

# Florida Rules for Certified & Court-Appointed Mediators

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# Florida Rules for Certified and Court-Appointed Mediators

## Part I Mediator Qualifications

### Rule 10.100 Certification Requirements

- (a) General. For certification as a county court, family, circuit court, dependency, or appellate mediator, a mediator must be at least 21 years of age and be of good moral character. For certification as a county court, family, circuit court or dependency mediator, one must have the required number of points for the type of certification sought as specifically required in rule 10.105.
- (b) County Court Mediators. For initial certification as a mediator of county court matters, an applicant must have at least a high school diploma or a General Equivalency Diploma (GED) and 100 points, which shall include:
  - (1) 30 points for successful completion of a Florida Supreme Court certified county court mediation training program;
  - (2) 10 points for education; and
  - (3) 60 points for mentorship.
- (c) Family Mediators. For initial certification as a mediator of family and dissolution of marriage issues, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:
  - (1) 30 points for successful completion of a Florida Supreme Court certified family mediation training program;
  - (2) 25 points for education/mediation experience; and
  - (3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

- (d) Circuit Court Mediators. For initial certification as a mediator of circuit court matters, other than family matters, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:
  - (1) 30 points for successful completion of a Florida Supreme Court certified circuit mediation training program;
  - (2) 25 points for education/mediation experience; and
  - (3) 30 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

- (e) Dependency Mediators. For initial certification as a mediator of dependency matters, as defined in Florida Rule of Juvenile Procedure 8.290, an applicant must have at least a bachelor's degree and 100 points, which shall include, at a minimum:
  - (1) 30 points for successful completion of a Florida Supreme Court certified dependency mediation training program;
  - (2) 25 points for education/mediation experience; and
  - (3) 40 points for mentorship.

Additional points above the minimum requirements may be awarded for completion of additional education/mediation experience, mentorship, and miscellaneous activities.

- (f) Appellate Mediators. For initial certification as a mediator of appellate matters, an applicant must be a Florida Supreme Court certified circuit, family or dependency mediator and successfully complete a Florida Supreme Court certified appellate mediation training program.
- (g) Senior Judges Serving As Mediators. A senior judge may serve as a mediator in a court-ordered mediation in a circuit in which the senior judge is not presiding as a judge only if certified by the Florida Supreme Court as a mediator for that type of mediation.
- (h) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a family or circuit mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.
- (i) Special Conditions. Mediators who are certified prior to August 1, 2006, shall not be subject to the point requirements for any category of certification in relation to which continuing certification is maintained.

**Rule 10.105 Point System Categories**

- (a) Education. Points shall be awarded in accordance with the following schedule (points are only awarded for the highest level of education completed and honorary degrees are not included):
 

High School Diploma/GED	10 points
Associate's Degree	15 points
Bachelor's Degree	20 points
Master's Degree	25 points
Master's Degree in Conflict Resolution	30 points
Doctorate (e.g., Ph.D., J.D., M.D., Ed.D., LL.M)	30 points
Ph.D. from Accredited Conflict Resolution Program	40 points

An additional five points will be awarded for completion of a graduate level conflict resolution certificate program in an institution which has been accredited by Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges, the

Southern Association of Colleges and Schools, the Western Association of Schools and Colleges, the American Bar Association, or an entity of equal status.

- (b) Mediation Experience. One point per year will be awarded to a Florida Supreme Court certified mediator for each year that mediator has mediated at least 15 cases of any type. In the alternative, a maximum of five points will be awarded to any mediator, regardless of Florida Supreme Court certification, who has conducted a minimum of 100 mediations over a consecutive five-year period.
- (c) Mentorship. Ten points will be awarded for each supervised mediation completed of the type for which certification is sought and five points will be awarded for each mediation session of the type for which certification is sought which is observed.
- (d) Miscellaneous Points.
  - (1) Five points shall be awarded to applicants currently licensed or certified in any United States jurisdiction in psychology, accounting, social work, mental health, health care, education, or the practice of law or mediation. Such award shall not exceed a total of five points regardless of the number of licenses or certifications obtained.
  - (2) Five points shall be awarded for possessing conversational ability in a foreign language as demonstrated by certification by the American Council on the Teaching of Foreign Languages (ACTFL) Oral Proficiency Test, qualification as a court interpreter, accreditation by the American Translators Association, or approval as a sign language interpreter by the Registry of Interpreters for the Deaf. Such award shall not exceed a total of five points regardless of the number of languages in which the applicant is proficient.
  - (3) Five points shall be awarded for the successful completion of a mediation training program (minimum 30 hours in length) which is certified or approved by a jurisdiction other than Florida and which may not be the required Florida Supreme Court certified mediation training program. Such award shall not exceed five points regardless of the number of training programs completed.
  - (4) Five points shall be awarded for certification as a mediator by the Florida Supreme Court. Such award shall not exceed five points per category regardless of the number of training programs completed or certifications obtained.

## Committee Notes

The following table is intended to illustrate the point system established in this rule. Any discrepancy between the table and the written certification requirements shall be resolved in favor of the latter.

Points Needed Per Area of Certification		Minimum Points Required in Each Area
County	100	30 certified county mediation training; 10 education (minimum HS Diploma/GED); 60 mentorship
Family	100	30 certified family mediation training; 25 education/mediation experience (minimum Bachelor's Degree); 30 mentorship [and requires 15 additional points]
Dependency	100	30 certified dependency mediation training; 25 education/mediation experience (minimum Bachelor's Degree); 40 mentorship [and requires 5 additional points]
Circuit	100	30 certified circuit mediation training, 25 education/mediation experience (minimum Bachelor's Degree); 30 mentorship; [and requires 15 additional points]

Education/Mediation Experience (points awarded for highest level of education received)			
HS Diploma/GED	10 points	Master's Degree in Conflict Resolution	30
Associate's Degree	15 points	Doctorate (e.g., JD, MD, PhD, EdD, LLM)	30
Bachelor's Degree	20 points	Ph.D. from accredited CR Program	40
Master's Degree	25 points	Graduate Certificate CR Program	+5
Florida certified mediator: 1 point per year in which mediated at least 15 mediations (any type) OR any mediator: – 5 points for minimum of 100 mediations (any type) over a 5 year period			

Mentorship - must work with at least 2 different certified mediators and must be completed for the type of certification sought	
Observation	5 points each session
Supervised Mediation	10 points each complete mediation

Miscellaneous Points	
Licensed to practice law, psychology, accounting, social work, mental health, health care, education or mediation in any US jurisdiction	5 points (total)
Florida Certified Mediator	5 points (total)
Foreign Language Conversational Ability as demonstrated by certification by ACTFL Oral Proficiency Test; qualified as a court interpreter; or accredited by the American Translators Association; Sign Language Interpreter as demonstrated by approval by the Registry of Interpreters for the Deaf	5 points (total)
Completion of additional mediation training program (minimum 30 hours in length) certified/approved by a state or court other than Florida	5 points (total)

## **Rule 10.110 Good Moral Character**

(a) General Requirement. No person shall be certified by this Court as a mediator unless such person first produces satisfactory evidence of good moral character as required by rule 10.100.

