

# The Intermediary

*A Bridge between the Dispute Resolution Commission  
and North Carolina's Certified Mediators*



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*From the Chair*

*By*

*Judge W. David Lee*

With our current economic environment, I have a renewed appreciation for mediation and our various programs' roles in our court system. When resources are scarce, whether due to job losses or pay cuts, many citizens have difficulty affording the legal assistance they may need. Even if they have the money to file a lawsuit, protracted litigation and the cost of a trial may make their situation problematic. In effect, their access to our courts may be limited.

When money is scarce, our courts often "feel the pinch", as well. On March 17th, my colleague, and fellow Commission member, Judge Joe Turner, sent an e-mail to lawyers who practice in the District Court in High Point and Greensboro advising them that the District did not have enough judges to handle its current caseload. The District had been using Emergency Judges to plug the holes, but the Administrative Office of the Courts, Judge Turner advised them, had told him that money was no longer available for Emergency Judges. In order to cope, Judge Turner announced that the District would have to close sessions of court from time-to-time. Just like our citizens who have been hard hit, our courts must find ways to adapt to our current environment.

While our citizens grapple with these economic and related issues, I am convinced that our situation would be worse absent the mediation process. Since their inception, our mediated settlement conference programs have consistently led to the early settlement of thousands of cases. Just as importantly, they have allowed judges to better allocate their time, turning their attention to civil cases that did not settle in mediation or to criminal matters. Beyond our Superior Court's Mediated Settlement Conference Program and our District Court's Family Financial Settlement Program, Dispute Settlement Centers operating across our State are successfully mediating thousands of juvenile cases and misdemeanor criminal matters, further reducing the burden on our courts. In addition, those same Centers serve to resolve a wide array of disputes voluntarily brought to them by citizens hopeful of resolving their conflicts short of litigation and court involvement.

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Though our Clerk Mediation Program has yet to see much utilization, with our aging population, I can only surmise that this program will soon have an important role to play as Clerks and their staff struggle to meet the growing demands of siblings who cannot agree on how to best care for Mom or Dad or who cannot amicably resolve their disputes over the administration of a parent's estate.

If not for mediation, where would we now be? Where would we find ourselves in the months or even years to come? How many sessions of court would we have to close, how many citizens would be forced to live with conflicts that they have not the resources to address or resolve? Mediators do not receive enough credit for their work or their successes. I hope that those who are reading *The Intermediary* today will know that many, including the members and staff of the Dispute Resolution Commission, are grateful for their contributions and we recognize that our courts could not be as efficient or as productive without them.

Even with what is already being done, I know that mediators are continuing to look for creative ways to help citizens and to do even more to insure that our courts are efficient and productive. Our Executive Director, Leslie Ratliff, describes one such effort in her article included in this edition about the new foreclosure mediation programs that are springing up across our country in response to the economic crisis. I commend this article to you.

I, again, thank you for all you do for our citizens and courts. I am confident that your contributions will help to tide us through this dark period in our economic history and that mediators and mediation programs will survive this crisis stronger, more respected and in greater demand than ever before.

## NEXT COMMISSION MEETING



The next meeting of the Dispute Resolution Commission is scheduled for Friday, May 8, in Charlotte. An agenda for the May meeting will be posted at [www.ncdrc.org](http://www.ncdrc.org) two weeks prior to the meeting. All mediators are welcome to attend, but the Commission asks that you contact its office and let staff know you will be present, so that seating is assured.

*The Commission invites its readers to comment on any articles or information 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!*

## The Economy and Related Issues Raise Questions For Mediators & Lawyers

The Commission has begun to receive increasing numbers of calls from mediators and attorneys regarding some situations which appear to be related to the faltering economy. The information below is intended to assist mediators who find themselves in similar situations:

### Vanishing parties:

**Q.** *I was assigned by the court to mediate a case. I understand that the defendant has been evicted. Neither the plaintiff nor the defendant's lawyer have a current address for him. What should I do?*

**A.** In the situation described above, Betty Fuqua, an ex-officio member of the Commission and Superior Court Trial Court Coordinator in District 3A, suggests that the mediator might be able to find an address by contacting the institution that foreclosed on the property. Though parties have an obligation to keep the court apprised of their whereabouts and mediators are not obligated to do an exhaustive search, she notes that parties can sometimes be located with minimal effort. Failing that, she says that in her district mediators are advised to send notice to the last address they have for the missing individual and to hold the mediation and report on attendance. She adds that mediators should be sure and set the mediation far enough ahead to enable the post office to forward the notice in the event the defendant has supplied a forwarding address. Ms. Fuqua suggests that mediators may want to contact court staff to learn how such situations are handled in other districts. In no event should a mediator simply drop the matter because s/he cannot locate a party.

### The high cost of gasoline and/or rationed fuel:

**Q.** *Opposing counsel and I did not*

*get back to our court-appointed mediator quickly enough and he has now gone ahead and set a date for the mediation and scheduled it in the county where he lives rather than out here where we are. Can the mediator make us come to him?*

**A.** During the period that gasoline was so costly and, especially while it was being rationed in western North Carolina, it made it difficult for mediators to travel. The Commission's office was contacted by attorneys regarding mediators who sought to address this problem by scheduling their mediations close to home or who sought to be reimbursed for their mileage. MSC Rule 3.A. provides that, "Unless all parties and the mediator agree, the mediated settlement conference shall be held in the Courthouse or other public or community building **in the county where the case is pending...**" In addition, MSC Rule 7.B. limits court appointed mediator compensation to a scheduling fee and hourly rate for service as the mediator. Compensation for mileage or windshield time is not permitted regardless of the cost of travel. Mediators who have agreed to accept appointments in districts that lie at some distance from their homes, may want to consider removing themselves from some of the lists. To avoid unnecessary travel when costs are high, it is also important for mediators to check the day before or even the morning the mediation is scheduled to be held, to confirm that the case has not settled pre-mediation. Attorneys can help by remembering to call their mediator as soon as possible if they are able to reach an early settlement.

