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THE PEACEMAKER

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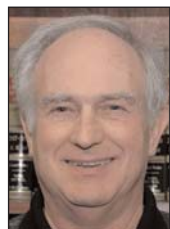
The Chair's Comments

A Word from Zeb E. Barnhardt Jr

February 24 and 25 will be great days for the Dispute Resolution Section.

On February 24, we are hosting the "Summit at the Summit" to which we have invited providers of dispute resolution services from all over the state.

This project is the result of a proposal coming from Ann Anderson's Long Range Planning Committee. The purpose of the gathering is to introduce the participants to one another so that they learn what each one does. There is no real agenda, other than to explore the history, current status and future of mediation, arbitration and other dispute resolution methods out-



Barney Barnhardt

side of courtroom litigation, and discuss ways that together the participants might help advance a more peaceful and cooperative society. We will see where this might lead and try to be ready to go there. The event will take place at the Summit Conference Center in Browns Summit (just north of Greensboro off Highway 29), hence the catchy name.

After the Summit, in the late afternoon of the 24th, the festivities of the Section Annual meeting and CLE will begin at the Grandover Resort in Greensboro. There will be a showing of the movie "Pray the Devil Back to Hell," followed by the annual dinner for the Section Council and speakers who will appear at the CLE program.

The CLE program will occur on the 25th. Danae Woodward and Judge Jane Harper have done a fantastic job preparing an exciting day with a mixture of plenary and break-out sessions on topics ranging from ethics and practical skills to more esoteric new ideas. There is something for everyone.

The formal Section Annual Meeting will occur at the lunch break on Friday. The Nominating Committee will present its report, and we will elect a new class of eight members to the Section Council, a Secretary and a Treasurer. The chair and vice chair for next year will be appointed by the president-elect of the North Carolina Bar Association sometime in April.

Please come to the Annual Meeting to participate in the CLE and to share some time with your friends in the Section. It will be a beneficial experience. The day offers 6.0 hours of CLE credit, which can be used to fill a gap for 2010 or apply to 2011, as members need it.

We have now had three Section Council meetings this year. The fourth and final one will occur on April 8 at the Elon University School of Law. Council meetings are open to anyone

who wishes to attend. We ask that you let the staff liaison know of plans to attend, so that lunch can be available for you.

One committee that bears special mention is the Clerks Mediation Committee. Bill Wolcott chairs the committee, which is working diligently to establish pilot programs in several counties to explore the best uses of mediation in the Clerk's Office. There is a lot of interest in getting that project underway, and we are excited with the progress that is being made.

There are many committees at work in the section. If you are interested in serving on a committee, please let me know or contact any member of the council so we can direct your inquiry to the appropriate person.

I cannot tell you how wonderful it is not to have to give a further progress report about the proposal to amend Rule 8.3 of the N.C. State Bar's Rules of Professional Conduct. This report can say that the amendment became effective on October 7 when the Supreme Court approved it. The amendment resolves the conflict between Rule 8.3 of the Rules of Professional Conduct and Standard III of the Standards of Conduct for Mediators. Under the Rule, as amended, an attorney mediator who knows that another attorney involved in a mediated settlement conference has committed a violation of the Rules of Professional Conduct that would otherwise be reportable under Rule 8.3 may report the violation only if such reporting is permitted by the Standards. I believe we can expect to see clarifications and perhaps Advisory Opinions that will give further guidance on that issue.

I look forward to seeing many of you at the Grandover on February 25. Come for a day of learning and share some good times with colleagues.

- Zeb E. (Barney) Barnhardt

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2011-12 NCBA/NCBAF Committee Service

Much of the work of the N.C. Bar Association/Foundation is accomplished through their committees, and it will soon be time to begin the committee appointment process for the 2011-12 FY.

Committee participation affords an excellent opportunity to meet and work with attorneys across our state and to make significant contributions to the legal profession.

The number of members on each committee is obviously limited, but we try to place as many people as possible.

If you would like to serve on an NCBA/NCBAF committee for the coming year, click on <http://www.ncbar.org/media/21026/preferenceform.pdf> to download a Committee Preference Form and committee description list.

Please complete and return the Committee Preference Form by April 8, 2011.

