

The Intermediary



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

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From The Chair

by

Judge Sanford L. Steelman, Jr.

There has been a changing of the guard at the Commission. Effective October 1st, I became the Commission's new chair, replacing J. Anderson "Andy" Little whose term had expired. New appointees to the Commission include: superior court judge W. David Lee (Monroe); district court judges John J. Carroll, III (Wilmington) and Joseph E. Turner (Greensboro); mediators Jessie M. Conley (Statesville) and N. Lawrence "Larry" Hudspeth, III (Yadkinville); and attorney N. Joanne Foil (Durham). We welcome these new members and look forward to the contributions they will make to the Commission's work.

Of course, it goes without saying that the Commission deeply appreciates the dedication of those Commission members whose terms expired at the end of September: mediator member and Chair Andy Little; superior court judge Judson D. DeRamus, Jr.; district court judges Michael R. Morgan and Danny E. Davis; mediator George G. Cunningham; and attorney J. Merritt White, III. A quick reading of the Commission's recently published Annual Report for Fiscal Year 2003/04 will give you an idea of just how productive these members were. We are grateful for their willingness to so generously share of their time and talents. If you know one of these folks, I hope you will join with the Commission in thanking them for their efforts on behalf of the people of this State.

I am pleased to report here that at least one of our former members will not be a stranger. Andy Little has agreed not only to remain as an ex-officio member of the Commission, but to co-chair a new *ad hoc* committee charged with exploring the feasibility of establishing a mediated settlement conference program to promote early resolution of disputes pending before Clerks of Superior Court, including adult guardianship, partition, and boundary matters. This committee is a joint project of the Commission and the NCBA's Dispute Resolution Section. Andy's co-chair will be Frank Laney who also serves as the Section's current Chair. I am confident that with Andy and Frank in charge we will soon have a thorough report with carefully considered recommendations.

I look forward to the next two years and am excited about the opportunity to lead this body and to have an impact on our State's mediated settlement conference programs. I will work hard to build on the successes of Andy and his predecessor, Judge Ralph A. Walker, now the Director of the AOC. There is much to be done, including finalizing some of the important projects com-

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

menced during Andy's administration as well as tackling new issues. As my predecessors have done before me, I invite our State's mediators to play an active role in shaping the Commission's efforts.

We will continue to post notices of Commission meetings in this newsletter and on our web site at www.ncdrc.org and to encourage mediators to attend. Two weeks prior to the date scheduled for its next meeting, I have asked Commission staff to post minutes from the prior meeting and an agenda for the upcoming meeting on the Commission's web site. In this way, mediators will be aware of issues pending before the Commission.

If you have concerns or ideas you want to share with me and the other members of the Commission, please call or write the Commission's office. We will value your comments and suggestions. Working together, we will insure that our programs continue to merit the respect of litigants, lawyers, and judges.

***The Commission Sends
Its Very Best Wishes
For The New Year!!***





**NEXT
COMMISSION
MEETING**

The next meeting of the Dispute Resolution Commission is scheduled for Friday, February 11, 2005, in Raleigh, NC. Minutes from the December meeting and an agenda for the February meeting will be available at www.ncdrc.org two weeks prior to the February meeting.

ANNUAL REPORT

The 2003-2004 Annual Report of the North Carolina Dispute Resolution Commission has been distributed to all certified mediators by e-mail and is posted on the Commission's web site. Copies were also supplied to members of the judiciary and numerous elected and appointed officials. The Commission welcomes comments on the Report or suggestions for issues that the Commission should explore in the coming year. Anyone with comments should direct them to the Commission's office.

Revisions To The Standards Of Conduct: “Giving Opinions” in Standard V

By J. Anderson “Andy” Little

There are mediators who give their opinions about the value of a case or about how the parties ought to settle it whether they are asked for those opinions or not. There are others who give opinions only when asked. Some never give opinions. And others aren't sure what to do because they feel pulled and tugged between their own impulses, the desires of the parties and the strict wording of the standards of conduct.

The North Carolina Supreme Court's Standards of Professional Conduct for Mediators that were in effect through October 19, 2004, prohibited mediators from giving their opinions about the value of the case or about how to settle it whether or not the opinion was requested by a party to the case. Standard V sought to protect the parties' prerogative to settle their dispute on their own terms. As Section V.C provided, “A mediator shall respect and encourage self-determination by the parties in their decision whether, and on what terms, to resolve their dispute, and shall refrain from being directive and judgmental regarding the issues in dispute and options for settlement.”