(b) Purpose. The primary purpose of the requirement of good moral character is to ensure protection of the participants in mediation and the public, as well as to safeguard the justice system. A mediator shall have, as a prerequisite to certification and as a requirement for continuing certification, the good moral character sufficient to meet all of the Mediator Standards of Professional Conduct set out in rules 10.200-10.690.

(c) Certification. The following shall apply in relation to determining the good moral character required for initial and continuing mediator certification:

- (1) The applicant's or mediator's good moral character may be subject to inquiry when the applicant's or mediator's conduct is relevant to the qualifications of a mediator.
- (2) An applicant for initial certification who has been convicted of a felony shall not be eligible for certification until such person has received a restoration of civil rights.
- (3) An applicant for initial certification who is serving a sentence of felony probation shall not be eligible for certification until termination of the period of probation.
- (4) In assessing whether the applicant's or mediator's conduct demonstrates a present lack of good moral character the following factors shall be relevant:
  - (A) the extent to which the conduct would interfere with a mediator's duties and responsibilities;
  - (B) the area of mediation in which certification is sought or held;
  - (C) the factors underlying the conduct;
  - (D) the applicant's or mediator's age at the time of the conduct;
  - (E) the recency of the conduct;
  - (F) the reliability of the information concerning the conduct;
  - (G) the seriousness of the conduct as it relates to mediator qualifications;
  - (H) the cumulative effect of the conduct or information;
  - (I) any evidence of rehabilitation;
  - (J) the applicant's or mediator's candor; and
  - (K) denial of application, disbarment, or suspension from any profession.



(d) Decertification. A certified mediator shall be subject to decertification for any knowing and willful incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.

### **Rule 10.120 Notice of Change of Address or Name**

(a) Address Change. Whenever any certified mediator changes residence or mailing address, that person must within 30 days thereafter notify the center of such change.

(b) Name Change. Whenever any certified mediator changes legal name, that person must within 30 days thereafter notify the center of such change.

### **Rule 10.130 Notification of Conviction**

(a) Definition. "Conviction" means a determination of guilt which is the result of a trial, or entry of a plea of guilty or no contest, regardless of whether adjudication of guilt or imposition of sentence was suspended, deferred, or withheld, and applies in relation to any of the following:

(1) a felony, misdemeanor of the first degree, or misdemeanor of the second degree involving dishonesty or false statement;

(2) a conviction of a similar offense described in subdivision (1) that includes a conviction by a federal, military, or tribal tribunal, including courts-martial conducted by the Armed Forces of the United States;

(3) a conviction of a similar offense described in subdivision (1) that includes a conviction or entry of a plea of guilty or no contest resulting in a sanction in any jurisdiction of the United States or any foreign jurisdiction. A sanction includes, but is not limited to, a fine, incarceration in a state prison, federal prison, private correctional facility, or local detention facility; or

(4) a conviction of a similar offense described in subdivision (1) of a municipal or county ordinance in this or any other state.

(b) Report of Conviction. A conviction shall be reported in writing to the center within 30 days of such conviction. A report of conviction shall include a copy of the order or orders pursuant to which the conviction was entered.

(c) Suspension. Upon receipt of a report of felony conviction, the center shall immediately suspend all certifications and refer the matter to the qualifications complaint committee.

(d) Referral. Upon receipt of a report of misdemeanor conviction, the center shall refer the matter to the qualifications complaint committee for appropriate action. If the center becomes aware of a conviction prior to the required notification, it shall refer the matter to the qualifications complaint committee for appropriate action.

## **Part II Standards of Professional Conduct**

### **Rule 10.200 Scope and Purpose**

These Rules provide ethical standards of conduct for certified and court-appointed mediators. Court-appointed mediators are mediators selected by the parties or appointed by the court as the mediator in court-ordered mediations. These Rules are intended to both guide mediators in the performance of their services and instill public confidence in the mediation process. The public's use, understanding, and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles. Whether the parties involved in a mediation choose to resolve their dispute is secondary in importance to whether the mediator conducts the mediation in accordance with these ethical standards.

#### *Committee Notes*

2000 Revision. In early 1991, the Florida Supreme Court Standing Committee on Mediation and Arbitration Rules was commissioned by the Chief Justice to research, draft and present for adoption both a comprehensive set of ethical standards for Florida mediators and procedural rules for their enforcement. To accomplish this task, the Committee divided itself into two sub-committees and, over the remainder of the year, launched parallel programs to research and develop the requested ethical standards and grievance procedures.

The Subcommittee on Ethical Standards began its task by searching the nation for other states or private dispute resolution organizations who had completed any significant work in defining the ethical responsibilities of professional mediators. After searching for guidance outside the state, the subcommittee turned to Florida's own core group of certified mediators for more direct and firsthand data. Through a series of statewide public hearings and meetings, the subcommittee gathered current information on ethical concerns based upon the expanding experiences of practicing Florida certified mediators. In May of 1992, the "Florida Rules for Certified and Court-Appointed Mediators" became effective.

In the years following the adoption of those ethical rules, the Committee observed their impact on the mediation profession. By 1998, several other states and dispute resolution organizations initiated research into ethical standards for mediation which also became instructive to the Committee. In addition, Florida's Mediator Qualifications Advisory Panel, created to field ethical questions from practicing mediators, gained a wealth of pragmatic experience in the application of ethical concepts to actual practice that became available to the Committee. Finally, the Florida Mediator Qualifications and Discipline Review Board, the disciplinary body for mediators, developed specific data from actual grievances filed against mediators over the past several years, which also added to the available body of knowledge.

Using this new body of information and experience, the Committee undertook a yearlong study program to determine if Florida's ethical rules for mediators would benefit from review and revision.

Upon reviewing the 1992 ethical Rules, it immediately became apparent to the Committee that reorganization, renumbering, and more descriptive titles would make the Rules more useful. For that reason, the Rules were reorganized into four substantive groups which recognized a mediator's ethical responsibilities to the "parties," the "process," the "profession" and the "courts." The intent of the Committee here was to simply make the Rules easier to locate. There is no official significance in the order in which the Rules appear; any one area is equally important as all other areas. The Committee recognizes many rules overlap and define specific ethical responsibilities which impact more than one area. Clearly, a violation of a rule in one section may very well injure relationships protected in another section.

Titles to the Rules were changed to more accurately reflect their content. Additionally, redundancies were eliminated, phrasing tightened, and grammatical changes made to more clearly state their scope and purpose.

Finally, the Committee sought to apply what had been learned. The 2000 revisions are the result of that effort.