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Collaborative Family Law

by Kerry Burleigh

To begin, I ask that you reflect on the word “collaborate.” It means “to work with another or others on a joint project.” It is derived from the Latin roots *com*, meaning “together” and *laborare*, meaning “to work.” Collaborative-law attorneys take this meaning rather literally in that our process requires our clients to work to solve their problems themselves. Thus, the collaborative process is not easy for clients. In some ways, it is easier for a divorcing spouse to hire a traditional, litigating attorney to do the work for her and have a judge decide what her future life will look like. However, for the clients who are able to agree to use the collaborative process and are willing to do the *work* required, the collaborative process gives them more control over the privacy, duration, outcome, and cost of their divorce process than litigation generally allows. Additionally, when the work is done correctly by the clients and the attorneys, the process can be transformative, essentially teaching the clients basic conflict resolution skills so they do not have to resort to litigation to resolve conflict which may arise between them in the future.

The collaborative process is not for everyone. There are some clients who will fare better in a litigation process. Still, one misperception that is often generated from the term “collaborative family law” is that “collaborative” describes the way the clients behave in the process. The term “collaborative law” is more appropriately used to distinguish the way the attorneys operate in the process from the way *attorneys* typically operate in a traditional litigation process. In litigation, attorneys act as advocates in an adversarial process, always anticipating or conducting litigation. By contrast, as advocates in the collaborative process, attorneys operate “collaboratively.” Before illustrating exactly what operating “collaboratively” looks like, it helps to have some historical background.

Beginnings of “Collaborative Law” and the Basic Philosophy

In his book, *The Collaborative Way to Divorce*, published in 2006, Minnesota family law attorney Stuart G. Webb describes

how, in 1989, he was in the middle of handling a case that epitomized everything that was unfortunate with the litigation process in the family law courts. There were “lying, nasty tricks, hiding assets, endless court hearings, and so on.” While trying to think of better ways of resolving conflicts that are inevitable in divorce matters, he concluded that there should be “settlement-only specialists available for divorcing couples, specialists who work with the couple outside the court system, and who would turn the case over to trial lawyers if and only if the settlement process failed.”

“**The collaborative process. . . can be transformative, essentially teaching the clients basic conflict resolution skills so they do not have to resort to litigation.**”

So, in 1990, Stu, as he is known by fellow collaborative professionals, declared himself a “collaborative lawyer;” however, he also knew that in order to succeed in his new approach, he would need other “collaborative lawyers.” He began explaining his ideas and proposals to other local attorneys, some of who believed in the idea and agreed to try it. He began doing trainings for groups of attorneys around the country. After learning about the collaborative law process, mostly by word of mouth, divorcing couples began to resolve their conflicts via the collaborative law process. Stu continues to participate in a Minnesota collaborative law practice group with about 86 other members.

For Stu, the most important component of the collaborative law process is that, in the event the process fails, the attorneys will withdraw from the case and be prohibited from representing a collaborative client in

court. This is an important requirement because, from the beginning of their training, attorneys are taught to proceed with all cases as if they will end up at trial, and certain tactics and strategies are necessary and appropriate to properly advocate for a client when a trial is a possibility. However, when the clients make reaching an out-of-court resolution a priority, many such tactics are unnecessary to protect their interests and sometimes cause important needs to be ignored. Therefore, the requirement that the attorneys withdraw if a settlement is not attained is essential.

Another effect of eliminating the adversarial component is that the attorneys can be natural role models of respectful and productive communication during the process. If always anticipating his role in a courtroom, an attorney will find it difficult, if not impossible, to consistently model the respectful, forward-looking behavior required for a collaborative process to advance smoothly. As I discuss later in this article, the North Carolina legislature was also convinced that it was essential that collaborative law attorneys be required to withdraw if no settlement is reached.

Another critical component to the collaborative process is using the interest-based negotiation model, which was promoted in the well-known book, *Getting to Yes*, published by the Harvard Negotiation Project. Interest-based or problem-solving negotiations focus on how the participant can best get his or her needs met in the negotiation rather than how much one participant in a negotiation can “win.” Collaborative law attorneys strive for the mutually acceptable, *durable* agreement, not just an agreement that embodies what a court might grant the client. An extreme but realistic example: a spouse agrees to pay \$1,000 per month in alimony even though she can’t afford it and perhaps has no intention of paying it. Maybe she agreed because she did not want to spend time and money to resolve the issue in court.