Though Standard V took a firm line, the Commission became aware over a period of time that many mediators were not abiding by its restrictions. Perhaps, in some instances, mediators were not fully aware of the Standard's prohibitions. In other instances, mediators chafed at a requirement that forced them to ignore the parties' requests for information that they needed, or thought they needed, to settle their case -- the very reason they were in mediation in the first place.

The members of the Commission itself were divided on the issue. Some favored acknowledging the “realities” of practice and modifying the Standard to make it less rigid. Others believed it was not necessary to change the Standard and if changed would encourage mediators to become more directive in their mediations.

Faced with the prospect that the Commission might one day be called upon to discipline a mediator for giving an opinion requested by one or both of the parties, the Commission spent a good part of the past year revisiting this Standard. The Commission aimed to craft a new measure of ethical behavior that would take into account the expectations and demands of the parties for information, including their mediators' opinions, while ensuring that, in giving their opinions, mediators did not impose their will upon the parties. New Standard V, adopted by the Supreme Court on October 6, 2004, seeks to strike a balance – permitting mediators to express opinions, but controlling the circumstances under which they may do so.

The new Standard allows a mediator to express opinions during a court-ordered mediated settlement conference, but only under two conditions:

- ◆ **A party must have requested the mediator's opinion on some aspect of the controversy under consideration.** A mediator may never volunteer an opinion or evaluation without a clear invitation to do so from a party or parties. Although the standard does not specifically say this, it follows that if one party requests an opinion and the other party does not, then the mediator may only give an opinion to the party requesting it. Of course, there is no obligation to give an opinion in the first place, and so a mediator may simply decline to answer with an opinion.
- ◆ **The opinion or evaluation may only be given as a last resort after the mediator has made every effort to help the parties evaluate their case themselves and to help them use their own resources to settle the dispute or claim.** Last resort means when all else has failed. This new standard points to the ideal in mediation. Mediation at its best is a facilitative rather than a directive process. This new standard encourages mediators to hold back on giving opinions, or at least not to give them reflexively. This standard encourages the time-honored practices of asking good questions, listening well, inventing new options, and keeping the responsibility for decision-making upon the parties

themselves. Opinion giving by the mediator under this standard is a last resort only.

In conjunction with the changes to Standard V, the Commission also revised Standard VI. Standard VI mandates that mediators refrain from giving legal or other professional advice while conducting a mediated settlement conference. Standard VI was revised to clarify that, in responding to a party's request for an opinion on the merits of the case or in evaluating a settlement proposal under consideration, a mediator is not giving legal advice for purposes of Standard VI as long as the mediator has complied with the conditions established in revised Standard V.

In addition to modifying Standards V and VI to address self-determination and the giving of mediator opinions, the Commission also recommended and the Supreme Court adopted a few other revisions to its Standards. First, the Preamble was revised to make it clear that though the conduct of all certified mediators is subject to the Standards, the Standards do not apply in situations where they conflict with the standards, rules, or statutes governing a non-court program which the mediator is serving. In such cases, the mediator should follow the standards, statutes, and rules of the program in which he or she is participating.

In adopting this change, the Commission recognized that the number of mediation programs now operating in North Carolina has rapidly grown. Many of these programs such as the federal Equal Employment Opportunity Commission Mediation Program or the postal service mediation program (REDRESS) have implemented their own rules, some of which address mediator conduct. Because dispute resolution is still a relatively new field and the whole area of mediator ethics is evolving, the Commission did not want the requirements in its Standards of Conduct to jeopardize the participation of Commission certified mediators in other non-court programs that had established differing requirements for mediator conduct nor did it want to limit the pool of mediators on which non-court programs could draw.

The Commission also recommended and the Court approved revisions to Standard III, Confidentiality. Section C of that Standard was revised to clarify that a mediator has the discretion to report confidential conduct or statements occurring prior to, during, or after a mediation to a party, non-party, or law enforcement personnel or to give an affidavit or testify regarding such information when a statute requires or permits the disclosure or public safety is an issue. Prior to the revisions, that subsection did not address conversations and conduct that occurred in the mediator's presence prior to or after a mediation, nor did the Standard specifically authorize the mediator to give an affidavit or to testify regarding information that would otherwise have been confidential.