If a mediator cannot, in fact, obtain the fuel to travel because of ration-

ing, s/he should consider rescheduling the mediation, if the parties are not willing to travel to the mediator's location. Though mediated settlement conferences are intended to be held face-to-face, if the parties cannot reschedule or the deadline is approaching, with everyone's agreement, the mediation could be held by conference call.

### The check is in the mail (or maybe not):

**Q.** *A party won't pay me, what should I do?*

**A.** If a mediator has not been able to collect his/her fee, Ms. Fuqua suggests that s/he may write to the Senior Resident Superior Court Judge or call his or designee for the MSC Program. Sometimes a judge or court staff will call an attorney and ask them to encourage their client to pay. Usually, Ms. Fuqua says, that is all it takes in her district. If a district is not willing to contact the attorney or does so and the client still does not pay, the mediator may file a *Motion And Order For Show Cause Hearing* (AOC-CV-815). It may not be cost effective to file the Motion for small amounts of money because the mediator will need to appear for the hearing and will have to pay the sheriff to serve the Motion.

**Q.** *A lawyer routinely selects me and has allowed clients to walk without paying me three times now? When I try to contact him about this situation, he refuses to take my calls. Do I have any recourse against the lawyer for my fees?*

**A.** The mediator may want to develop a contract for his/her mediation services which places an obligation to pay on both the attorney and party. This is arguably not professional conduct and the mediator might want to consider alerting the Chief Justice's Commission on Professionalism. ♦



## Mediation Used in Medicaid Disputes

Mediators are making a real difference in the lives of many of North Carolina's poorest citizens by participating in a new effort to use mediation to address appeals contesting reductions or denials of services under the Medicaid Program. Terri Masiello, a Dispute Resolution Commission member and Executive Director of the Piedmont Mediation Center in Statesville, sat for an interview with Commission staff to talk about this new and important effort:



*Q: Terri, can you provide a little background? Why are Medicaid appeals being mediated?*

A: It is no secret that health care costs overall are rising in North Carolina and that expenses associated with Medicaid, the federal health insurance program serving those with limited incomes, are growing. Our State's population is aging and many of our elderly are poor. The economic crisis is also driving many individuals and families to depend on Medicaid for health care emergencies and other services as jobs and health insurance are lost and savings depleted. In addition, our State has lost millions of dollars in the recent community services situation. In an effort to conserve resources, Medicaid responded to these situations by cracking down on services. State regulators asked Value Options, a service broker hired to approve many of the services provided Medicaid patients, to more carefully screen new requests for services and to re-evaluate services already approved. The result has been an increase both in denials of requests for new services and in terminations, suspensions or reductions of services already approved. Many, whose requests for services were denied or reduced, appealed to the Office of Administrative Hearings (OAH). The filing of all these appeals resulted in a tremendous backlog and delays at OAH. OAH Administrative Law Judge Don Overby, who is a certified superior court mediator, suggested to Chief Administrative Law Judge Julian Mann, who is also certified, that perhaps these cases could be mediated. This suggestion started the ball rolling and initial discussions were held with Diann Seigle, Executive Director of Carolina Dispute Settlement Services in Raleigh, and, later, Jody Minor, Executive Director of the Mediation Network of North Carolina (Network). Senator Nesbitt chaired a legislative committee which considered mediation in this context. Initially, discussions were about mediation of appeals involving mental health services only, but later expanded to mediation of all Medicaid appeals.

*Q: I have heard there were fears that North Carolina could lose federal funding for Medicaid if appeals were not processed timely?*

A: Yes, I also understand that there were concerns that could happen.

*Q: Temporary legislation (which sunsets on July 1, 2010) was adopted that provides for the use of mediation in Medicaid appeals. Can you tell us about the legislation?*

A: A note was added to G.S. 108A-54, to provide, that upon receipt of an appeal request from a Medicaid applicant or recipient to whom services have been denied or limited, the Chief Administrative Law Judge of OAH shall immediately notify the Network which then has five days to contact the applicant or recipient to offer mediation services. In effect, mediation has become the first step in the appeal process. If the applicant or recipient is willing, the mediation must be completed within 25 days of the submission of appeal request.

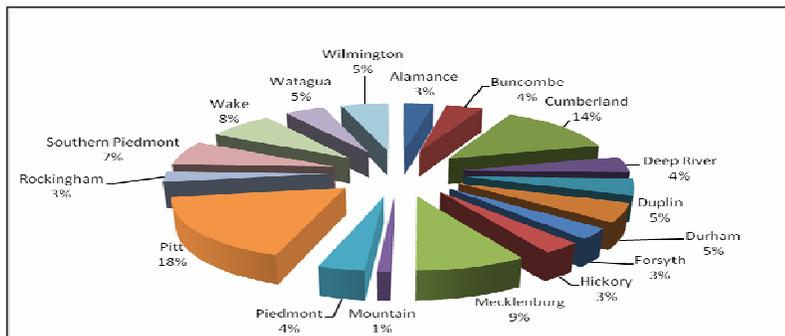
*Q: That seems like a really tight time frame. Can you tell me more about how the process works?*

A: The Network is responsible for dispersing cases among participating dispute settlement centers with the referrals going to the centers closest to the applicant or recipient petitioners. The Center actually contacts the petitioner and determines whether s/he is willing to participate in mediation. Generally, only the petitioner and a representative of Value-Options or the State attend, but others such as caretakers or social workers may also participate, particularly in instances where the petitioner needs additional support. The center schedules the mediation which may be held in person if the petitioner is willing and able to attend, or by telephone. Most sessions take about an hour. A mediator will, upon request, call a short recess to permit those attending to obtain legal or other advice usually by telephone. We advise applicants and recipients beforehand to ask anyone they may want to consult with, to be on standby during the mediation.