### **Rule 10.210 Mediation Defined**

Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

### **Rule 10.220 Mediator's Role**

The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision-making authority, however, rests solely with the parties.

### **Rule 10.230 Mediation Concepts**

Mediation is based on concepts of communication, negotiation, facilitation, and problem-solving that emphasize:

- (a) self determination;
- (b) the needs and interests of the parties;
- (c) fairness;
- (d) procedural flexibility;
- (e) confidentiality; and
- (f) full disclosure.

### **Rule 10.300 Mediator's Responsibility to the Parties**

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator's responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator's business practices should reflect fairness, integrity and impartiality.

#### *Committee Notes*

2000 Revision. Rules 10.300 - 10.380 include a collection of specific ethical concerns involving a mediator's responsibility to the parties to a dispute. Incorporated in this new section are the concepts formerly found in Rule 10.060 (Self Determination); Rule 10.070 (Impartiality/Conflict of Interest); Rule 10.080 (Confidentiality); Rule 10.090 (Professional Advice); and Rule 10.100 (Fees and Expenses). In addition, the Committee grouped under this heading ethical concerns dealing with the mediator's demeanor and courtesy, contractual relationships, and responsibility to non-participating persons.

### **Rule 10.310 Self-Determination**

- (a) **Decision-making.** Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.
- (b) **Coercion Prohibited.** A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.
- (c) **Misrepresentation Prohibited.** A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.
- (d) **Postponement or Cancellation.** If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.

#### *Committee Notes*

2000 Revision. Mediation is a process to facilitate consensual agreement between parties in conflict and to assist them in voluntarily resolving their dispute. It is critical that the parties' right to self-determination (a free and informed choice to agree or not to agree) is preserved during all phases of mediation. A mediator must not substitute the judgment of the mediator for the judgment of the parties, coerce or compel a party to make a decision, knowingly allow a participant to make a decision based on misrepresented facts or circumstances, or in any other way impair or interfere with the parties' right of self-determination.

While mediation techniques and practice styles may vary from mediator to mediator and mediation to mediation, a line is crossed and ethical standards are violated when any conduct of the mediator serves to compromise the parties' basic right to agree or not to agree. Special care should be taken to preserve the party's right to self-determination if the mediator provides input to the mediation process. See Rule 10.370.

On occasion, a mediator may be requested by the parties to serve as a decision-maker. If the mediator decides to serve in such a capacity, compliance with this request results in a change in the dispute resolution process impacting self-determination, impartiality, confidentiality, and other ethical standards. Before providing decision-making services, therefore, the mediator shall ensure that all parties understand and consent to those changes. See Rules 10.330 and 10.340.

Under subdivision (d), postponement or cancellation of a mediation is necessary if the mediator reasonably believes the threat of domestic violence, existence of substance abuse, physical threat or undue psychological dominance are present and existing factors which would impair any party's ability to freely and willingly enter into an informed agreement.

### **Rule 10.320 Nonparticipating Persons**

A mediator shall promote awareness by the parties of the interests of persons affected by actual or potential agreements who are not represented at mediation.

#### *Committee Notes*

2000 Revision. Mediated agreements will often impact persons or entities not participating in the process. Examples include lienholders, governmental agencies, shareholders, and related commercial entities. In family and dependency mediations, the interests of children, grandparents or other related persons are also often affected. A mediator is responsible for making the parties aware of the potential interests of such non-participating persons.

In raising awareness of the interests of non-participating persons, however, the mediator should still respect the rights of the parties to make their own decisions. Further, raising awareness of possible interests of related entities should not involve advocacy or judgments as to the merits of those interests. In family mediations, for example, a mediator should make the parents aware of the children's interests without interfering with self-determination or advocating a particular position.

### **Rule 10.330 Impartiality**

- (a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.
- (b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

- (c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.

#### *Committee Notes*

2000 Revision. A mediator has an affirmative obligation to maintain impartiality throughout the entire mediation process. The duty to maintain impartiality arises immediately upon learning of a potential engagement for providing mediation services. A mediator shall not accept or continue any engagement for mediation services in which the ability to maintain impartiality is reasonably impaired or compromised. As soon as practical, a mediator shall make reasonable inquiry as to the identity of the parties or other circumstances which could compromise the mediator's impartiality.

During the mediation, a mediator shall maintain impartiality even while raising questions regarding the reality, fairness, equity, durability and feasibility of proposed options for settlement. In the event circumstances arise during a mediation that would reasonably be construed to impair or compromise a mediator's impartiality, the mediator is obligated to withdraw.

Subdivision (c) does not preclude a mediator from giving or accepting de minimis gifts or incidental items provided to facilitate the mediation.

#### **Rule 10.340 Conflicts of Interest**

(a) Generally. A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator's impartiality.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

(d) Conflict During Mediation. A mediator shall not create a conflict of interest during the mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

(e) Senior and Retired Judges. If a mediator who is a senior judge or retired judge not eligible for assignment to temporary judicial duty has presided over a case involving any party, attorney, or law firm in the mediation, the mediator shall disclose such fact prior to mediation. A mediator shall not serve as a mediator in any case in a circuit in which the mediator is currently presiding as a senior judge. Absent express consent of the parties, a mediator shall not serve as a senior judge over any

case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge who provides mediation services shall not preside over any case in the circuit where the mediation services are provided; however, a senior judge may preside over cases in circuits in which the judge does not provide mediation services.

#### *Committee Notes*

2000 Revision. Potential conflicts of interests which require disclosure include the fact of a mediator's membership on a related board of directors, full or part time service by the mediator as a representative, advocate, or consultant to a mediation participant, present stock or bond ownership by the mediator in a corporate mediation participant, or any other form of managerial, financial, or family interest by the mediator in any mediation participant involved in a mediation. A mediator who is a member of a law firm or other professional organization is obliged to disclose any past or present client relationship that firm or organization may have with any party involved in a mediation. The duty to disclose thus includes information relating to a mediator's ongoing financial or professional relationship with any of the parties, counsel, or related entities. Disclosure is required with respect to any significant past, present, or promised future relationship with any party involved in a proposed mediation. While impartiality is not necessarily compromised, full disclosure and a reasonable opportunity for the parties to react are essential.

Disclosure of relationships or circumstances which would create the potential for a conflict of interest should be made at the earliest possible opportunity and under circumstances which will allow the parties to freely exercise their right of self-determination as to both the selection of the mediator and participation in the mediation process. A conflict of interest which clearly impairs a mediator's impartiality is not resolved by mere disclosure to, or waiver by, the parties. Such conflicts occur when circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.

To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator's professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself. By way of example, a mediator would therefore be prohibited from providing accounting, psychiatric or legal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process. Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

#### **Rule 10.350 Demeanor**

A mediator shall be patient, dignified, and courteous during the mediation process.