Lastly, the Commission revised Standard VII that addresses conflicts of interest. Since the establishment of the Family Financial Settlement Program, the Commission had received several inquiries from certified family mediators regarding language in Section C of this Standard which provided that: "A mediator who is a lawyer or other professional shall not advise or represent either of the parties in future matters concerning the subject of the dispute." Mediators seeking advice from the Commission's staff often bring up conflict of interest questions in the following form: "I mediated a separation agreement for a couple experiencing marital difficulties. The agreement was never signed and now they intend to divorce. The husband has asked me to represent him in the divorce litigation. May I do so?" Or, in a slightly different variation – "I mediated a custody matter for a couple that had filed for divorce. We were able to settle issues of custody and visitation. Now, they are trying to divide their property and the wife has asked me to represent her on her equitable distribution claim. Does the Standard prohibit me from doing that?"

Since actions for legal separation, divorce, custody, and equitable distribution are all separate and distinct filings, these family mediators questioned whether Standard VII.C's prohibition applied in the circumstances they described. In essence, they interpreted the language in then Standard VII.C narrowly. Since the various legal components involved in divorce were all separate and distinct actions and filings, then, they reasoned, so were the various disputes underlying the actions.

The Commission interprets Standard VII.C much more broadly. Though the process of divorce may involve a number of separate and distinct legal actions and filings, the underlying subject of the dispute remains the same -- the same troubled marriage between the same husband and wife. The Commission is especially worried about the effect that such mediators' interpretations could have on the program's credibility. How will a spouse, who had poured her heart out to a mediator in a caucus session during a mediation to arrive at a separation agreement, react when she later

learns that her husband's divorce attorney is that same mediator? Will the public have confidence in the confidential nature of the mediation process if mediators can morph into opposing counsel? The Commission thinks not.

In an effort to quickly address this situation and dispel such narrow interpretations of Standard VII.C, the Commission first adopted Advisory Opinion #06-04 (available through the Commission's office or its web site) and then set about revising the Standard itself. The revised Standard adopted by the Court on October 6th provides that, "A mediator who is a lawyer or other professional shall not advise or represent any of the parties in future matters concerning the subject of the dispute, an action closely related to the dispute, or an out growth of the dispute."

The Standards adopted by the Supreme Court on October 6 were effective October 20, 2004. Copies of the new Standards can be obtained from the Commission's web site at www.ncdrc.org. Click on "Standards of Conduct for Mediators" from the left-hand menu, and then click on "Standards of Conduct" from the subsequent menu.

Since its inception, the Commission has sought to fulfill its charge to regulate mediators by working to educate mediators about their responsibilities under the Standards, to provide confidential advisory services through informal staff opinions and formal opinions of the Commission, and to revise the standards themselves when needed. We hope all mediators will be mindful of the Commission's work through its newsletter and web site and will feel free to make use of the advisory services of the staff and the Commission itself.

J. Anderson "Andy" Little is associated with Mediation, Inc., a North Carolina firm of certified mediators and a North Carolina Dispute Resolution Commission approved trainer. Mr. Little is an experienced trial attorney, mediator, and trainer and is the Past Chair of the NC Dispute Resolution Commission.



The following article was submitted by certified mediator Deborah Isenhour. Ms. Isenhour has been involved with others in an effort to establish a chapter of the Association for Conflict Resolution (ACR) in North Carolina. In this article, Ms. Isenhour gives readers an update on their progress.

The North Carolina Chapter of the Association for Conflict Resolution (ACR-NC), which received its charter this summer, held its first Annual Meeting on October 4, 2004. Hosted by Dr. Cathie Witty, Director for the Masters in Conflict Resolution Program at UNCG, the business meeting was followed by a panel discussion led by: Leslie Ratliff, Executive Secretary for the Dispute Resolution Commission; Frank Laney, Chair of the Dispute Resolution Section of the NC Bar Association; Michael Haswell, President of the NC Association for

Professional Family Mediators; and Frances Henderson, representing the Mediation Network of North Carolina. At the conclusion of the meeting, the panelists were honored with certificates designating them as Honorary Founding Members of ACR-NC.

As a benefit to members, the Chapter hosted a Teleseminar entitled "Marketing Your Mediation Practice" on December 14, 2004, presented by Lynne Kinnucan. Attendees learned how to use the media and other forms of public relations to build their business and get the word out about their organization. They also heard about the two essential tools and the 10 top strategies the experts use. Lynne Kinnucan has been a mediator, trainer, program developer, and PR person in the ADR field for 20 years. She is currently the program developer for Section Leaders at ACR, runs their Mentor Program, and coaches Chapters in how to use effective public relations.