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*Q: Is mediation available statewide?*

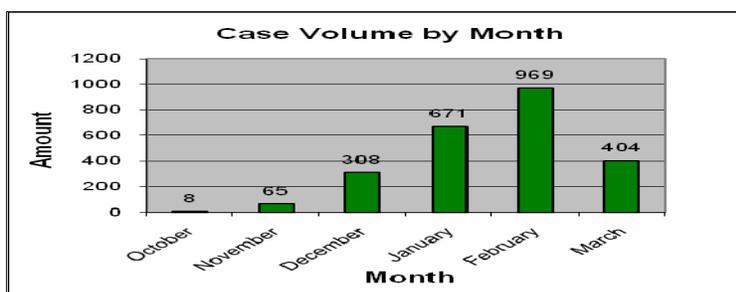
A: Currently 17 of the 23 dispute settlement centers operating in North Carolina are working to make Medicaid appeals mediation available statewide. (The pie chart below illustrates how the case load is distributed among the various centers.)



*Q: Terri, what kinds of situations have you seen in mediation?*

A: We have seen appeals involving denials or reductions in medical services across a range of issues. We have mediated denials of requests for medication and medical procedures. Many of the cases involved requests for community support or other services for emotionally disabled individuals. My center has also had a fair amount of cases involving minors and requests for orthodontia treatment or help with learning disabilities or physical disabilities. Requests for services such as private duty nursing or an attendant to accompany a disabled child to school have also been mediated. Recently, I mediated a case involving a family with a handicapped child. As the child grew, he could no longer turn his wheel chair around in their only bathroom. The only possible way to enlarge the bathroom to insure space for the wheelchair was to push out the back wall. The request had been denied because it resulted in increasing the square footage of the home. These types of discussions are well suited for mediation.

*Q: Jody Minor, tells me that between October 1, 2008, when the Network began to disperse cases and March 31, 2009, that 2,425 Medicaid appeals were referred for mediation. (Mr. Minor provided the graph below, illustrating total volume referred to all Centers from October, 2008, through March, 2009.) That's a tremendous number. How many referrals has your center received and has mediation been helpful in resolving them?*



A: From October 1, 2008, though March 10, 2009, we had 82 referrals. Mediation has been very successful. Not only are applicants or recipients accepting the offer to mediate nearly all of the time, but between 80-90 percent of the referrals are settling in mediation.

*Q: I am amazed that you can get both such high participation and such high settlement rates when you are mediating cases involving medical and mental health treatment issues.*

A: Unless a Legal Aid lawyer is involved, the reality is that these folks don't usually have funds to hire an attorney, so they can either come to an informal process like mediation or they can go to OAH and represent themselves in a formal legal proceeding. Most folks are intimidated by the latter. As for the settlement rate, sometimes applicants or recipients struggle to explain their needs and they understand how hard it can be to communicate with a big

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## **Commission Adopts New Advisory Opinion**

The Dispute Resolution Commission has adopted new Advisory Opinion 08-15, pursuant to its Advisory Opinion Policy. The Commission encourages all mediators who are facing an ethical dilemma or who have a question about rule interpretation to contact the Commission's office and request guidance. If time is of the essence, a mediator may seek immediate assistance from Commission staff over the telephone or by e-mail. The call and advice given will be noted in the Commission's Call Log. Mediators may also request a written opinion from the Commission. Written Advisory Opinions carry the full weight of the Commission. To view the Advisory Opinion Policy, go to [www.ncdrc.org](http://www.ncdrc.org) and click on "Mediator Ethics" and then click on "Advisory Opinion Policy". Previously adopted Opinions may also be viewed on the web. The full text of the new Opinion follows:

### **08-15 Advisory Opinion of the NC Dispute Resolution Commission**

(Adopted and Issued by the Commission on November 7, 2008)

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. In adopting the Policy and issuing opinions, the Commission seeks to educate mediators and to protect the public.

#### **Concern Raised**

The heirs of an estate had been unable to reach an agreement as to who should serve as the estate's administrator/fiduciary. The Clerk of Superior Court in the county where the matter was pending referred the dispute to mediation. During the mediation, the heirs, all of whom were represented by counsel, reached an agreement which named their mediator as the administrator. When the agreement was later presented to the Clerk for approval, one of the heirs objected to the appointment arguing, in effect, that she thought it was a conflict of interest for the mediator to agree to serve as the administrator. That individual told the Clerk that she had expressed concerns about the arrangement during the mediation, but that her concerns had been brushed aside and she had not continued to object. Inquiry was made to the Commission as to where it was appropriate for the mediator to agree to serve as the administrator/fiduciary.

#### **Advisory Opinion**

Standard VII addresses conflicts of interest. That Standard provides that, "A mediator shall not allow any personal interest to interfere with the primary obligation to impartially serve the parties to the dispute". Subsection E. of that Standard also provides that, "A mediator shall not use information obtained during a mediation for personal gain or advantage".

In agreeing to serve as the administrator/fiduciary, the mediator may have had a pure motive and felt that he was going the extra mile to help these heirs settle their dispute. Nevertheless, in accepting the appointment, he failed to give due regard to the conflict between the parties interests and the fact that he stood to gain personally and financially from his appointment as administrator.

Significant fees are often associated with service as an administrator/fiduciary or guardian. A mediator who promotes himself or herself as available to serve in that capacity creates the impression that he or she manipulated the mediation

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process or the parties with the ultimate goal of furthering his/her own interests at the expense of those of the parties.

