least three reasons: First, tandem meetings facilitate Commission member attendance at the Section's Annual Meeting. The Commission believes that CME is important not only for mediators, but for members of the Commission as well. Second, the Commission believes it is crucial for mediators to have access to its members. The Commission numbers only fourteen and we cannot know what is happening in every judicial district. We depend on mediators to let us know what is working and what is broken and needs to be fixed. If you have concerns or questions, I hope that you sought out a member of the Commission or its staff. (If not, feel free to call our office now.) Third, the Commission wants to lend its support to the efforts of organizations like the Section. There are many agencies and organizations in North Carolina that are part of our dispute resolution family. For better or worse, we are all linked together and we need to do what we can to help ensure one another's success.

I know that many of you are probably wondering what is happening at the legislature. These are not easy times for any state sponsored service or program and dispute resolution programs are no exception. Some of you may have heard that the House eliminated funding for the Court Ordered Arbitration Program from its budget. The Senate proposes to keep the Program, but to alter it significantly. Suggestions for altering it include making it a user pay program like mediated settlement

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The Commission invites its readers to comment on any articles presented in *The Intermediary* or to write articles for inclusion. Send your thoughts to the editor, Leslie Ratliff, at [leslie.ratliff@nccourts.org](mailto:leslie.ratliff@nccourts.org). We look forward to hearing from you!



or downsizing it by eliminating some of the cases currently eligible for referrals, for example, appeals from magistrate decisions. The Court Ordered Arbitration Program has been operating successfully in North Carolina since 1987. Much hard work and effort has gone into this Program and it would be a shame if it is dismantled.

The legislature proposes to cut funding for the Dispute Resolution Centers by 8.2 percent. This figure would actually result in a slight funding increase over what was available to the Centers last year. The Commission received a small appropriation last year of approximately \$34,000 and will likely lose at least \$10,000 of that amount in this budget session. So far, the Custody and Visitation Mediation Program appears to be safe. I invite any and all of you to call or to write your legislators and let them know that you believe that dispute resolution programs are making a difference in our State and that any cuts or losses will be felt by litigants and the courts.

As we move into the warm months of summer, I hope that all of you are making plans to take a break from your mediation and other work and to enjoy some time off at the beach, the mountains or wherever your journeys take you. Travel safely and plan to return recharged and ready to give 100 percent to the courts and litigants of our State.



**Upcoming  
 Training**

**SUPERIOR COURT TRAINING**

**American Arbitration Association:** 40-hour superior court mediator training course, June 25-29, in Charlotte, NC, and September 17-21, in Raleigh, NC. For more information or to register, contact Kristina Morrison at (800) 982-3792.

**Beason & Ellis Conflict Resolution, LLC:** 40-hour superior court mediator training course, July 23-27, and November 12-16, in Durham, NC. For more information or to register, call (919) 419-9979.

**Mediation, Inc:** 40-hour superior court mediator training course, June 9-13, in Asheville, NC; September 17-21, in Raleigh, NC, and November 12-16, in Raleigh, NC. For more information or to register, contact Thorns Craven at (336) 777-1477 or (800) 233-5848 (NC only). Web site: [www.mediationincnc.com](http://www.mediationincnc.com).

**FAMILY FINANCIAL TRAINING**

**Atlanta Divorce Mediators, Inc.:** 40-hour family mediation training course, June 12-16, in Atlanta, GA; June 26-30, in Wilmington, NC; July 31-August 4, in Birmingham, AL; August 14-18, in Atlanta, GA; October 2-6, in Atlanta, GA; October 16-20, in Murphy, NC; October 23-28, in Nashville, TN; November 13-17, in Montgomery, AL; December 4-8, in Atlanta, GA. For more information, contact Dr. Elizabeth Manley at (800) 862-1425.

**Mediation, Inc:** 40-hour family mediation training course, July 16-20, in Raleigh, NC; October 15-19, in Raleigh, NC. 16-hour supplemental family mediation training course, September 26-27, in Raleigh, NC. See above for contact information.

**6-HOUR FFS/MSC COURSE**

**Professor Mark Morris** will offer the 6-hour course on September 20, 2003, in Durham, NC. To register go to: [www.nccourts.homestead.com](http://www.nccourts.homestead.com).

**ADVANCED MEDIATOR TRAINING**

**Atlanta Divorce Mediators, Inc.:** *Complex Issues in Divorce Mediation Cases*, August 21; *Advanced Training in Domestic Violence Issues in Mediation*, August 25-26; *Advanced Training on Child Issues and Parenting Plans in Mediation*, November 15. *Advanced Divorce Practicum: 16-Hour Advanced Divorce Mediation Practicum*, June 19-20; August 21-22; September 12-13; October 23-24; December 11-12. All advanced training in Atlanta, GA. See above for contact information.