This agreement is not durable and the client expecting, but not receiving, alimony is left with painful, time consuming options

See COLLABORATION page 4

for trying to enforce the agreement. He also lost the opportunity to negotiate different terms that may have served his needs better. In addition, his trust in his ex-spouse is lower than ever, handicapping future discussions. In the collaborative process, one way the attorneys advocate for their clients is by doing all they can to ensure the clients' agreement is one with which each party can and will comply.

What Does the Process Look Like?

The collaborative process begins when separating spouses agree to use the collaborative process to help them resolve custody, property, and financial issues prior to their divorce. There are various collaborative models to choose from, and in the basic model, each client chooses a collaborative law attorney and agrees in writing to restrict the attorneys' representation to settlement negotiations only. The clients and their attorneys then attend a series of what are called "four-way conferences" – meetings with the clients and the attorneys in which the attorneys guide the clients through a series of steps that support the clients in making well-informed, rational decisions and commitments they can live with.

The first step is to gather and share financial documentation in order to compile the marital property inventory. Living expense projections may be generated as a way to discuss whether and how much income will be reallocated from one household to the other after the separation in the form of alimony and, if appropriate, child support. If there are children, the family will likely meet with a jointly-retained child development specialist as part of the collaborative process in order to have information about the children's age specific developmental and emotional needs as the clients begin to think about a long-term parenting plan. During the information gathering process, the clients begin to articulate what their needs and interests are in a basic sense – needs like financial security and maintaining a strong relationship with the children. At this point the clients learn to differentiate their needs from strategies to meet their needs. For example, having exactly equal custodial time with the children is not a "need," it is a *strategy* that could be used to meet the *need* of

maintaining a strong relationship with the children.

Once all information is shared and needs are clarified, the parties begin the second step, which is to develop as many strategies as possible for addressing the needs and interests that have been articulated. Frequently, this "problem-solving" process will involve brainstorming, in which the clients, with the support of their attorneys, attempt to generate creative options for the various issues to be resolved. The attorneys facilitate the search for solutions, often using the same conflict resolution skills as mediators use. They also educate their clients about tax consequences and help them consider the legal and practical ramifications of the various options.

After three to six four-way conferences, the final step is for the clients to evaluate the options they articulated and decide whether any of the options will work, or can be adjusted and made to work, for both of them. In eighty-five to ninety percent of collaborative cases, the parties are able to reach an agreement on all issues and enter into a separation agreement without resorting to a judicial determination. The clients who do not reach a resolution can begin the litigation process with the discovery process already completed and with the knowledge that they did their best trying to reach an out-of-court settlement.

Multi-disciplinary Models and Roles of the Professionals

Besides the "attorney-only" model, clients can choose an interdisciplinary model of the collaborative process, in which the clients also retain mental health and/or financial professionals. If the marital estate is substantial or complicated, the clients may jointly hire a collaborative law-trained financial professional who will work with them to project cash flow needs, avoid unintended tax consequences and consider the financial impact of various options in more detail than attorneys can. The financial professional can prepare short-term and long-term projections of each client's net worth over time given a proposed settlement agreement so the clients can have as complete a picture as possible before committing to a particular division of the estate and support agreement.

If there are children, the clients have the opportunity to jointly hire a child specialist – a mental health professional who has been trained in the collaborative process and who is neutral as between the two parents. The child specialist meets with the clients' children one or more times to get an understanding of how the children are coping with the changes and to listen to and assess the children's needs and concerns. After meeting with the children, the child specialist brings the voice of the children back to the clients at a conference scheduled for this specific purpose so they can hear it together and consider the children's needs and wants when designing their joint parenting plan.

The child specialist is NOT a custody evaluator or a parenting coordinator. He does not provide therapy services to the children. He is retained by the clients for the sole purpose of providing them with information they need to decide on a parenting plan which meets their children's needs as well as their own. He provides a valuable service that the attorneys cannot provide. Many times the child specialist is a key player in the process not only because he can help keep the clients focused on their children, but he can also give specific examples regarding a child's expressed concerns to the clients to remind them that their decisions should take into consideration not just what the clients need, but also what their children need.