A mediator who accepts such an appointment at the offer or even insistence of the parties creates the same perception. In particular, that perception is created where, as reportedly here, the mediator allowed his name to be set forth in the agreement even after one of the heirs objected to the mediator's service as administrator. Such perceptions serve to discredit the mediator, the mediation process, the Clerk Mediation Program and, ultimately, the Commission and courts.

A mediator should remain focused exclusively on his or her role as mediator and should not solicit or accept an appointment as a fiduciary that flows from the mediation process. A mediator who accepts such an appointment creates the perception that he or she manipulated the mediation process and the parties to his or her own advantage in obtaining the appointment and, thus, compromised his/her neutrality in the process.

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**Note from the Executive Director:** *Advisory Opinion 08-15 addresses a situation where a mediator permitted himself to be appointed an Administrator in an estate matter involving siblings arguing over who should be appointed the Administrator. The Commission has also learned of a situation where a mediator of a custody dispute, which was mediated privately, agreed to also serve as the Parent Coordinator for the couple and their children. This is also a paid position and a copy of the Opinion was provided to this mediator. In both instances, the mediator's conduct invites the perception that he or she manipulated the process and the parties to his/her own financial advantage. Though, the Opinion does not address it, such conduct also raises potential confidentiality concerns when a mediator shifts between roles. Confidentiality concerns may be especially problematic in the Parent Coordinator instance.*



## Foreclosure Mediation -- A Timely Idea

In the wake of lost jobs, rising interest rates, and falling real estate values, many states have seen foreclosure filings soar. Many courts have been overwhelmed with such filings. Our neighbor to the South, Florida, has been especially hard hit. Judge Hugh Starnes, a retired Florida judge, has been called back into service to man Ft. Myers special foreclosure court. A CNN reporter who sat in on "rocket docket", as Judge Starnes' court is known locally, reported that the foreclosure process takes only seconds and sometimes the court hears up to 1,000 cases a day. Judge Starnes told CNN that, "It is a legal, procedural response to an overwhelming number of filings that unfortunately is necessary." Judge Starnes, who used to hear family cases, characterized his current job as an "unhappy one", where there is not much opportunity for problem solving.

Judge Starnes and Lee County, Florida, are not alone. Other Florida circuits are looking for ways to address their own rising tide of foreclosure cases. The *Florida Bar News* reports that 423,700 foreclosures in Florida have been projected for 2009 and that 1.4 million are projected over the next four years. Not only are these foreclosures resulting in evictions and ruined credit scores, they leave neighborhoods coping with overgrown lawns, vandalism, and ever greater depressed values in a housing market that has already fallen fifty percent in some areas of the State. One reason Florida has been so hard hit is that many of the homes in foreclosure were owned by speculators or were bought as vacation homes. As Judge Starnes notes, such homes encompass about sixty percent of his caseload and the owners usually don't even bother to appear for the hearing. That fact explains why these cases often take only seconds to process. (A video of the rocket docket in action is available on CNN.)

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# *Upcoming Mediator Certification Training*



## **SUPERIOR COURT TRAINING**

**Beason & Ellis Conflict Resolution, LLC:** 40-hour Superior Court Mediator Training, May 13-17, in Charlotte and July 29 - August 2, in Chapel Hill. For more information or to register, call (919) 419-9979 or (866) 517-0145 or visit their web site: [www.beasonellis.com](http://www.beasonellis.com).

**Carolina Dispute Settlement Services:** 40-hour Superior Court Mediator Training, July 20 - 24 in Raleigh. For more information or to register, contact Dawn Bryant at (919) 755-4646, Ext. 23. Web site: [www.notrials.com](http://www.notrials.com).

**Mediation, Inc:** 40-hour superior court mediator training course, April 22-26, in Raleigh and August 18-22, in Asheville. For more information or to register, contact Beth Adkins at (919) 636-5697 or (888) 842-6157 or visit their web site: [www.mediationincnc.com](http://www.mediationincnc.com).

## **FAMILY FINANCIAL TRAINING**

**Atlanta Divorce Mediators, Inc:** 40-hour Family Mediation Training, April 30-May 4, in Atlanta, GA; June 22 - 26, in Atlanta, GA; August 27 - 31, in Atlanta, GA. For more information, contact Melissa C. Heard at (770) 778-7618. Web site: [www.mediationtraining.net](http://www.mediationtraining.net).

**Carolina Dispute Settlement Services:** 40-hour Family Mediation Training. See contact information above.

**Mediation, Inc:** 40-hour Family Mediation Training, September 2 - 6 in Chapel Hill. See above for contact information.

## **SUPPLEMENTAL MSC/FFS 16-HOUR TRAINING**

**Beason and Ellis Conflict Resolution , LLC:** Superior Court Supplemental Training. For training dates and additional information, call (919) 419-9979 or visit [www.beasonellis.com](http://www.beasonellis.com).

**Carolina Dispute Settlement Services:** Superior Court and Family Financial Supplemental Training. Family Financial Supplemental Training is scheduled for June 10 - 11 in Raleigh. For training dates and additional information, or to register, contact Dawn Bryant at (919) 755-4646, Ext.23. Or visit: [www.notrials.com](http://www.notrials.com).

**Mediation, Inc:** Superior Court and Family Financial Supplemental Training. For additional information or to register, call (888) 842-6157 or (919) 636-5697 or visit: [www.mediationincnc.com](http://www.mediationincnc.com).

## 6-HOUR FFS/MSC COURSE

(Covers North Carolina legal terminology, court structure, and civil procedure)

**Professor Mark W. Morris:** 6-hour course, August 29, 2009, NCCU School of Law. To pre-register online, go to [www.nccourts.homestead.com](http://www.nccourts.homestead.com).