ACR-NC will also be co-sponsoring the Quad State Fair Housing and Equal Opportunity Conference with the City of Charlotte on March 16-18, 2005. The conference will bring together housing providers and advocates, lenders, employers, public agencies, non-profit social service agencies, as well as state and local civil rights enforcement agencies. Participants will represent NC, SC, KY, and TN. To provide the Conflict Resolution Training Track for the Conference, ACR-NC is partnering with the Dispute Resolution Section of the NC Bar Association and the Mediation Network of North Carolina. The theme of this year's conference is "Valuing Diversity in the 21st Century: Practice, Policy, and Partnerships" and will be held in Charlotte. Anyone interested in submitting a proposal for Conflict Resolution training can find the RFP on ACR-NC's website or can contact Deborah Isenhour at deborah@thesourceinstitute.com.

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More Copies Ordered!

Some of you may remember receiving a book from the Commission a few months ago. It was a hard-bound volume entitled, *Alternative Dispute Resolution in North Carolina: A New Civil Procedure*. Compiled and edited by certified mediator, Jacqueline R. "Jackie" Clare, the book was published under the joint sponsorship of the Commission and the NCBA's Dispute Resolution Section. Some 2,400 copies were mailed *gratis* to certified mediators, judges, lawyers, court administrators, and legislators working in North Carolina. Additional copies were supplied to Supreme Courts and State law libraries in all fifty States.

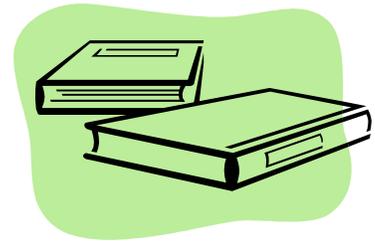
Since its publication, North Carolina's ADR book has proved to be a great hit and has carried word of North Carolina's ADR successes far and wide. On the home front, the book was featured at the Section's Annual CLE Program, *Successful Mediations: the Right Ingredients*, held this past March in Raleigh. Beyond CLE, the book has found favor with our State's law schools, two of which -- NC Central and Wake Forest -- use the text for their dispute resolution survey classes. Carolina Dispute Settlement Services (CDSS) has been a big booster of the book and, this past August, distributed some 130 copies to attorneys and human resources personnel who attended the Office of State Personnel's Dispute Resolution Symposium held to familiarize attendees with the State's new mediation program designed to address grievances filed by State employees.

Nationally, the volume is scheduled to be presented to members of the ABA's Dispute Resolution Section

at their 2005 Annual Meeting. Judge Ralph Walker, John Schafer, and J. Anderson "Andy" Little will introduce the book and share with those attending information about the work of North Carolina's mediators and arbitrators.

Alternative Dispute Resolution in North Carolina: A New Civil Procedure, has even made it across the ocean. CDSS personnel, Phillip Long and Leila Jabbar, accompanied by District Court Judge Kristen Ruth (District 10) and Assistant District Attorney John Parris, were invited to Winchester, England, to address the Second Winchester International Restorative Justice Conference held in March of 2004. They arrived with copies of the book in tow. The contingent also traveled to the port of Southampton where they met with members of the English judiciary and presented them with copies of the book. Before leaving, the travelers found themselves invited to speak with Member of Parliament Cheryl Gillan who had heard about their presentation in Winchester and wanted to learn more about North Carolina's experience with ADR and the book that resulted. This coming spring, another contingent from CDSS and the Wake County District Courts will travel to Thailand to participate in the Eleventh UN Crime Congress and to present information about Wake County's District Court Criminal Mediation Program. Leila Jabbar, who will be attending for CDSS, has assured *The Intermediary* that she will be taking a carton of books with her.

Copies of the book have traveled even to the developing world. Zinaida Gutu, a former judge and arbitrator from the Republic of Moldova, studied dispute resolution at Duke University this past spring and returned to her native country carrying a satchel of copies for her



colleagues. She was excited to share North Carolina's experiences with her countrymen and women and hoped to spark their imaginations as well.

Given the high level of interest in the book, the 1,000 copies that remained after the initial distribution to North Carolina's certified mediators, judges, lawyers, and court administrators did not last long. As a result, the NCBA Dispute Resolution Section recently ordered the printing of an additional 2,000 copies. Copies not already spoken for will be sold by the NCBA for \$8.00 per volume. Anyone wishing to purchase a copy may contact the NCBA's Jane Weathers at (919) 677-0561.

The Commission heartily congratulates all the individuals involved in writing, publishing, and promoting *Alternative Dispute Resolution in North Carolina: A New Civil Procedure*. Their efforts have served to spread far and wide word of the work being done by North Carolina's mediators and arbitrators and the successes they have enjoyed. Former Commission member, Carmon J. Stuart, was the initial driving force behind this project. Sadly, Carmon passed away earlier this year. Though Carmon would never learn how truly successful this project has been, *The Intermediary* can think of no more fitting tribute to Carmon than the copies of "his" book lying on desks in law schools and offices stretching from Durham and Winston-Salem to Los Angeles; London; Bangkok; and Chisinau, capital of the Republic of Moldova.