Finally, some clients in the interdisciplinary model of collaborative law elect to retain divorce coaches or advisors, especially when there is significant conflict between the clients. Coaches are mental health professionals, trained in the collaborative process, who work with their respective clients to improve communication skills, help the clients manage strong emotions in a safe and controlled environment, identify for the clients negative "family dynamics," and meet with the parents and the child specialist to develop the co-parenting arrangement. The attorneys may or may not attend these meetings with the coaches, depending on the wishes of the clients, but will discuss any proposed co-parenting arrangements with their clients prior to the signing of a separation agreement or Consent Custody Order which obligates them to the arrangements proposed.

proposed.

Collaborative Law in North Carolina

North Carolina General Statute §§ 50-70 through 50-79 establish the validity and requirements of the collaborative law alternative in North Carolina. Enacted in 2003, the statute requires that the parties and their attorneys sign a “Collaborative Law Agreement,” which must include provisions for the withdrawal of all attorneys involved in the collaborative law process if the process does not result in settlement of the dispute. Additionally, in the event settlement is not reached, N.C. Gen Stat. § 50-76(c) explicitly bars the collaborative divorce attorneys from representing “either party in any further civil proceedings” and requires that the attorneys “shall withdraw as attorney for either party.” To protect the process from abuse, N.C. Gen Stat. § 50-77 provides that work products of attorneys and experts and communications and statements made via the collaborative process are inadmissible in court proceedings except by agreement of the parties. Finally, N.C. Gen Stat. § 50-74 specifically allows for the suspension of a case already proceeding in the court system if the parties jointly decide to try the collaborative process.

Collaborative Law Practice Groups

In addition to the statutes creating collaborative law procedures in North Carolina, the State Bar of North Carolina has issued ethics opinion 2002 FEO 1, which approves the creation of “collaborative law organizations,” otherwise known as practice groups, through which member attorneys can promote the use of collaborative law procedures and refer spouses of clients to other members of the group without a conflict of interest. The ability to create such organizations has encouraged the rapid growth of the collaborative law alternative around the country and has ensured the quality of the process.

Practice groups are formal organizations comprised of like-minded professionals who have agreed to offer the collaborative process as at least one of the services they offer and who wish to continue to attend trainings to improve their collaborative law skills. The organizations may include collaborative law-trained mental health professionals and financial specialists as well as attorneys. Generally, collaborative practice groups define their membership eligibility requirements, establish membership dues and support members in their efforts to promote the use of the collaborative process. They often encourage ongoing education and training,

both in general conflict resolution skills and in collaborative law. They also help to create positive working relationships and trust among the members of the group, which is ultimately a benefit to clients.

In closing, the collaborative process has become an important addition to the various processes in North Carolina divorcing couples can use to resolve disputes and achieve closure. If you would like to learn more about more about the collaborative process, you can contact my office at any time, or you can read about it on various websites, including the website for the International Association for Collaborative Professionals (IACP), www.collaborativepractice.com. ■

Kerry Burleigh practices collaborative family law in the Triangle area and restricts her practice to out-of-court settlement processes. She is a member of the Separating Together practice group (www.separatingtogether.com) and the newly established North Carolina Association of Collaborative Divorce Professionals. Her email is kburleigh@burleighlawfirm.com and her office number is 919-573-4848.

Ms. Mannerly Mediator

Compensation Conundrum

The following question was not actually submitted to Ms. Mannerly Mediator, but came about from discussions that Ms. Mannerly Mediator has had with refined, considerate, and extremely thoughtful practitioners. Ms. Mannerly Mediator has written the question so as to educate others who are not so refined, considerate, and thoughtful which she is sure the gentle readers will appreciate.

Dear Ms. Mannerly Mediator,

At a recent mediation, the parties reached an agreement about the amount of the settlement. During the long day, various items had been discussed, but at the final hour a dispute arose about the terms of the written mediated settlement agreement. I brought the attorneys together to talk about the terms of the final agreement, hoping to sort things out.

At the face to face meeting of the attorneys, the defendant's attorney told the plaintiff's attorney that I, the mediator, had never communicated one of the important terms to him. I knew that I had on several occasions and in fact had notes of what I said, but I did not challenge him. The parties went on to finalize their agreement and the case completely settled.