### **Rule 10.360 Confidentiality**

- (a) **Scope.** A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties.
- (b) **Caucus.** Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.
- (c) **Record Keeping.** A mediator shall maintain confidentiality in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

### **Rule 10.370 Advice, Opinions, or Information**

- (a) **Providing Information.** Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.
- (b) **Independent Legal Advice.** When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.
- (c) **Personal or Professional Opinion.** A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

#### *Committee Notes*

2000 Revision (previously Committee Note to 1992 adoption of former rule 10.090). Mediators who are attorneys should note Florida Bar Committee on Professional Ethics, formal opinion 86-8 at 1239, which states that the lawyer-mediator should “explain the risks of proceeding without independent counsel and advise the parties to consult counsel during the course of the mediation and before signing any settlement agreement that he might prepare for them.”

2000 Revision. The primary role of the mediator is to facilitate a process which will provide the parties an opportunity to resolve all or part of a dispute by agreement if they choose to do so. A mediator may assist in that endeavor by providing relevant information or helping the parties obtain such information from other sources. A mediator may also raise issues and discuss strengths and weaknesses of positions underlying the dispute. Finally, a mediator may help the parties evaluate resolution options and draft settlement proposals. In providing these services however, it is imperative that the mediator maintain impartiality and avoid any activity which would have the effect of overriding the parties’ rights of self-determination. While mediators may call upon their



own qualifications and experience to supply information and options, the parties must be given the opportunity to freely decide upon any agreement. Mediators shall not utilize their opinions to decide any aspect of the dispute or to coerce the parties or their representatives to accept any resolution option.

While a mediator has no duty to specifically advise a party as to the legal ramifications or consequences of a proposed agreement, there is a duty for the mediator to advise the parties of the importance of understanding such matters and giving them the opportunity to seek such advice if they desire.

### **Rule 10.380 Fees and Expenses**

- (a) Generally. A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.
- (b) Guiding Principles in Determining Fees. A mediator shall be guided by the following general principles in determining fees:
  - (1) Any charges for mediation services based on time shall not exceed actual time spent or allocated.
  - (2) Charges for costs shall be for those actually incurred.
  - (3) All fees and costs shall be appropriately divided between the parties.
  - (4) When time or expenses involve two or more mediations on the same day or trip, the time and expense charges shall be prorated appropriately.
- (c) Written Explanation of Fees. A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:
  - (1) the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;
  - (2) the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;
  - (3) the basis and amount of charges for any other items; and
  - (4) the parties' pro rata share of mediation fees and costs if previously determined by the court or agreed to by the parties.
- (d) Maintenance of Records. A mediator shall maintain records necessary to support charges for services and expenses and upon request shall make an accounting to the parties, their counsel, or the court.

- (e) Remuneration for Referrals. No commissions, rebates, or similar remuneration shall be given or received by a mediator for a mediation referral.
- (f) Contingency Fees Prohibited. A mediator shall not charge a contingent fee or base a fee on the outcome of the process.

### **Rule 10.400 Mediator's Responsibility to the Mediation Process**

A mediator is responsible for safeguarding the mediation process. The benefits of the process are best achieved if the mediation is conducted in an informed, balanced and timely fashion. A mediator is responsible for confirming that mediation is an appropriate dispute resolution process under the circumstances of each case.

#### *Committee Notes*

2000 Revision. Rules 10.400 - 10.430 include a collection of specific ethical concerns involved in a mediator's responsibility to the mediation process. Incorporated in this new section are the concepts formerly found in rule 10.060 (Self-Determination), rule 10.090 (Professional Advice); and rule 10.110 (Concluding Mediation). In addition, the Committee grouped under this heading ethical concerns dealing with the mediator's duty to determine the existence of potential conflicts, a mandate for adequate time for mediation sessions, and the process for adjournment.

### **Rule 10.410 Balanced Process**

A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.

#### *Committee Notes*

2000 Revision. A mediator should be aware that the presence or threat of domestic violence or abuse among the parties can endanger the parties, the mediator, and others. Domestic violence and abuse can undermine the exercise of self-determination and the ability to reach a voluntary and mutually acceptable agreement.

### **Rule 10.420 Conduct of Mediation**

- (a) Orientation Session. Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:
  - (1) mediation is a consensual process;
  - (2) the mediator is an impartial facilitator without authority to impose a resolution or

adjudicate any aspect of the dispute; and

(3) communications made during the process are confidential, except where disclosure is required or permitted by law.

(b) Adjournment or Termination. A mediator shall:

(1) adjourn the mediation upon agreement of the parties;

(2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;

(3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;

(4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and

(5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) Closure. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.

#### *Committee Notes*

2000 Revision. In defining the role of the mediator during the course of an opening session, a mediator should ensure that the participants fully understand the nature of the process and the limits on the mediator's authority. See rule 10.370(c). It is also appropriate for the mediator to inform the parties that mediators are ethically precluded from providing non-mediation services to any party. See rule 10.340(d). Florida Rule of Civil Procedure 1.730(b), Florida Rule of Juvenile Procedure 8.290(o), and Florida Family Law Rule of Procedure 12.740(f) require that any mediated agreement be reduced to writing. Mediators have an obligation to ensure these rules are complied with, but are not required to write the agreement themselves.

#### **Rule 10.430 Scheduling Mediation**

A mediator shall schedule a mediation in a manner that provides adequate time for the parties to fully exercise their right of self-determination. A mediator shall perform mediation services in a timely fashion, avoiding delays whenever possible.

#### **Rule 10.500 Mediator's Responsibility to the Courts**

A mediator is accountable to the referring court with ultimate authority over the case. Any

interaction discharging this responsibility, however, shall be conducted in a manner consistent with these ethical rules.

*Committee Notes*

2000 Revision. Rules 10.500 - 10.540 include a collection of specific ethical concerns involved in a mediator's responsibility to the courts. Incorporated in this new section are the concepts formerly found in rule 10.040 (Responsibilities to Courts).

**Rule 10.510 Information to the Court**

A mediator shall be candid, accurate, and fully responsive to the court concerning the mediator's qualifications, availability, and other administrative matters.

**Rule 10.520 Compliance with Authority**

A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation.

**Rule 10.530 Improper Influence**

A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.

*Committee Notes*

2000 Revision. Giving gifts to court personnel in exchange for case assignments is improper. De minimis gifts generally distributed as part of an overall business development plan are excepted. See also rule 10.330.

**Rule 10.600 Mediator's Responsibility to the Mediation Profession**

A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.

*Committee Notes*

2000 Revision. Rules 10.600 - 10.690 include a collection of specific ethical concerns involving a mediator's responsibility to the mediation profession. Incorporated in this new section are the concepts formerly found in rule 10.030 (General Standards and Qualifications), rule 10.120 (Training and Education), rule 10.130 (Advertising), rule 10.140 (Relationships with Other Professionals), and rule 10.150 (Advancement of Mediation).