**The ADR Center of Wilimington:** 6-hour course. For more information or to register, contact John J. Murphy at (910) 362-8000 or e-mail at [johnm@theadrcenter.org](mailto:johnm@theadrcenter.org). Web site: [www.theadrcenter.org](http://www.theadrcenter.org).

**Judge H. William Constangy (Charlotte):** For more information, contact Judge Constangy at (704) 807-8164.

## CLERK TRAINING

**The ADR Center:** Clerk Training Course, Wilmington. For additional information contact John J. Murphy at (910) 362-8000 or visit: [www.theadrcenter.org](http://www.theadrcenter.org).

**Mediation, Inc:** The Clerk Training Course available on DVD. Contact Beth Adkins for information on renting the DVD. See above for contact information.

## CME AND ADVANCED TRAINING OPPORTUNITIES

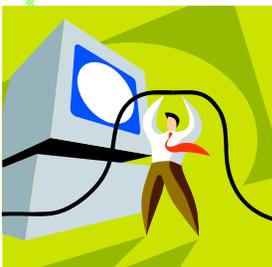
**Atlanta Divorce Mediators, Inc.:** is presenting Advanced Divorce Practicum Training on July 24-25 and December 4-5, in Atlanta, GA. For additional information, call (770) 778-7618 or visit [www.mediationtraining.net](http://www.mediationtraining.net).

**Mediation, Inc:** is presenting Advanced Negotiation Crash Course on June 24 in Asheville. See above for additional information.

**North Carolina Bar Association:** is presenting the following programs: "Annual Estate Planning and Fiduciary Law Program" on July 16-19 at Kiawah Island, SC; "Changes: A Labor and Employment Law Update" on June 26-27 in Asheville; "The Martial Deduction: Planning, Funding and Distributing" on May 1-2 in Greensboro; "Men Have Issues Too (2009 Family Law Section Annual Meeting); May 1-3 in Wrightsville Beach; and "Powerful Communication Skills: Winning Strategies For Lawyers" on April 30 - May 1 in Cary.

### New to the Commission's Web-Site

The Commission asks all mediators to complete three hours of Continuing Mediator Education (CME) annually. To help mediators comply, the Commission has posted a list of books on mediation at [www.ncdrc.org](http://www.ncdrc.org). Click on "Continuing Education for Mediators" then click on "Suggested Readings". The books listed are favorites of Commission Members.



*(Mediation Used in Medicaid Disputes continued from Page 5)*

bureaucracy. Mediation means that, for a time, they have the undivided attention of a representative of that bureaucracy and it is often the first time that they have really heard each other. Many times, the denial or reduction is a result of a misunderstanding or the lack of documented need.

Often times, applicants or recipients will accept a denial or reduction as long as they understand the reason for the decision. Mediation provides an opportunity for State personnel or Value Options staff to explain their reasoning. It is my understanding that only a fraction of the cases where the State refused to alter its decision to deny or reduce services at mediation, are being heard by OAH. Once they understand the decision, applicants and recipients typically don't pursue it further. In fact, my measure of success for many of these mediations is not whether the service is provided, but whether the applicant or recipient understands why it was denied.

*Q: Who is conducting these mediations and are they provided with any training?*

A: The mediations are conducted by center staff or volunteers. In my particular center, I did the mediations initially until I had a good feel for how they worked and could share that information with my staff and volunteers. Our staff and volunteers were already trained as mediators and had actual mediation experience. They were also provided with some specialized training by DHHS. It was not mediation training, but rather information on case screening, Medicaid terminology, information about the kinds of situations that might be referred, that sort of material.

*Q: What about funding for this effort?*

A: Centers are paid a flat rate. We receive \$100.00 per case for cases that do not make it to mediation. That would usually be a situation where we can't find the applicant or recipient or he or she does not want to mediate. We receive \$200.00 per case for cases where we provide either conciliation or mediation services.

*Q: Are these mediations confidential? What happens with the agreement if there is one?*

A: The process is generally confidential, though we observe the exceptions to confidentiality set forth in the Supreme Court's Standards of Professional Conduct for Mediators, *i.e.*, threats of child or elder abuse, threats to do harm to persons or property. If mediation is successful, the mediator reports that fact to OAH and they confirm it with Value Options or the State. Then, the matter is dismissed. If mediation is not held because we cannot locate the applicant or recipient or he or she declines mediation, or if mediation is not successful, the mediator informs the Hearing Division at OAH and the case proceeds to a hearing.

*Q. Terri, has been there a lot of interest in what you are doing?*

A: Absolutely, to my knowledge this is the first time these kinds of cases have ever been mediated. Other states have expressed a great deal of interest in what is happening here.

*Q: Is there anything else that you would like the Intermediary's readers to know about this new effort?*

A: I would like them to know that I have found this work to be very gratifying. We are serving a fragile population that often struggles to be heard by the government agencies on which they depend. They are used to being shuttled from one telephone line to the next or from one person to another. They are so grateful for a process that they feel gives them a chance to be heard and to have their concerns acknowledged. That has been almost universally true in my experience, even when the denial or reductions remain in tact.