I felt wronged because the defense attorney wrongly accused me, but I did nothing. I wanted to talk about me, but instead let the issue slide. What should I have done?

*Sincerely,
Shamed in Shallotte*

Dear Shamed,

Ms. Mannerly Mediator appreciates the

question from the Gentle Mediator and would first like to congratulate Shamed, as well as the parties, for working through a difficult session and for reaching a resolution of their case.

Ms. Mannerly Mediator has searched her etiquette books for an analogous situation and has concluded that this dilemma is similar to one in which a guest to a dinner party arrives improperly attired. Ms. Mannerly Mediator knows that this is somewhat of a stretch, but asks the Reader to consider the following scenario.

Let us assume that the mediator is the host of a guest, who arrives, dressed in a jacket and tie, while the other guests appear donned in jeans. Upon arrival, the jacketed guest accuses the host of specifying business

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Ms. Mannerly *from page 5*

attire in the phone invitation, which the host knows is incorrect.

What would such a host do? Certainly the host would not make the guest feel further discomfort and tell the guest, I did no such thing, you are lying or some such similar accusation. Instead, the host would invite the guest into the house, offer a hangar for a jacket and tie and would otherwise play down any miscommunication that might have happened. Certainly, the host would not tell the guest to go home, because he is wrong. Should not the mediator behave in the same way?

The Standards of Conduct for certified mediators provides guidance for a situation of this sort. Standard II governs impartiality and provides:

II. Impartiality: A mediator shall, in word and action, maintain impartiality toward the parties and on the issues in dispute.

A. Impartiality means absence of prejudice or bias in word and action. In addition, it means a commitment to aid all parties, as opposed to a single party, in exploring the possibilities for resolution.

The guidance from this standard is that the mediator should squelch any feelings of having his or her integrity impugned and instead continue the impartial process of the negotiations. Had Shamed pointed out directly that the defense attorney was wrong and that the mediator was right, the parties may have believed that the mediator was taking sides. Shamed, in word and action

(while maybe not in thought), maintained impartiality by continuing the discussion and not calling attention to the fact that the defense attorney was wrong.

Standard VII also provides guidance. Standard VII provides:

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

A. The mediator shall place the interests of the parties above the interests of any court or agency which has referred the case, if such interests are in conflict.

B. Where a party is represented or advised by a professional advocate or counselor, the mediator shall place the interests of the party over his/her own interest in maintaining cordial relations with the professional, if such interests are in conflict.

While Standard VII may not have been intended to cover these facts, the guidance from the Standard is clear that the mediator should not allow the mediator's self interest to become the point of the negotiations. If the mediator focused on the assault of his/her job-performance of communicating terms, then the discussion would have been about the mediator's interests, and not the parties.

Ms. Mannerly Mediator also would direct the Gentle Mediator to Rule 6B (2) of the

Rules governing Mediated Settlement Conferences. The Rule, which generally covers disclosures, provides:

The mediator has a duty to be impartial and to advise all participants of any circumstances bearing on possible bias, prejudice or partiality. The Rule requires the mediator to maintain impartiality and

B. As early as practical and no later than the beginning of the first session, the mediator shall make full disclosure of any known relationships with the parties or their counsel that may affect or give the appearance of affecting the mediator's impartiality.

C. The mediator shall decline to serve or shall withdraw from serving if:

(1) a party objects to his/her serving on grounds of lack of impartiality, and after discussion, the party continues to object; or

(2) the mediator determines he/she cannot serve impartially.

If Shamed felt that the distraction of what h/she communicated or did not communicate about the discussion would impair the parties discussion, then Shamed should withdraw from the mediation. Withdrawal should be used as a last resort, however, such as sending the guest home who makes an improper statement at an event.

Based upon Shamed's description of the events, Ms. Mannerly Mediator believes that Shamed was a good host and did not embarrass the guest nor call unnecessary attention to the guest's misunderstanding.

Ms. Mannerly Mediator commends Shamed for the question and hopes that the guest appreciates the proper behavior exhibited by such a good host.