## **Rule 10.610 Marketing Practices**

- (a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practice, including advertising, which contains false or misleading information. A mediator shall ensure that any marketing of the mediator's qualifications, services to be rendered, or the mediation process is accurate and honest.
- (b) Supreme Court Certification. Any marketing practice in which a mediator indicates that such mediator is "Florida Supreme Court certified" is misleading unless it also identifies at least one area of certification in which the mediator is certified.
- (c) Other Certifications. Any marketing publication that generally refers to a mediator being "certified" is misleading unless the advertising mediator has successfully completed an established process for certifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term "certified" in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.
- (d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified mediator.
- (e) Prohibited Claims or Promises. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.
- (f) Additional Prohibited Marketing Practices. A mediator shall not engage in any marketing practice that diminishes the importance of a party's right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial system.

### *Commentary*

2010 Revision. Areas of certification in subdivision (b) include county, family, circuit, dependency and other Supreme Court certifications.

The roles of a mediator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any mediation marketing practice, a former adjudicative officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For example, the depiction of a mediator in judicial robes or use of the word "judge" with or without modifiers to the mediator's name would be inappropriate. However, an accurate representation of the mediator's judicial experience would not be inappropriate.

## **Rule 10.620 Integrity and Impartiality**

A mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator's integrity or impartiality.

### **Rule 10.630 Professional Competence**

A mediator shall acquire and maintain professional competence in mediation. A mediator shall regularly participate in educational activities promoting professional growth.

### **Rule 10.640 Skill and Experience**

A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience.

### **Rule 10.650 Concurrent Standards**

Other ethical standards to which a mediator may be professionally bound are not abrogated by these rules. In the course of performing mediation services, however, these rules prevail over any conflicting ethical standards to which a mediator may otherwise be bound.

### **Rule 10.660 Relationships with Other Mediators**

A mediator shall respect the professional relationships of another mediator.

### **Rule 10.670 Relationships with Other Professionals**

A mediator shall respect the role of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.

### **Rule 10.680 Prohibited Agreements**

With the exception of an agreement conferring benefits upon retirement, a mediator shall not restrict or limit another mediator's practice following termination of a professional relationship.

#### *Committee Notes*

2000 Revision. Rule 10.680 is intended to discourage covenants not to compete or other practice restrictions arising upon the termination of a relationship with another mediator or mediation firm. In situations where a retirement program is being contractually funded or supported by a surviving mediator or mediation firm, however, reasonable restraints on competition are acceptable.

### **Rule 10.690 Advancement of Mediation**

- (a) **Pro Bono Service.** Mediators have a responsibility to provide competent services to persons seeking their assistance, including those unable to pay for services. A mediator should provide mediation services pro bono or at a reduced rate of compensation whenever appropriate.
- (b) **New Mediator Training.** An experienced mediator should cooperate in training new mediators, including serving as a mentor.

- (c) Support of Mediation. A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.

## **Part III Mediation Certification and Applications Discipline**

### **Rule 10.700 Scope and Purpose**

These rules apply to all proceedings before investigatory committees and adjudicatory panels of the Mediator Qualifications and Discipline Review Board (MQDRB) involving applications for certification or discipline of certified and court-appointed mediators. The purpose of these rules is to provide a means for enforcing the Florida Rules for Certified and Court-Appointed Mediators (Rules).

### **Rule 10.710 Privilege to Mediate**

The privilege to mediate as a certified or court-appointed mediator is conditional, confers no vested right, and is revocable for cause.

### **Rule 10.720 Definitions**

- (a) Applicant. A new applicant with no previous certifications, an applicant for renewal of a current certification, an applicant for additional certifications, and an applicant for reinstatement of certification.
- (b) Court-Appointed. Being appointed by the court or selected by the parties as the mediator in a court-ordered mediation.
- (c) Division. One of the standing divisions of the MQDRB established on a regional basis.
- (d) DRC or Center. The Florida Dispute Resolution Center of the Office of the State Courts Administrator.
- (e) File. To deliver to the office of the Florida Dispute Resolution Center of the Office of the State Courts Administrator pleadings, motions, instruments, and other papers for preservation and reference.
- (f) Good Moral Character Inquiry. A process which is initiated based on information which comes to the attention of the DRC relating to the good moral character of a certified or court-appointed mediator or applicant for certification.
- (g) Investigator. A certified mediator, lawyer, or other qualified individual retained by the DRC at the direction of a RVCC or a QIC to conduct an investigation.
- (h) MQDRB or Board. The Mediator Qualifications and Discipline Review Board.

- (i) Panel. Five members of the MQDRB selected by the DRC by rotation to adjudicate the formal charges associated with a rule violation or a good moral character complaint, selected from the division in which the complaint arose unless, in the discretion of the DRC Director, there is good reason to choose members from 1 of the other divisions.
- (j) Panel Adviser. A member of The Florida Bar retained by the DRC to assist a panel in performing its functions during a hearing. A panel adviser provides procedural advice only, is in attendance at the hearing, is not part of the panel's private deliberations, but may sit in on deliberations in order to answer procedural questions and is authorized to draft the decision and opinion of the panel for approval by the full panel and execution by the Chair.
- (k) Prosecutor. A member of The Florida Bar in good standing retained by the DRC to prosecute a complaint before a hearing panel. The Prosecutor is authorized to perform additional investigation in order to prepare the case, negotiate a consent to charges and an agreement to the imposition of sanctions to be presented to the panel prior to the hearing, and to fully prosecute the case, including any post hearing proceedings.
- (l) Qualifications Inquiry Committee or QIC. Four members of the MQDRB, no more than 1 from each division, selected by the DRC by rotation to serve for a 1-year period to conduct investigations and disposition of any good moral character inquiry for any applicant.
- (m) Rule Violation Complaint. Formal submission of alleged violation(s) of the Florida Rules for Certified and Court-Appointed Mediators. A complaint may originate from any person or from the DRC.
- (n) Rule Violation Complaint Committee or RVCC. Three members of the MQDRB selected by the DRC by rotation to conduct the investigation and disposition of any rule violation complaint.

### **Rule 10.730 Mediator Qualifications and Discipline Review Board**

- (a) Generally. The Mediator Qualifications and Discipline Review Board (MQDRB) shall be composed of 4 standing divisions that shall be located in the following regions:
- (1) Northern: encompassing the First, Second, Third, Fourth, Eighth, and Fourteenth judicial circuits;
  - (2) Central: encompassing the Fifth, Seventh, Ninth, Tenth,-Eighteenth and Nineteenth judicial circuits;
  - (3) Southeast: encompassing the Eleventh, Fifteenth, Sixteenth, and Seventeenth judicial circuits; and
  - (4) Southwest: encompassing the Sixth, Twelfth, Thirteenth, and Twentieth judicial circuits.