Upcoming Mediator Certification Training

SUPERIOR COURT TRAINING

Beason & Ellis Conflict Resolution, LLC: 40-hour superior court mediator training course, January 26-30, 2005, in Durham, NC. For more information or to register, call (919) 419-9979. Web site: www.beasonellis.com.

Carolina Dispute Settlement Services: 40-hour superior court mediator training course, January 3-7, 2005, in Raleigh, NC. For more information or to register, contact Diann Seigle at (919) 755-4646, Ext.25, or (800) 960-3062. Web site: www.notrials.com.

Intercede Mediation/ADR Services: 40-hour superior court mediator training course, none scheduled at this time, TBA. (A Mecklenburg County Bar, 26th Judicial District CLE Course. For information, call (704) 375-8624 or go to www.meckbar.org.) Web site: www.intercedemediation.com.

Mediation, Inc: 40-hour superior court mediator training course, February 23-27, 2005, 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.

FAMILY FINANCIAL TRAINING

Atlanta Divorce Mediators, Inc: 40-hour family mediation training course, February 3-7, 2005, in Atlanta, GA; April 28-May 2, 2005, in Atlanta, GA. For more information, contact Dr. Elizabeth Manley at (800) 862-1425. Web site: www.mediationtraining.net.

Carolina Dispute Settlement Services: 16-hour family mediation training course, March 17-18, 2005, in Raleigh, NC. See above for contact information.

Mediation, Inc: 40-hour family mediation training course, March 30-April 3, 2005, in Raleigh, NC. See above for contact information.

6-HOUR FFS/MSC COURSE

Professor Mark W. Morris will offer the 6-hour course on NC court structure, civil procedure, etc., on February 12, 2005, in the Triangle area (exact location TBA). To pre-register online, go to www.nccourts.homestead.com.

CME Opportunities

Mediation, Inc. is presenting an advanced mediation training course, "Getting Past Impasse: Settling Insured Claims," on January 28, 2005, in Greenville, NC. For additional information, call (336) 777-1477 or visit www.mediationincnc.com.

North Carolina Bar Association is presenting "Negotiation and Conflict Resolution for Lawyers" on January 21, 2005, in Greensboro, NC. To register or for additional information, call (919) 677-8745 or (800) 228-3402 or visit www.ncbar.org/CLE.

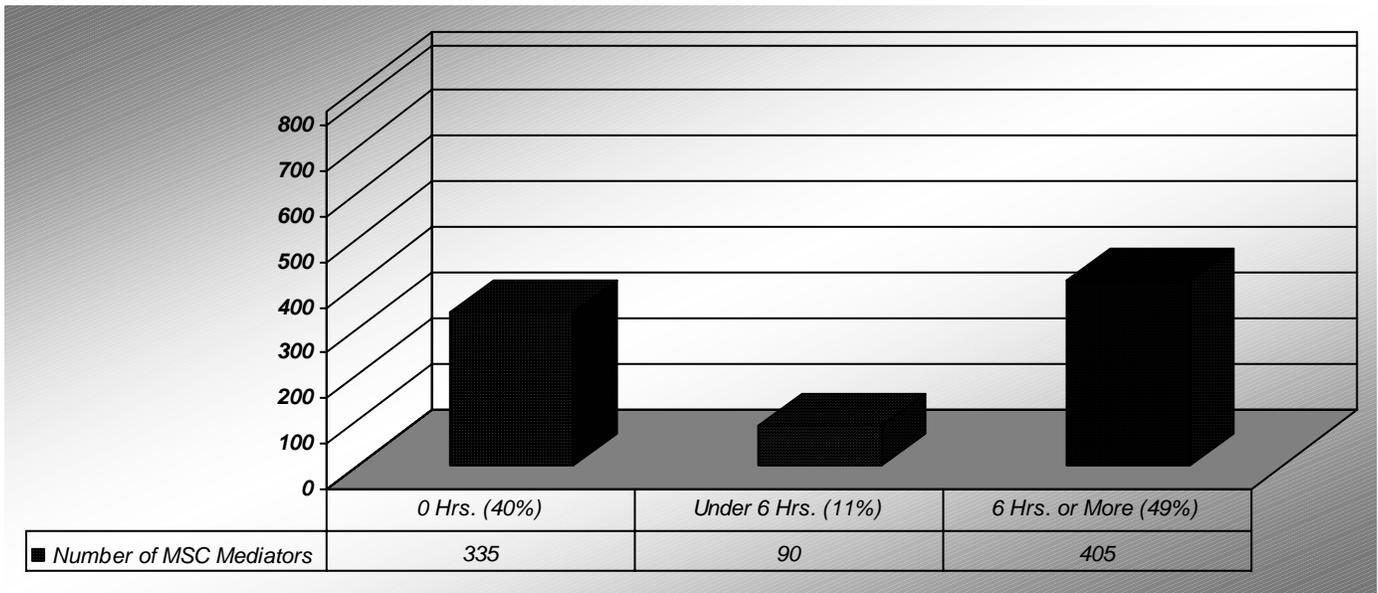
Atlanta Divorce Mediators, Inc., is presenting Advanced Divorce Practicum Training on February 10-11, 2005, in Atlanta, GA. For additional information, call (800) 862-1425 or visit www.mediationtraining.net.