**Note:** To learn more about Terri Masiello, see the article on *New Commission Members* on page 14.

## Commission Revamps Renewal Process

Once, again, it is time for the annual spring renewal of mediator certifications. In an effort, to make it easier for mediators to renew, the Commission has revamped the mechanics of its on line renewal process. There will be a number of changes this year:

- 1) Mediators will go directly to [www.ncdrc.org](http://www.ncdrc.org) to renew.** In early June, mediators will receive a packet from the Commission. Included with that packet will be bright yellow sheet of paper assigning the recipient a temporary password. With that password in hand, mediators will go directly to the Commission's web site at [www.ncdrc.org](http://www.ncdrc.org) and click on the Commission's royal blue logo. From that portal, mediators will have an opportunity to enter their email address and temporary password in order to access and complete a renewal application.
- 2) Mediators will select a permanent password.** Once a mediator's temporary password has been accepted, he or she will be asked to select a permanent password. Mediators may use that password during subsequent renewal periods or at any time during the year to go to the Commission's website to access and update their contact, availability or biographical information.
- 3) Invoices will not be mailed separately.** Once the mediator has completed and submitted his or her renewal application, the program will print an invoice for the annual renewal fee and the mediator will mail the invoice and his or her check to the Commission's office.



**Click Here**

The Commission has been grateful for the patience of mediators with on-line renewal which, has admittedly, not worked well to date. This new design is, in fact, the very process that the Commission requested four year's ago, but was not permitted to implement. Unfortunately, the design for the process that was instead imposed on the Commission was plagued by technological problems, proved unfathomable to many mediators, and resulted in extra work for Commission staff. The Commission sincerely hopes that this more streamlined approach will prove more workable.

Mediators will also note an additional change in the ethics' portion of the renewal application. Mediators will be asked not only to disclose convictions, disciplinary matters, and judicial sanctions; but also civil judgments, tax liens and bankruptcies. While the Commission understands that some may view requiring these additional disclosures as invasive, experience to date has convinced the Commission of the utility of having this information. For example, it may be relevant for the Commission to know that an applicant for family financial mediator certification has repeatedly failed over a period of years to pay his or her child support. The Commission wishes to assure all applicants that it is unlikely that a single bankruptcy, tax lien or civil judgment would derail an initial or renewal application. The Commission is looking more for patterns or multiple situations that raise serious concerns. The Commission will keep all such information highly confidential.



As always, the Commission deeply appreciates the contributions that mediators made this year to work of our courts and hopes that all will continue to serve in the coming year.

Are you a blogger? Do you like to read blogs? The Commission has posted a list of Mediation Blogs on it's web site at [www.ncdrc.org](http://www.ncdrc.org), including one by DRC certified mediator, Roy Baroff. To see the list, click on "Continuing Education for Mediators" then click on "Mediation Blogs".



Florida's twenty judicial circuits have worked hard to keep up with the situation, but many are concerned about the patchwork approach that exists throughout the State's courts for handling foreclosures, especially as it affects owners who, in fact, occupy their homes. The March 15, 2009, edition of the *Florida Bar News* reports that a group of private lawyers and legal aid groups have now petitioned Florida's Supreme Court to invoke its emergency rule-making authority to mandate that all new and pending mortgage foreclosure actions involving owner occupied residences, be referred to mediation. The petitioners argue that too often homes are lost because owners, who are behind in their payments, are never able to reach anyone in the lender's office who is willing to talk to them and who has authority to modify their payment terms. Many times, the petitioners report, the owner has no opportunity to speak to anyone until the summary judgment hearing or even the foreclosure sale itself. In either instance, it is too late by then to turn things around. The petitioners have not only asked the Court to mandate mediation of foreclosure actions in Florida, but to also require the home owner and a representative of the lender with authority to modify terms, to appear in person for the meeting. They are also asking the Court to require the lender to cover the cost of the mediation. The petitioners argue that the uniform statewide requirements they propose will allow many, who might otherwise be evicted, to remain in their homes and will also generally protect property values across Florida.

Some Florida circuits have already begun to experiment with mediation in foreclosure actions. The 1<sup>st</sup> and 19<sup>th</sup> judicial circuits have both set up a new system for handling foreclosures that includes special mediation courts. The special courts are being run by the Collins Center for Public Policy. (The Collins Center, established in 1988, is an independent entity charged with finding impartial solutions to controversial problems. It exceeds the bounds of a traditional think tank in that it seeks opportunities and takes action on projects that impact the citizens of Florida.) Rob Petry of the Collins Center believes mediation holds out the promise of helping homeowners, lenders and local communities. He explains that the mediation does not happen in a vacuum. Homeowners must first undergo credit counseling to determine how large a monthly payment they can realistically afford. Lenders, he adds, must make available a representative who has the power to modify the mortgage. If such a person fails to appear, the judge, he says, has the power to dismiss the case.

Florida is not the only state to explore using mediation as a tool to address foreclosure filings. New Jersey operates a foreclosure mediation program. For no charge, a New Jersey homeowner facing foreclosure has access to housing counselors and lawyers who try to help the homeowner devise a modified payment plan that may involve reduced penalties and/or lower interest rates. If the lender rejects the modified plan, the court appoints a mediator who brings the borrower and lender together face-to-face to discuss options for re-payment. California, Connecticut, Iowa, Minnesota, Ohio and others have also inserted mediation components into legislation or programs they have adopted to address rising foreclosure rates. The Supreme Court of Ohio has developed a comprehensive web site on its Foreclosure Mediation Program which explains, step-by-step, how the program operates. Legislation, rules and forms used to administer the program are posted on the web site. The site also includes a consumers' guide to foreclosure mediation which also offers suggestions to mediators on how they may become involved.

Interest in developing ways to help homeowners remain in their homes has increased even more since President Obama's announcement of his 75 billion dollar plan to stem the rising tide of foreclosure and stabilize the housing market. Additional legislation and programs are expected at the state level in the wake of the federal legislation.

While interest in mediation as a tool remains high, there are some skeptics. Some do not believe that there is enough incentive for lenders to agree to modifications, vandalized homes and blighted neighborhoods notwithstanding. Dan Skiles, President of First Peoples Bank in Port St. Lucie, Florida, insists that, "You get the third party in there; it does nothing but run up fees and complicates matters." Others simply think that the courts are overreaching in using the mediation process to modify contracts and extract concessions from lenders.