Other divisions may be formed by the Supreme Court of Florida based on need.



(b) Composition of Divisions. Each division of the MQDRB shall be composed of:

- (1) Judges: three circuit, county, or appellate judges;
- (2) County Mediators: three certified county mediators;
- (3) Circuit Mediators: three certified circuit court mediators;
- (4) Family Mediators: three certified family mediators, at least 2 of whom shall be non-lawyers;
- (5) Dependency Mediators: not less than 1 nor more than 3 certified dependency mediators, at least 1 of whom shall be a non-lawyer;
- (6) Appellate Mediators: not less than 1 nor more than 3 certified appellate mediators; and
- (7) Attorneys: three attorneys who are currently or were previously licensed to practice law in Florida for at least 3 years who have or had a substantial trial or appellate practice and are neither certified as mediators nor judicial officers during their terms of service on the MQDRB but who have a knowledge of and experience with mediation practice, statutes, and rules, at least 1 of whom shall have a substantial family law practice.

(c) Appointment and Term. Eligible persons shall be appointed to the MQDRB by the chief justice of the Supreme Court of Florida for a period of 4 years. The terms of the MQDRB members shall be staggered. No member of the MQDRB shall serve more than 3 consecutive terms. The term of any member serving on a committee or panel may continue until the final disposition of their service on a case.

(d) Rule Violation Complaint Committee (RVCC). Each RVCC shall be composed of 3 members of the MQDRB selected by the DRC on a rotation basis. To the extent possible, members of a RVCC shall be selected from the division in which the alleged violation occurred. RVCCs are assigned to a single case; however they may be assigned to related cases to be disposed of collectively as is deemed appropriate by the DRC Director. A RVCC shall cease to exist after the disposition of the case(s) to which they are assigned. Each RVCC shall be composed of:

- (1) one judge or attorney, who shall act as the chair of the committee;
- (2) one mediator, who is certified in the area to which the complaint refers; and
- (3) one other certified mediator.

(e) Qualifications Inquiry Committee (QIC). Each QIC shall be composed of 4 members, 1 from each of the 4 divisions of the MQDRB, selected by the DRC on a rotation basis to serve for a period of 1 year or until completion of all assigned cases, whichever occurs later. The QIC shall be composed of:

- (1) one judge or attorney, who shall act as the chair of the committee; and
- (2) three certified mediators.

(f) Panels. Each panel shall be composed of 5 members of the MQDRB selected by the DRC on a rotation basis. To the extent possible, members shall be selected from the division in which the alleged violation occurred or, in the case of a good moral character inquiry, from the division based on the Florida address of the subject of the inquiry. Panels are assigned to a single case; however, they may be assigned to related cases to be disposed of collectively as is deemed appropriate by the DRC Director. A panel shall cease to exist after disposing of all cases to which it is assigned. Each panel shall be composed of:

- (1) one judge, who shall serve as the chair;
- (2) three certified mediators, at least 1 of whom shall be certified in the area to which the complaint or inquiry refers; and
- (3) one attorney who shall serve as vice-chair. The vice-chair shall act as the chair of the panel in the event of the unavailability of the chair.

(g) Decision making. For all RVCCs, QICs, and panels, while unanimity is the preferred method of decision making, a majority vote shall rule.

#### *Committee Notes*

2000 Revision. In relation to (b)(5), the Committee believes that the chief justice should have discretion in the number of dependency mediators appointed to the board depending on the number of certified dependency mediators available for appointment. It is the intention of the Committee that when dependency mediation reaches a comparable level of activity to the other 3 areas of certification, the full complement of 3 representatives per division should be realized.

#### **Rule 10.740 Jurisdiction and Powers**

(a) RVCC. Each RVCC shall have such jurisdiction and powers as are necessary to conduct the proper and speedy investigation and disposition of any complaint. The judge or attorney chairing the RVCC shall have the power to compel:

- (1) attendance of any person at a RVCC proceeding;
- (2) statements, testimony, and depositions of any person; and
- (3) production of documents, records, and other evidence.

The RVCC shall perform its investigatory function and have concomitant power to resolve cases prior to panel referral.

(b) QIC. The QIC shall have such jurisdiction and powers as are necessary to conduct the proper and speedy investigation and disposition of: any good moral character inquiry pursuant to rule 10.800; petitions for reinstatement; or other matters referred by the DRC. The judge or attorney chairing the QIC shall have the power to compel:

- (1) attendance of any person at a QIC proceeding;
- (2) statements, testimony, and depositions of any person; and
- (3) production of documents, records, and other evidence.

The QIC shall perform its investigatory function and have concomitant power to resolve cases prior to panel referral.

(c) Panel. Each panel shall have such jurisdiction and powers as are necessary to conduct the proper and speedy adjudication and disposition of any proceeding before it. The panel shall perform the adjudicatory function, but shall not have any investigatory functions.

(d) Panel Chair. The chair of a panel shall have the power to:

- (1) compel the attendance of witnesses;
- (2) issue subpoenas to compel the depositions of witnesses;
- (3) order the production of records or other documentary evidence;
- (4) hold anyone in contempt prior to and during the hearing;
- (5) implement procedures during the hearing;
- (6) determine admissibility of evidence; and
- (7) decide motions prior to or during the hearing.

The vice-chair of a panel, upon the unavailability of the chair, is authorized only to issue subpoenas or order the production of records or other documentary evidence.

(e) Contempt/Disqualification Judge. One MQDRB judge member from each division shall be designated by the DRC, to serve for a term of 1 year, to hear all motions for contempt at the complaint committee level (RVCC or QIC) and hear motions for disqualification of any member of a RVCC, QIC or panel.

### **Rule 10.750 Contempt Process**

(a) General. Should any person fail, without justification, to respond to the lawful subpoena of a

RVCC, QIC, or panel, or, having responded, fail or refuse to answer all inquiries or to turn over evidence that has been lawfully subpoenaed, or should any person be guilty of disorderly conduct, that person may be found to be in contempt.

(b) RVCC or QIC Contempt. A motion for contempt based on the grounds delineated in subdivision (a) above along with a proposed order to show cause may be filed before the contempt/disqualification judge in the division in which the matter is pending. The motion shall allege the specific failure on the part of the person or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt.

(c) Panel Contempt. The chair of a panel may hear any motions filed either before or during a hearing or hold any person in contempt for conduct occurring during the hearing.

### **Rule 10.760 Duty to Inform**

A certified mediator shall inform the DRC in writing within 30 days of having been reprimanded, sanctioned, or otherwise disciplined by any court, administrative agency, bar association, or other professional group.

### **Rule 10.770 Staff**

The DRC shall provide all staff support to the MQDRB necessary to fulfill its duties and responsibilities under these rules and perform all other functions specified in these rules.