CME Numbers In

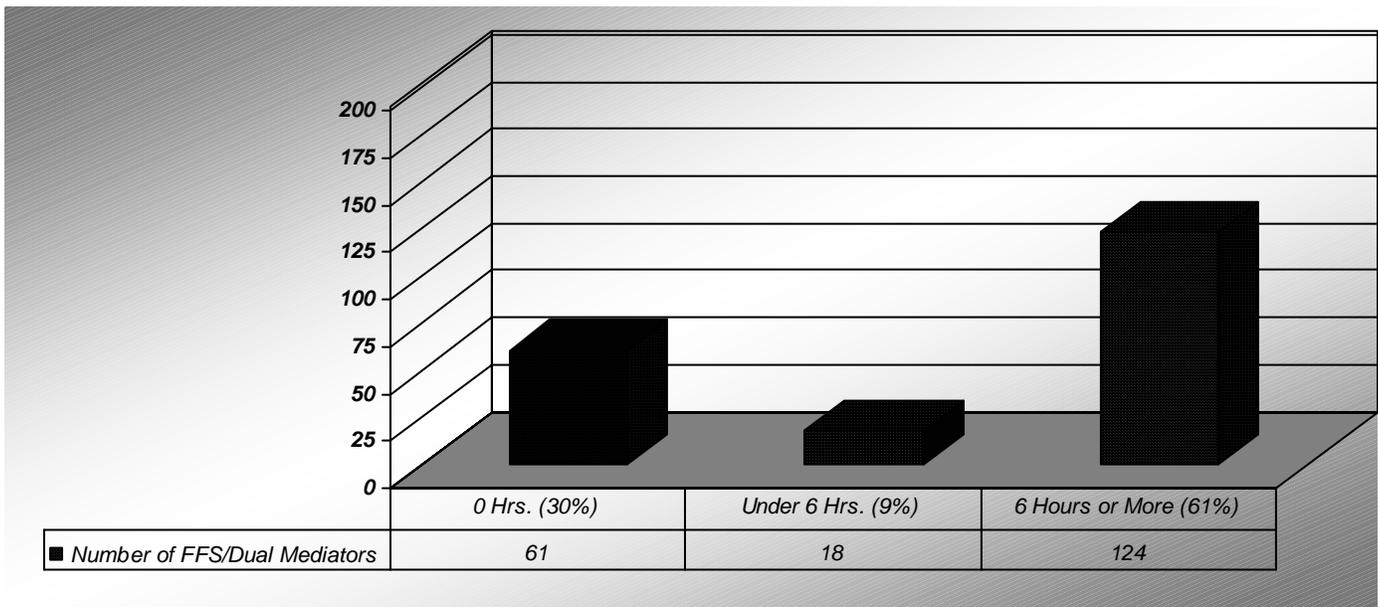
During the last two mediator certification renewal periods, mediators were asked to report continuing mediator education (CME) hours that they completed during the reporting year. The reports were requested in connection with a policy adopted by the Commission on November 16, 2001, which asked all certified mediators to voluntarily complete at least six hours of CME every two years. The policy set out a menu of activities for which CME credit could be awarded, including: attending courses, observing conferences conducted by more experienced mediators, reading dispute resolution books and other literature, or serving as a mentor or being mentored. The Commission's office has been compiling statistics on CME attendance the last two renewal cycles for the purpose of giving the Commission information on whether mediators were complying with its request.

Printed below are graphs charting CME reporting for both the superior court's Mediated Settlement Conference (MSC) and the district court's Family Financial Settlement (FFS) Programs.