Sincerely,
M. Mannerly Mediator

Ms. Mannerly Mediator is the nom de plume of a mediator in Pilot Mountain, NC, who would like to remain anonymous. Further inquiries can be submitted to annanderson681@hotmail.com.

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Office 2010 Musings

by Len Benade

Microsoft Office 2010 is well worth the upgrade. After waiting three years to upgrade to Office 2007, I only waited about nine months to upgrade to 2010. I can assure you that this transition will be much easier than that from 2003 to 2007. There are many powerful new features and a multitude of minor enhancements. On the major side, the working Interface in each office program is much more powerful and user friendly, and now all Office documents can be previewed while searching through Windows Explorer. A most incredible development is the navigation pane, new in 2010. You've got to see the following Microsoft online tutorial to appreciate what I'm talking about. You'll be amazed. Go to

<http://office.microsoft.com/en-us/word-help/use-the-navigation-pane-to-search-and-move-around-in-your-document-RZ101829243.aspx?section=4>.

On the minor side, I've waited a long time for a 'revolving cube' slide transition in PowerPoint, heretofore available only in an expensive CrystalGraphics package. It's one of the many new additions to PowerPoint. And OneNote 2010 rocks! Sync your notebooks between home and office with free

web space using Microsoft Office SkyDrive. The program will scan hand written notes and transcribe/insert Office documents to OneNote pages. In order to insert pdf files you must first convert them to Word docs. To do this download and purchase "Tweak to PDF" for \$19.95 – it's worth it. For more details on using this indispensable program read "The Ideal Note Taking System for Today's Lawyer" by Stephen Worrall, a family law practitioner in Georgia at http://www.tabletclawyer.com/2007/05/the_ideal_notet.html.

However, as one might expect, there are growing pains. Office 2010 is incompatible with all Adobe programs. Check out this blog entitled "Adobe Misses the Office 2010 Boat" at <http://ptihosting.com/blog/it-blog/microsoft-office-2010-rtm-and-adobe-acrobat-incompatible/>.

So here I am telling you this just after extolling Adobe in the last tech article. Not to fear – you can work around the useless pdf buttons in Word by just printing the file using your Adobe printer. Another option: PDFfill makes three great little PDF programs and two of them are free. PDFfill PDF Writer is simple, free and all you need to

convert to or save pdf files. PDFfill Tools is handy and free as well. With PDF Editor you can do many of the same things as Adobe Acrobat. It's intuitive and easy to use, and it will cost you just \$19.95 per computer. Then, there's the Outlook drag/drop bug. When you drag an item from Outlook 2010 (say an email) and deposit into another application (for example your Quickbooks Customer Manager database), and then you drag another one, you'll now be dragging two, then three, and so on. The very mildly annoying fix is simply to jump out of the Inbox or Outbox and the back in after each drag/drop.

Still, the pros far outweigh these miniscule cons. Windows 7 64-bit with Office 2010 is an awesome combination. If you haven't taken the plunge, don't hesitate any longer – you won't be sorry! ■

Len Benade is the managing partner of Benade & Huggins LLP in Hickory, North Carolina. He has been a securities arbitrator (NASD, NYSE, NEA, FINRA) for 20 years and is a certified FINRA mediator.

Amendments & Additions to Industrial Commission Rules

by John C. Schafer

The North Carolina Industrial Commission ("IC") has adopted amendments and additions to its existing ICMSC Rules. These changes were effective as of Jan. 1, 2011. Many of the revisions simply updated the rules to reflect current statutory and case law as well as recent changes that have been made in the Superior Court MSC Rules. For example, the revised rules increase the hourly and administrative fees to \$150, allow for the recovery of mediation fees as part of costs, provide for foreign language interpreters at mediation as would otherwise occur at IC hearings, require the use of mediators certified by the Dispute Resolution Commission,

adopt postponement provisions similar to those in the Superior Court MSC Rules, and update provisions concerning the inadmissibility of negotiations and mediator testimony. In addition, the revisions to the ICMSC Rules reflect one of the primary purposes of the Workers' Comp Act, which is "to grant certain and speedy relief to injured employees...." In this regard, ICMSC Rule 2(a) now provides in pertinent part as follows: "The scheduled date of the mediation conference shall be within 120 days of the mediation order. The stipulation shall include the date of the scheduled mediation, the name, address, and telephone number of the mediator

selected by agreement . . ." The full text of the rule changes are available at the following link – <http://www.ic.nc.gov/ncic/pages/Final-Rules-20101014.pdf>, and are also available in the Latest News section of the IC web page at <http://www.ic.nc.gov>. ■

Deputy Commissioner John C. Schafer is in charge of the Mediation Section of the N.C. Industrial Commission.