# THE MULTI-DOOR LAW OFFICE



By Mark Springfield, Esq.\*

## Mediation

Mediation is always a potential option even before litigation. Among lawyers, mediation is often associated with a mandatory court process following the institution of formal court proceedings. Mediation has its roots, however, in community mediation centers that sprang up in the late 1970s and 1980s. Mediation was typically considered to be a way to resolve disputes in the community without having to go to court. There is no reason that using mediation to resolve a legal dispute must be a part of a court process.

Many communities have mediation centers that will contact disputing parties and invite them to participate in voluntary mediation. Certified lawyer mediators also abound in nearly every community. Clients with legal disputes and who come to a lawyer may not know of these options. If directed to a mediation center or certified mediator, a client, who would not be willing to pay for a lawyer's time to go to court because of the high cost, may be willing to pay for a lawyer's time to understand how mediation works, or to receive some basic negotiation skills, or to know what the legal remedy would be if the matter were in court, or for help selecting a good mediator.

## Collaborative Law

Collaborative law is an option that is relatively new to ADR, but in some cases has advantages over mediation. Collaborative law is typically associated with family law, because the concept originated twelve years ago with a family lawyer, Stu Webb, in Minnesota. In family law matters using collaborative law, couples agree with their attorneys that the issues surrounding the dissolution of a marriage, including custody, equitable distribution, and child or spousal support will be negotiated in the course of "four-way meetings." Both parties agree that their attorneys are disqualified from filing adversary proceedings in court, and that if a settlement is not reached, then different attorneys must be retained for liti-

gation. The parties agree to full and voluntary disclosure of information, and the attorneys use a problem-solving model of negotiation. Thus, attorneys seek to obtain resolutions that meet the needs of their clients, but work from the premise that the best way to get that result is also to figure out a way to meet the needs of the other spouse.

The collaborative process allows a broader use of the problem-solving negotiation model typically taught in mediation training; whereas in litigation, this model is often restricted in its usefulness because of the nature of the adversarial system. The collaborative approach also takes far fewer hours of attorney time than litigation and is therefore less expensive and quicker. Collaborative law in the multi-door law office could be an option for many kinds of disputes besides divorce, such as disputes among business partners, contentious probate proceedings, or contract disputes, particularly where the parties may wish to have an ongoing business relationship.

## "Unbundled" Legal Services

With the multi-door courthouse, some clients may be best served by *not* having an attorney represent them in a civil action, and may be better served by having an attorney help them represent themselves in order to get to one of the ADR processes. Thus, an attorney might agree to a limited engagement to review pleadings and explain the procedural and local rules of the court so that the client can represent him or herself in order to access the ADR process. This type of unbundled legal service has proven helpful, for instance, to a parent who needs a custody or visitation order, but who cannot afford the typical retainer for custody representation. With limited help from an attorney in preparing the complaint for custody, they are able to represent themselves in order to get to the mandatory custody mediation at the courthouse. (Continued on page 8)

In the February issue of *The Intermediary*, Andy Little noted that the new Mediated Settlement Conference Rules culminate almost twenty years of work by dedicated lawyers, judges and court officials and represent North Carolina's version of the multi-door courthouse. The multi-door courthouse is a reference to the introduction of alternative dispute resolution (ADR) into litigation to reduce crowded court dockets, speed the resolution of cases, and reduce the cost to litigants of having their civil disputes resolved. Over the last ten years in North Carolina, the multi-door courthouse has required attorneys to engage in ADR, often as a prerequisite to getting into the courtroom. This happy coercion has had the effect of changing, in a relatively short period of time, a great deal of lawyer skepticism about ADR into general acceptance and widespread use.

With ADR an accepted part of many lawyers' practices, with many lawyers having received training in mediation and negotiation skills, and with the multi-door courthouse in place, perhaps it is time to focus on the role of lawyers as the initial gateway to ADR processes. The broad array of ADR processes need not be reserved as adjuncts of the courthouse or as part of an adversarial mode of dispute resolution. Indeed, some ADR processes, such as collaborative law and certain forms of mediation work best if they are not part of the more adversarial processes of the courthouse. Even in those cases where the courthouse is the best option, lawyers might "unbundle" legal services to promote less expensive dispute resolution through the ADR processes now built into litigation. In other words, when it comes to helping people resolve their legal disputes, lawyers in their law offices should be the first place clients discover the multiple doors of alternative dispute resolution.