MSC CME Report 02/04



FFS/Dual CME Report FY 02/04



New Members Join Commission



On December 3, 2004, a number of new appointees were sworn in as members of the Dispute Resolution Commission, including: Judge John J. Carroll, III, (Wilmington); Judge W. David Lee (Monroe); Judge Joseph E. Turner (Greensboro); N. Lawrence “Larry” Hudspeth, III, (Yadkinville); N. Joanne Foil (Durham), and Jesse M. Conley (Statesville). In addition, Judge Sanford L. Steelman, Jr., was sworn in as the Commission’s Chair and Dorothy C. “Dottie” Bernholz and Kenneth J. “Ken” Gumbiner were re-appointed to serve second terms. The effective date of all the terms began October 1, 2004, and are for a 3-year period. By way of introduction, photos of the swearing in and biographical information follow:



Judge Carroll, Larry Hudspeth, Judge Lee and Jessie Conley are administered their oath by Judge Sanford Steelman.

Jesse M. Conley

Ms. Conley became a partner in the Statesville law firm of Pressly, Thomas and Conley in 1994. She practices in a number of areas, including: personal injury, contracts, collections, criminal, and family law. In addition to practicing law, Ms. Conley is also an active mediator, certified to conduct mediations in both superior and district court. Ms. Conley has also served as an assistant district attorney and district court judge. She is a graduate of Wake Forest University School of Law and received her undergraduate degrees in public policy and English from Duke University. Ms. Conley was previously tapped by the Commission to serve on the *Ad Hoc* Committee which drafted rules to implement the pilot Family Financial Settlement Program. Ms. Conley and her husband reside in Statesville with their two daughters.

Judge W. David Lee

Judge Lee is a Union County native. He serves as Resident Superior Court Judge for District 20-B, encompassing Stanly and Union Counties. Judge Lee is a 1972 graduate of Western Carolina University and received his law degree from Wake Forest in 1975. He resides in Unionville with his wife, Kim, and two daughters. Judge Lee was certified as a superior court mediator until his appointment to the judiciary. Judge Lee was appointed by Chief Justice I. Beverly Lake, Jr.

Judge John J. Carroll, III

Judge Carroll is Chief District Court Judge of the 5th Judicial District encompassing New Hanover and Pender Counties. He was elected to the position of District Court Judge in 1996 and was appointed Chief Judge in 2000. Judge Carroll also serves as a Lieutenant Colonel in the Judge Advocate General’s Corps of the U.S. Army Reserves. Judge Carroll was an honors graduate of the University of Vermont and attended Vermont Law School, earning his law degree in 1986. He and his wife are the parents of three girls and one boy. In commenting on Judge Carroll’s appointment, Commission Chair Sanford Steelman noted, “Judge Carroll comes to this body not only as a distinguished judge, but following a long and honorable career in the U.S. military. I fully expect that he will be an active member of this body.”

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N. Lawrence “Larry” Hudspeth

Mr. Hudspeth is a native of Yadkinville. He attended high school in Yadkin County and holds a Bachelor of Arts degree and a law degree from UNC-Chapel Hill. Mr. Hudspeth has practiced law in Yadkinville since 1976 and is a partner with Shore Hudspeth & Harding, P.A. Mr. Hudspeth’s practice is concentrated in the areas of family law and civil litigation. He was certified as a family law specialist in 1989. In addition to his law practice, Mr. Hudspeth is an active mediator and holds both superior and district court mediator certification. He lives with his wife in Pfafftown. They have one son.



Judge Turner, Ken Gumbiner, Dottie Bernholz, and Judge Carroll are sworn in by Judge Steelman.

Judge Joseph E. Turner

Judge Turner began his judicial career in 1988 and currently serves as the Chief District Court Judge for the 18th Judicial District (Guilford County). Prior to joining the judiciary, he was an Assistant Public Defender and a practicing attorney. Judge Turner is a 1976 graduate of the University of North Carolina School of Law and he holds a bachelor’s degree from Davidson College. Judge Turner and his wife have three adult children. Chief Justice I. Beverly Lake, Jr., appointed Judge Turner to the Commission.

N. Joanne Foil

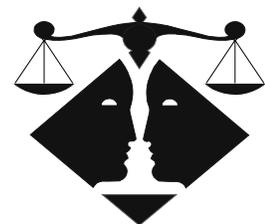
Ms. Foil is the owner of Foil Law Offices in Durham where she has practiced family law since 1976. In 1992, she was certified as a family law specialist. Ms. Foil served on the Council of the North Carolina State Bar from 1996 through 2003. She is a graduate of the University of North Carolina’s School of Law. Ms. Foil was appointed to the Commission by North Carolina State Bar President Dudley Humphrey. In commenting on Ms. Foil’s appointment, Judge Steelman noted, “She is a respected family lawyer who will bring nearly thirty year’s practice experience to her work as a member of the Commission”.