While North Carolina has not looked to mediation to help resolve such disputes, North Carolina lawmakers and former Governor Easley set up a program which zeroed in on subprime mortgages. Under the program, which commenced November 1, 2008, firms who service mortgages are required to notify homeowners with troubled loans at least 45 days prior to filing a foreclosure proceeding against them. At that point, the State Banking Commissioner steps in and sends a letter to the homeowner encouraging him or her to call a toll-free number to receive advice from a housing counselor. ♦

## Members Complete Terms

At its November meeting, the Commission said goodbye to members who have completed their terms: Julius E. Banzet, III; Sherman Lee Criner; and Diann Seigle. Both outgoing Chair, Judge Sanford Steelman, Jr., and in coming Chair Judge W. David Lee, praised the contributions of the departing members and thanked them for their hard work. In particular, Mr. Criner was praised for his service as the Chair of the Commission's Mediator Certification and Training Standards Committee and Ms. Seigle for her work in envisioning and developing the new District Criminal Court Mediation Program.

In addition to the loss of these members, Court of Appeals Judge Judge Sanford L. Steelman, Jr., of Union County, completed two terms as a member of the Commission and one as its Chair. Judge Lee, thanked Judge Steelman for his service and, most especially, for his leadership. He also noted that he was pleased to announce that Judge Steelman had agreed to remain active on the Commission in a new role, serving as liaison from the Court of Appeal's Mediation Program. Judge Lee thanked Judge Steelman for his continuing commitment to the Commission and said that he would be grateful for Judge Steelman's guidance as he transitioned in his new role as Chair. Judge Steelman served six years on the Commission, two of them as its Chair.

Judge Steelman, Mr. Banzet, Mr. Criner and Ms. Seigle, received plaques expressing the Commission's gratitude for their service.



## Commission Has New Chair, 5 New Members And 1 Member Returns!

At the Dispute Resolution Commission's November Meeting, Judge W. David Lee, Senior Resident Superior Court Judge in District 20, was sworn in as the Commission's chair. The oath of office was administered by outgoing chair, N.C. Court of Appeals Judge Sanford L. Steelman, Jr. Judge Lee was appointed Chair by Chief Justice Sarah E. Parker. He has already served one full term on the Commission, and will serve as Chair through September of 2009. Judge Steelman has agreed to remain active on the Commission as a liaison from the Court of Appeal's Mediation Program. Judge Lee becomes the Commission's fourth chair following: Judge Ralph A. Walker, J. Anderson "Andy" Little, and Judge Steelman.

Judge Lee, in turn, administered the oath of office to new Commission members, Jacqueline R. Clare, attorney and certified mediator; Judge Barbara Jackson of the N.C. Court of Appeals; J. Anderson Little, attorney, certified mediator and trainer; Terri Masiello, Executive Director of the Piedmont Mediation Center; and attorney N. Victor Farah. Each of these new members will serve a three year term. Clerk of Superior Court Martha H. Curran, of District 26, was re-appointed to the Commission by the Chief Justice and was also sworn in at the November Meeting.

The Dispute Resolution Commission is a sixteen-member body comprised of judges, mediators, attorneys who are not mediators, and interested members of the public. The Chief Justice holds the bulk of appointments, but others are made by the Governor, Speaker of the House, President Pro Tempore of the Senate, and the President of the Bar.

In addition to Judge Steelman, Ellen Gelbin has joined the Commission as liaison from the NCBA's Dispute Resolution Section.



## The Commission Congratulates Two New Mediation Trainers

The Commission has certified two new mediator training programs affiliated with two North Carolina Universities:

- ◆ Ellen Gelbin will teach a course on Superior Court Mediation at Wake Forest University School of Law and
- ◆ Roy Baroff will offer a course on Superior Court Mediation in UNC Greensboro's Master's Degree in Conflict Resolution Program.

These courses are designed for students and are not open to the general public.

## NEW FACES AT THE COMMISSION

There were new faces at the Commission's November 7<sup>th</sup> meeting in Blowing Rock! The Dispute Resolution Commission warmly welcomes its new members and looks forward to their contributions:

### **Jacqueline "Jackie" R. Clare**

is an attorney and certified MSC Mediator. She began her legal career at Womble, Carlye, Sandridge and Rice where she focused on complex commercial litigation and bankruptcy. She became a certified mediator in 1993 and has since devoted her career to being a full time mediator. She focuses her mediation practice in the areas of business, bankruptcy, workers' compensation, personal injury and medical malpractice. Ms. Clare is the past Chair of the NCBA's Dispute Resolution Section and editor of *Alternative Dispute Resolution in North Carolina: A New Civil Procedure*, a history of dispute resolution in North Carolina. Judge Lee has appointed Ms. Clare to the Commission's Standards, Disciplinary and Advisory Opinions Committee.



The **Honorable Judge Barbara Jackson** currently sits on the N.C. Court of Appeals. She received her J.D. from the University of North

Carolina at Chapel Hill in 1990. Prior to assuming her seat on the Court of Appeals, Judge Jackson: served as General Council to the N.C. Department of Labor; was an Associate with Holt York McDarris; served as Deputy General Council to the N.C. Governor's Advocacy Council for Persons

with Disabilities; and as Associate General Counsel to Governor James G. Martin. Judge Jackson is the recipient of "The Order of the Long Leaf Pine" and is a Fellow with the NC Institute of Political Leadership. She has been very active with the North Carolina Bar Association, the Wake County Bar Association (Board of Directors), and the North Carolina Association of Women Attorneys. Judge Lee has appointed Judge Jackson to serve on the Commission's Executive Committee.