The Greensboro Landlord-Tenant Dispute Program

by Sherill Hayes, Ph.D., Cathie Witty, MPA, Ph.D., & Robert Nunn

In 2010, the Program in Conflict Studies and Dispute Resolution at the University of North Carolina at Greensboro began a partnership with the City of Greensboro Human Relations Department (HRD) to help landlords and tenants address and resolve disputes. The goal of the program is to improve the relationship between tenants and landlords to resolve presenting conflicts, educate the public about housing and their rights under North Carolina landlord-tenant laws, and improve the landlord-tenant relationship. Although the program has been operational for less than one year, results show some positive outcomes, especially in meeting the informational needs of residents, providing a forum for addressing disputes, and laying groundwork for developing longer term partnerships between the universities and city government in addressing social issues using dispute resolution.

Background

The City Human Relations Department first identified the need for the new program. In early 2008, Robert Nunn, HRD Division Manager, and Cheryl Gant, HRD Fair Housing Specialist, noticed the HRD receiving a larger volume of calls. They noted that the majority of these calls were not Fair Housing discriminatory matters, but they were disputes between tenants and landlords around issues like repairs and security deposits that could benefit from additional assistance. Nunn thought of the UNCG Program in Conflict Studies and believed this would be a great opportunity to form a partnership to offer both a service to residents of Greensboro and experience to Master's students in conflict resolution.

The program development team, which included Dr. Cathie Witty and Dr. Sherrill Hayes from UNCG and Nunn and Gant from the HRD, was able to get some advice and background information from programs with similar mandates in city governments in Charlotte and Winston-Salem. A key finding from these other programs was the benefit of engaging the potential community stakehold-

ers in the process. To address this issue, in early 2009, the program development team convened several meetings of key stakeholders, including two with landlords' association representatives, tenant advocacy groups, Legal Aid attorneys, property management personnel, and other real estate professionals. These meetings allowed stakeholders to provide input into the program and raise some initial awareness for the future program. The team also held several additional meetings with representatives from Legal Aid and one meeting with the local Magistrates and Chief District Court judge to discuss the potential implications of the program for the courts. The program was fortunate to receive a grant from the Community Foundation of Greater Greensboro that allowed us to fund a graduate assistant, Nancy Sharpless, to serve as coordinator during the summer of 2010 and pay for some operational expenses for the program through the first part of 2011.

Design of the Program

The Landlord-Tenant Dispute Program (LTDP) is designed as a neutral, voluntary program to provide a forum for landlords and tenants to eliminate communication barriers and work together. The primary referral sources are Legal Aid, HRD Fair Housing Division, self-referrals from tenants and/or landlords, and Magistrate's court. Referrals are received through a dedicated phone line in the HRD. The program is administered from the City by Division Manager Nunn, and staffed by a program coordinator who is a trained mediator and staff member/graduate assistant from Conflict Studies. Program mediators are trained volunteers supervised by UNCG Conflict Studies faculty.

Cases appropriate for the program are not clear matters of law and procedure, but involve problems in the landlord and tenant relationship. For a mediation to take place, both parties must agree to come together and discuss the issues. The mediator's role is to assist both parties in defining and clarifying issues, reducing obstacles to communication, exploring possible solutions, and reaching a

mutually satisfactory agreement. If parties wish, a memorandum of understanding is drawn up, documenting their agreement on how to resolve current and manage any future issues.

Initial Results

In the first eight months of the program (April 9-December 8, 2010) the program fielded 144 calls. The majority of these calls were made by tenants (n= 142; 98%). In 58% of cases (n = 84) respondents were able to give specific contact information – at least a name and/or phone number – for the other party. In contrast, 40% of the callers (n= 58) were either unable to provide specific information about the other party or chose not to provide it.