Judge Steelman is sworn in as the Commission’s Chair. Judge Lee administered the oath of office.

Judge Steelman

On December 3, Judge Sanford L. Steelman, Jr., of Weddington, North Carolina, was sworn in as the Dispute Resolution Commission’s new Chair. He is the Commission’s third Chair, following predecessors Judge Ralph A. Walker and J. Anderson “Andy” Little. Judge Steelman is a member of the North Carolina Court of Appeals. He was appointed Chair by Chief Justice I. Beverly Lake, Jr., and will serve a two-year term. Judge Steelman has been a member of the Commission since 2002.



Lastly, ACR has formed a working group to encourage Congress to proclaim a National Conflict Resolution Day in 2005. ACR, working in concert with other dispute resolution organizations, will be asking Congress to issue a proclamation designating National Conflict Resolution Day in order to increase public awareness of dispute resolution processes. The national organization has asked ACR-NC to help with this effort. Specifically, they are collecting stories that they can share with members of Congress which illustrate the benefits associated with dispute resolution. Mediators who have a story to share or who would like to be otherwise involved in this effort should contact Ms. Isenhour at (919) 542-1882.

To find out more information about the chapter or to join, contact Deborah Isenhour or go to ACR-NC's website. The website can be accessed directly by entering www.mediate.com/acrnorthcarolina in your browser or by going to www.acrnet.org and choosing North Carolina from the pull-down menu on the left of ACR's home page.

Profiles to Be Posted

The Administrative Office of the Courts has informed the Commission that it is nearing completion of the design and installation phase of software to enable the Commission to post Mediator Profile Forms on the Commission's web page. The Profile Forms contain biographical information about mediators. Web posting should make the information much more accessible to lawyers and the public. Commission staff hope to be contacting mediators within the next six months to ask them to complete a form online for transmission to the AOC.

- ◆ Both the FFS and MSC Rules require all mediators to distribute an evaluation form at the close of mediation. The mediator should ask parties and attorneys to complete the form and return it to him or her. (See MSC Rule 6.B.(6) and FFS Rule 6.B.(7).) Copies of the approved form are available on the Commission's web site or through its office.
- ◆ It is the responsibility of the mediator, and not the parties, to schedule the conference. The mediator should consult with parties about a convenient date and location, but ultimately it is the mediator's responsibility to schedule and hold the conference prior to the deadline for completion. (See MSC Rules 3.A., 6.A.(3), and 6.B.(5) and FFS Rules 3.A. and 6.B.(5).

***Ad Hoc* Committee Continues Its Work**

An *Ad Hoc* Committee charged with exploring whether a mediation program should be established to expedite settlement of matters pending before Clerks of Superior Court is moving forward with its work. The Committee, which is chaired by J. Anderson "Andy" Little and Frank C. Laney, was jointly established by the Commission and the NCBA's Dispute Resolution Section. Mr. Little is a former Chair of the Commission and Mr. Laney is the current chair of the Section.

The Committee, which began to meet this fall, is composed largely of Clerks, attorneys who practice estate or elder law, mediators, and court administrators. The group first considered whether establishing a mediation program would benefit Clerks in handling matters within their purview. It was determined that certain types of cases handled by Clerks would benefit from such a program, including estate, adult guardianship, and boundary and partition disputes. Other types of matters heard by Clerks, such as foreclosures, were determined not to be amenable to mediation.

Given that the Clerks and attorneys present at the meeting expressed considerable interest in moving forward with a program, the Committee is now drafting legislation and proposed rules to implement the legislation. Though the Committee has attempted, whenever possible, to track the legislation and rules developed earlier for the Mediated Settlement and Family Financial Settlement Programs, the proposed legislation and rules will likely differ considerably in some respects. Mr. Little has said that the Committee hopes to have proposed legislation ready to introduce at the General Assembly's next session.

New Form Available

The Commission and AOC have now approved and posted a new dispute resolution form, AOC-CV-835, Motion and Order to Extend Completion Date for Mediated Settlement Conference or Other Settlement Procedure. The form is designed for use in both the MSC and FFS Programs. To view the form, go to www.ncdrc.org and click on "Forms" at the top of the page. Then, enter the form number and click on "Search". The Commission developed the form at the request of mediators and court personnel.