### **Rule 10.800 Good Moral Character Inquiry Process**

(a) Generally. Good moral character issues of applicants shall be heard by the QIC to determine if an applicant has the good moral character necessary to be certified pursuant to rule 10.110. If, during the term of certification of a mediator, the DRC becomes aware of any information concerning a certified mediator which could constitute credible evidence of a lack of good moral character under rule 10.110, the DRC shall refer such information to a RVCC as a rule violation complaint pursuant to 10.810. The QIC and RVCC shall be informed of the applicant's or mediator's prior disciplinary history.

(b) Meetings. The QIC shall convene as necessary by conference call or other electronic means to consider all cases currently pending before it.

(c) Initial Review. Prior to approving a new or renewal application for certification, the DRC shall review the application and any other information to determine whether the applicant appears to meet the standards for good moral character under rule 10.110. If the DRC's review of an application for certification or renewal raises any questions regarding the applicant's good moral character, the DRC shall request the applicant to supply additional information as necessary. Upon completing this extended review, if the information continues to raise questions regarding the applicant's good moral character, the DRC shall forward the application and supporting material as an inquiry to the QIC.

(d) Process. In reviewing all documentation relating to the good moral character of any applicant, the QIC shall follow the process below.

(1) In relation to a new application, the QIC shall either recommend approval or, if it finds there is reason to believe that the applicant lacks good moral character, the QIC may do 1 or more of the following:

(A) offer the applicant the opportunity to withdraw his/her application prior to the finding of probable cause;

(B) offer the applicant the opportunity to satisfy additional conditions prior to approval of application; or

(C) prepare a complaint and submit the complaint to the DRC for forwarding to the applicant. The complaint shall state with particularity the specific facts and details that form the basis of the complaint. The applicant shall respond within 20 days of receipt of the complaint unless the time is otherwise extended by the DRC in writing.

(i) After the response is received, the QIC may:

1. dismiss the complaint and approve the application; or

2. make a finding of probable cause, prepare formal charges, and refer the matter to the DRC for assignment to a panel.

(2) In relation to a renewal application, the QIC shall either recommend approval or, if it finds there is reason to believe that the renewal applicant lacks good moral character, the QIC may do 1 or more of the following:

(A) offer the renewal applicant the opportunity to withdraw his/her application and may include the necessity to resign any other certifications prior to the finding of probable cause; or

(B) offer the applicant the opportunity to satisfy additional conditions prior to approval of application; or

(C) prepare a complaint and submit same to the DRC for forwarding to the applicant. The complaint shall state with particularity the specific facts and details that form the basis of the complaint. The applicant shall respond to the complaint within 20 days of receipt unless otherwise extended by the DRC in writing.

(i) After the response is received, the QIC may:

1. dismiss the complaint and approve the renewal application; or

2. make a finding of probable cause, prepare formal charges and refer the matter to the DRC for assignment to a panel.

(e) Notification. Within 10 days of a matter being referred to the QIC, the DRC shall send notification to the applicant of the existence of a good moral character inquiry. Notification to the applicant shall be made by certified mail addressed to the applicant's physical address on file with the DRC until such time as the mediator expressly agrees in writing to accept service electronically and then notification shall be made to the applicant's e-mail address on file with the DRC.

(f) Investigation. The QIC, after review of the information presented, may direct the DRC to retain the services of an investigator to assist the QIC in any of its functions. The QIC, or any member or members thereof, may also conduct an investigation if authorized by the QIC chair. Any investigation may include meeting with the applicant or any other person.

(g) QIC Meeting with the Applicant. Notwithstanding any other provision in this rule, at any time while the QIC has jurisdiction, it may meet with the applicant in an effort to resolve the matter. This resolution may include additional conditions to certification if agreed to by the applicant. If additional conditions are accepted, all relevant documentation shall be forwarded to the DRC. These meetings may be in person, by teleconference, or other communication method at the discretion of the QIC.

(h) Notice and Publication. Any consensual resolution agreement with an applicant which includes sanctions shall be distributed by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators and published on the DRC page of the Florida Courts website with a summary of the case and a copy of the agreement.

(i) Review. If no other disposition has occurred, the QIC shall review all available information including the applicant's response to a complaint, any investigative report, and any underlying documentation to determine whether there is probable cause to believe that the alleged conduct would constitute evidence of the applicant's lack of good moral character.

(j) No Probable Cause. If the QIC finds no probable cause, it shall close the inquiry by dismissal and so advise the applicant in writing.

(k) Probable Cause and Formal Charges. If the QIC finds probable cause to believe the applicant lacks the good moral character necessary to be certified as a mediator, the QIC shall draft formal charges and forward such charges to the DRC for assignment to a panel. The charges shall include a statement of the matters regarding the applicant's lack of good moral character and references to the rules relating to those matters. At the request of the QIC, the DRC may retain a member in good standing of The Florida Bar to conduct such additional investigation as necessary and to draft the formal charges for the QIC. The formal charges shall be signed by the chair, or, in the alternative, by the remaining 3 members of the QIC.

(l) Withdrawal of Application. A withdrawal of an application does not result in the loss of jurisdiction by the QIC.

(m) Panel. If a matter is referred to a panel under this section, the process shall proceed pursuant to rule 10.820.

*Committee Notes*

2015 Revision. A lack of good moral character may be determined not only by 1 incident but also by the cumulative effect of many instances. In reviewing an application for matters concerning the good moral character of any applicant, prior disciplinary actions against the applicant, from whatever source, should be provided to the QIC for their review and consideration.

**Rule 10.810 Rule Violations Complaint Process**

(a) Initiation of Complaint. Any individual or the DRC may make a complaint alleging that a mediator has violated 1 or more provisions of these rules. The complaint from an individual shall be written, sworn to under oath and notarized using a form supplied by the DRC. A complaint initiated by the DRC need not be sworn nor notarized but shall be signed by the director or the DRC staff attorney, if any. The complaint shall state with particularity the specific facts and details that form the basis of the complaint.

(b) Filing. The complaint shall be filed with the DRC. Once received by the DRC, the complaint shall be stamped with the date of receipt.

(c) Assignment to a Rules Violation Complaint Committee (RVCC). Upon receipt of a complaint, the DRC shall assign the complaint to a RVCC within a reasonable period of time. The RVCC shall be informed by the DRC of the mediator's prior disciplinary history. As soon as practical after the receipt of a complaint from an individual, the DRC shall send a notification of the receipt of the complaint to the complainant.

(d) Facial Sufficiency Determination. The RVCC shall convene by conference call to determine whether the allegation(s), if true, would constitute a violation of these rules.

(1) If the RVCC finds a complaint against a mediator to be facially insufficient, the complaint shall be dismissed without prejudice and the complainant shall be so notified and given an opportunity to re-file within a 20-day time period. No complainant whose complaint is dismissed without prejudice pursuant to this section shall be permitted more than 1 additional filing to establish facial sufficiency.