Some brief examples of a few options that might be discussed with clients as a matter of course in the "multi-door law office" include:

(Continued from page 7)

In conclusion, attorneys trained in mediation, negotiation, and other alternative dispute resolution processes can provide a real service to clients by exploring ADR options before reaching the multi-door courthouse. Moreover, the lower cost to the client for ADR services outside of the court system expands the market for legal services and creates new clients for attorneys. Persons unwilling or unable to pay the high cost of attorney representation in court may nonetheless be willing or able to pay for legal services in connection with ADR.

\* *Mark Springfield has been certified as a superior court mediator in North Carolina since May 2002. He is a solo practitioner in Raleigh and a founding member of the Carolina Collaborative Law Group. The editor thanks Mark for submitting this piece for inclusion in The Intermediary. If our readers have any comments about Mark's piece, we will be happy to print them as well as Mark's response.*

### Karen K. Griffith Joins Commission Staff

The Commission welcomes its newest staff member, Karen K. Griffith, who replaces Yvette Hohenberger. Karen is originally from Wisconsin, but has been in Raleigh since 1989. She holds a Bachelor of Music degree from Ohio State University and a Master's Degree in Library Science from the University of Pittsburgh. Before joining the Commission, Karen worked for the North Carolina Library for the Blind and Physically Handicapped. Karen's interests include classical music and dogs, especially rescues. Karen, who works 20 hours per week, will be assisting primarily with the Family Financial Settlement Program.

### Mediation Tip

Please move promptly to schedule cases for mediation once they are referred to you by the court. Court staff report that mediators sometimes wait on the parties to initiate contact and start the scheduling process with the result that valuable time is wasted. Both the MSC and FFS Rules make it clear that the mediator is the case manager and has responsibility for initiating the scheduling process. (See FFS Rule 6.B.(5) and MSC Rules 3.A. and 6.B.(5)).

If the parties will not cooperate with the mediator, e.g., they fail to return calls or to agree upon a date and location for the mediation, it is the responsibility of the mediator to pick a date of his or her own choosing and to notify the parties. If they fail to appear, the mediator should note that in his or her Report of Mediator.

Mediated settlement cannot expedite litigation if cases are not promptly scheduled and deadlines established by the court are not met. The Commission expects mediators to take their case management responsibilities seriously.



### Bike Trip Update: Welcome Back, Barbara!

Dispute Resolution Commission member and Asheville attorney/mediator Barbara Ann Davis completed her cross country bicycle journey on March 8, 2003. Why ride your bike across the country? In addition to the demanding physical challenge and quest for adventure, the ride was a self-designed fund raiser for breast and ovarian cancer programs in the riders' home communities. Many of you asked about the out-

come of the trip, Coast to Coast Cycling for Women's Health, which was featured in the previous DRC newsletter.

As a brief wrap-up, Davis recounts, "3,000 miles, 52 days (including 3 rest days), 7 states, 5 women, 4 flat tires (none for me), zero accidents or injuries, dumpy motel rooms, wonderful bed and breakfast stays, and incredible beauty in the ever changing terrain along back-country roads. Bayou swamps, roller coaster hills, flat rocky desert, pecan groves, high mountain passes, snow, hail, rain, headwinds, heat, but mostly stunning crisp winter days ... that about sums up our bike journey from St. Augustine, Florida to San Diego, California."

What did she gain from the experience? Davis said she "experienced the satisfaction of attempting a challenge so overwhelming that it seemed impossible, sticking with it and succeeding. I have a sense of confidence in my ability to tackle difficult situations and a renewed appreciation for a simple lifestyle in paring down possessions to the barest necessities. And I learned how to properly eat crawfish (it's true, you suck the heads and eat the tails) and to recognize the scent of an excellent Mexican restaurant from a downwind distance of 1/2 mile."

The team of 5 Coast to Coast riders raised a total of \$28,543, of which Davis raised \$10,266, from individual contributions. They were delighted to be able to provide financial support for direct services to the following North Carolina nonprofit organizations: Cornucopia House (Chapel Hill), Hope Chest for Women (Asheville), Pathways Life After Cancer (Asheville), and YWCA Women's Services Project.

### Annual Renewal Update

So far, about 60% of superior court mediators and about 70 % of family financial mediators have returned their certification renewal materials for fiscal year 2003/04. The Commission deeply appreciates the dedication and service of our certified mediators.