Issues in these cases were varied but a few prominent themes began to emerge, especially: financial issues such as security/damage deposit, back rent, reimbursement for repairs made (22.2% of calls); seeking information about the program, handling eviction notices, moving out before the end of a lease, issues around living in a property that has been sold/foreclosed upon (21%); repair/maintenance issues, especially air conditioning being out or insufficient (18.8%); and health/safety issues of mold, vermin, or bed bugs (10.4%). Other issues arose less frequently, like the social environment (7.7% of calls) including issues with neighbors, noise, parking spaces or being towed, and witnessing illegal activities. In a few cases, the callers did not provide sufficient information to determine the issue or to follow-up with them (8.3%).

In terms of outcomes, the data demonstrate that over half of the contacts (54.5%) made to the program result in providing clients with some resolution to their issue. In many cases that meant providing wanted/needed information (24.8%); in others, some cases were "self-resolved" (26.2%), while some reached a mediated agreement (2.1%), or a partial resolution (1.4%). "Self-resolved" cases were cases in which, through contacting the program, both parties discussed the issues over the phone with a medi-

ator who encouraged a private resolution of the current issue. It appears that in these cases the program and mediators served as a “jump start” to a conversation and that interaction between the parties without a direct face-to-face mediation was satisfactory enough that the initiating party decided that no further action was needed.

A further 17% of cases received a direct referral to additional community resources (Legal Aid, advocacy groups, social services, etc.) that were better suited for their issues and hopefully contributed to a resolution. Mediation was refused by one or both parties in 12% of cases and only one case went to mediation and reached impasse. In 14% of cases there was insufficient information to contact the other party.

Conclusions and Implications

For a new joint university and city government program run by volunteers and graduate students, these data demonstrate some initial successes as well as some important considerations. Although the original design of the program was to conduct face to face mediation of disputes, experiences with the clients and their issues in the first few months led to a more flexible dispute resolution model. While information provision and

resource referrals were initially considered a potential outcome of the process, facilitating self-resolution and resolving disputes by shuttle mediation over the telephone were not. Understanding these developments has implications for recruiting and training volunteer mediators and students to operate in the program. It also demonstrates that looking at dispute resolution more broadly than just the mediation process can have an important impact on the real issues. A consideration for the program’s future is whether or not to continue to deliver dispute resolution services using this hybrid model or to consider focusing more on bringing parties to the table for mediation sessions, especially given the success with the mediation process when it occurs.

This program also illustrates the potential for effective community engagement and collaboration between university programs and local communities in a number of areas: identifying local needs and interests; strengthening community outreach, responsiveness and involvement on the part of local governments; and facilitating active contributions by faculty and students in community issues, joint civic initiatives and programs than foster greater citizen participation and input into local government.

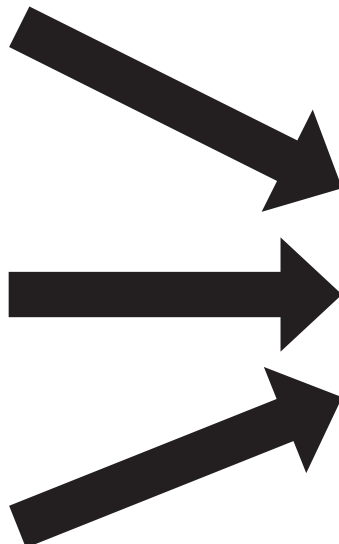
Irrespective of the future directions, resolutions are being reached by providing clients with access to knowledgeable, listening individuals, who are focused on managing and resolving disputes, and willing to use a full range of strategies and techniques including information and community resource networks. While this work may not be recognizable as a “mediation” program, it certainly is serving a purpose in resolving disputes between tenants and landlords in Greensboro.

If you are interested in becoming a volunteer mediator or would like to find out more about the program you may contact Dr. Sherrill Hayes at swhayes@uncg.edu. Program information can be found here: <http://www.greensboro-nc.gov/departments/Relations/landlordtenantprogram.htm> ■

Dr. Cathie Witty is Director of and Dr. Sherrill Hayes is an Assistant Professor in the Program in Conflict Studies and Dispute Resolution, University of North Carolina at Greensboro. Robert Nunn is the Fair Housing Enforcement Division Manager for the Human Relations Department, City of Greensboro, NC.

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