**J. Anderson "Andy" Little**, returns to the Dispute Resolution Commission after having served previously as both a member and as Chair. Mr.

Little is a certified mediator, a mediation trainer and the author of *Making Money Talk: How to Mediate Insured Claims and Other Monetary Disputes*. Mr. Little was an early proponent of mediation in North Carolina and was instrumental in helping to establish the superior court's Mediated Settlement Conference Program in the early 1990's. He was also the first Chair of the NCBA's Dispute Resolution Section. Mr. Little received his law degree from the University of North Carolina at Chapel Hill. Judge Lee has asked Mr. Little to chair the Commission's Program Oversight Committee.

**Terri Masiello** is the Executive Director of the Piedmont Mediation Center in Statesville. Ms. Masiello holds a



B.S. in Social Work and a Business Management Certificate from Hampton Roads.

Ms. Masiello was one of the first to be certified as a District Criminal Court Mediator in North Carolina and served as a member of the Commission's Ad Hoc Committee which drafted the rules for the new District Criminal Court Mediation Program. Ms. Masiello also trains mediators. She is also certified as a Mediated Settlement Conference and Clerk Program Mediator. Judge Lee has appointed Ms. Masiello to the Commission's Standards, Disciplinary and Advisory Opinions Committee.

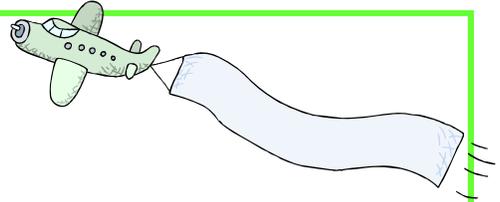
**N. Victor Farah** is a Raleigh attorney with the Jernigan Law Firm. He primarily practices workers' compensation law. Mr. Farah was admitted to the North Carolina



State Bar in 1987 and is a Board Certified Specialist in Workers' Compensation Law. He has served on the Board of Governors for the N.C. Academy of Trial Lawyers and as Chair of the NCBA's Workers' Compensation Section. He also volunteers as a peer counselor for the NCBA's PALS Committee. Mr. Farah is a native of Detroit and a graduate of Wayne State University Law School. Judge Lee has appointed Mr. Farah to serve on the Commission's Standards, Disciplinary and Advisory Opinions Committee.



## The Commission Congratulates Pro Bono Panel Volunteers



Over the past several months, the North Carolina Bar Association's Dispute Resolution Section has been soliciting volunteer mediators to serve on *pro bono* panels. Members of the panels have agreed to conduct mediations involving Legal Aid clients for free or at a reduced rate. The panel is part of NCBA Past-President Janet Ward Black's 4-All initiative aimed at securing assistance for those who cannot afford the high cost of litigation and for whom justice is out of reach.

The names of those mediators who have volunteered to date to serve on the panels are printed below. The members of the Commission are gratified that so many mediators have volunteered. **The Commission salutes these individuals and congratulates them on their willingness to serve their fellow citizens.** In these tough economic times, an initiative like this takes on even greater importance. It is not too late to become involved. If you are willing to serve, please contact Rick Igou at (919)450-8447 or [Igou@earthlink.net](mailto:Igou@earthlink.net). The Commission encourages your participation in this worthy cause.

Anne Micheaux Akwari  
Ann Anderson  
LeNoir Ayscue  
Barney Barnhardt  
Bob Beason  
Leonard "Len" Benade  
Dorothy C. Bernholz  
Donald H. Beskind  
William A. Blancato  
Richard T. Boyette  
Ken Broun  
Kenneth P. Carlson, Jr.  
Peter T. Chenery  
Jacqueline R. Clare  
Denise Smith Cline  
Howard M. Cohen  
Alden B. Cole  
R. Sarah Compton  
Robert C. Cone  
Jeannette Griffith Congdon  
William L. "Bill" Daisy  
Benjamin Davis  
Dawn Dowd  
George Doyle  
Ashley M. Edwards  
René Stemple Ellis  
Ed Farthing  
Elliot Fus  
Charles H. Gardner

Ellen R. Gelbin  
Eric Ginsburg  
Christopher T. Graebe  
J. Brandon Graham  
William G. "Will" Granger  
A. Holt Gwyn  
Jeannie Hall  
Jane Harper  
Frances W. Henderson  
Daniel B. Hill  
Bob Holbert  
Harriet S. Hopkins  
Richard J. "Rick" Igou  
James E. Ingram  
Deborah M. Jackson  
Nancy Byerly Jones  
David Kelsey  
Eugene Kennedy  
Bob Kerner  
Harold Koger  
Michele A. Ledo  
M.J. Longval  
John Mabe  
Hector MacDonald  
Robert "Bob" Martin  
Terri Masiello  
William M. Mauldin  
Marilyn Maynard  
Tom McCarty

Ralph Meekins  
Kate Mewhinney  
Martha New Milam  
Jeffrey L. Miller  
William J. "Billy Joe" Morgan  
Melzer A. "Pat" Morgan, Jr.  
Lisa B. Morris, RN, JD  
Dennis Myers  
Nancy Norelli  
G. Jona "Joe" Poe, Jr.  
Jim Ragan  
Charles E. Rawlings, MD  
Mark F. Richardson  
A. Douglas Robinson  
Theresa Joan Rosenberg  
Steven A. Savia  
Cameron Simmons  
Jim Smith  
Adam Stein  
Hugh Stevens  
Michael A. Swann  
Gayle Goldsmith Tuch  
Eugene J. Vasile  
Reagan H. Weaver  
Barbara B. Weyher  
Albert Jerome Williams, Jr.  
Henry Hall Wilson, III  
William F. Wolcott, III  
William A. Woodruff