(2) If the complaint is found to be facially sufficient, the RVCC shall prepare a list of any rule or rules which may have been violated and shall submit same to the DRC.

(e) Service. Upon the finding of facial sufficiency of a complaint, the DRC shall serve on the mediator a copy of the list of alleged rule violations, a copy of the complaint, and a link to an electronic copy of these rules or the rules which were in effect at the time of the alleged violation.

Service on the mediator shall be made either electronically or by certified mail addressed to the mediator's physical or e-mail address on file with the DRC.

(f) Response. Within 20 days of the receipt of the list of alleged rule violations and the complaint, the mediator shall send a written, sworn under oath, and notarized response to the DRC by registered or certified mail. Unless extended in writing by the DRC, if the mediator does not respond within the 20-day time frame, the allegations shall be deemed admitted and the matter may be referred to a panel.

(g) Resignation of Certification. A resignation of certification by a mediator after the filing of a complaint does not result in the loss of jurisdiction by the MQDRB.

(h) Investigation. The RVCC, after review of the complaint and response, may direct the DRC to appoint an investigator to assist the RVCC in any of its functions. The RVCC, or any member or members thereof, may also conduct an investigation if authorized by the RVCC chair. Any investigation may include meeting with the mediator, the complainant or any other person.

(i) RVCC Meeting with the Complainant and Mediator. Notwithstanding any other provision in this rule, at any time while the RVCC has jurisdiction, it may meet with the complainant and the mediator, jointly or separately, in an effort to resolve the matter. This resolution may include sanctions as set forth in rule 10.840(a) if agreed to by the mediator. If sanctions are accepted, all relevant documentation shall be forwarded to the DRC. Such meetings may be in person, by teleconference, or other communication method, at the discretion of the RVCC.

(j) Notice and Publication. Any consensual resolution agreement which includes sanctions shall be distributed by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators and published on the DRC page of the Florida Courts website with a summary of the case, the rule or rules listed as violated, the circumstances surrounding the violation of the rules, and a copy of the agreement.

(k) Review. If no other disposition has occurred, the RVCC shall review the complaint, the response, and any investigative report, including any underlying documentation, to determine whether there is probable cause to believe that the alleged misconduct occurred and would constitute a violation of the rules.

(l) No Probable Cause. If the RVCC finds no probable cause, it shall dismiss the complaint with prejudice and so advise the complainant and the mediator in writing. Such decision shall be final.

(m) Probable Cause Found. If the RVCC finds that probable cause exists, it may:

(1) draft formal charges and forward such charges to the DRC for assignment to a panel;  
or

(2) decide not to proceed with the case by filing an Order of Non-Referral containing a short and plain statement of the rules for which probable cause was found and the reason or reasons for non-referral, and so advise the complainant and the mediator in writing.



(n) Formal Charges and Counsel. If the RVCC finds probable cause that the mediator has violated 1 or more of these rules, the RVCC shall draft formal charges and forward such charges to the DRC for assignment to a panel. The charges shall include a statement of the matters asserted in the complaint relevant to the finding of rules violations, any additional information relevant to the finding of rules violations, and references to the particular sections of the rules violated. The formal charges shall be signed by the chair, or, in the alternative, by the other 2 members of the RVCC. At the request of the RVCC, the DRC may retain a member in good standing of The Florida Bar to conduct such additional investigation as necessary and draft the formal charges.

(o) Dismissal. Upon the filing of a stipulation of dismissal signed by the complainant and the mediator, and with the concurrence of the RVCC, which may withhold concurrence, the complaint shall be dismissed with prejudice.

### **Rule 10.820 Hearing Panel Procedures**

(a) Notification of Formal Charges. Upon the referral of formal charges to the DRC from a RVCC or QIC, the DRC shall promptly send a copy of the formal charges to the mediator or applicant and complainant, if any, by certified mail, return receipt requested.

(b) Prosecutor. Upon the referral of formal charges, the DRC shall retain the services of a member in good standing of The Florida Bar to prosecute the case.

(c) Panel Adviser. After the referral of formal charges, the DRC may retain the services of a member in good standing of The Florida Bar to attend the hearing and advise and assist the panel on procedural and administrative matters.

(d) Assignment to Panel. After the referral of formal charges to the DRC, the DRC shall send to the complainant, if any, and the mediator or applicant a Notice of Assignment of the case to a panel. No member of the RVCC or QIC that referred the formal charges shall serve as a member of the panel.

(e) Assignment of Related Cases. If the DRC assigns related cases to a panel for a single hearing, any party to those cases may make a motion for severance which shall be heard by the chair of the panel.

(f) Time of the Hearing. Absent stipulation of the parties or good cause, the DRC shall set the hearing for a date not more than 120 days nor less than 30 days from the date of the notice of assignment of the case to the panel. Within 10 days of the scheduling of the hearing, a notice of hearing shall be sent by certified mail to the mediator or applicant and his or her attorney, if any.

(g) Admission to Charges. At any time prior to the hearing, the panel may accept an admission to any or all charges and impose sanctions upon the mediator or applicant. The panel shall not be required to meet in person to accept any such admission and imposition of sanctions.

(h) Dismissal by Stipulation. Upon the filing of a stipulation of dismissal signed by the complainant, if any, the mediator or applicant, and the prosecutor and with the review and concurrence of the

panel, which concurrence may be withheld, the case shall be dismissed with prejudice. Upon dismissal, the panel shall promptly forward a copy of the dismissal order to the DRC.

(i) Procedures for Hearing. The procedures for a hearing shall be as follows:

- (1) Panel Presence. No hearing shall be conducted without the chair being physically present. All other panel members must be physically present unless the chair determines that exceptional circumstances are shown to exist which include, but are not limited to, unexpected illness, unexpected incapacity, or unforeseeable and unavoidable absence of a panel member. Upon such determination, the hearing may proceed with no fewer than 4 panel members, of which 1 is the chair. In the event only 4 of the panel members are present, at least 3 members of the panel must agree on the decisions of the panel. If 3 members of the panel cannot agree on the decision, the hearing shall be rescheduled.
- (2) Decorum. The hearing may be conducted informally but with decorum.
- (3) Oath. Anyone testifying in the hearing shall swear or affirm to tell the truth.
- (4) Florida Evidence Code. The rules of evidence applicable to trials of civil actions shall apply but are to be liberally construed.
- (5) Testimony. Testimony at the hearing may be given through the use of telephonic or other communication equipment upon a showing of good cause to the chair of the panel within a reasonable time prior to the hearing.
- (6) Right to Defend. A mediator or applicant shall have the right: to defend against all charges; to be represented by an attorney; to examine and cross-examine witnesses; to compel the attendance of witnesses to testify; and to compel the production of documents and other evidentiary matter through the subpoena power of the panel.
- (7) Mediator or Applicant Discovery. The prosecutor shall, upon written demand of a mediator, applicant, or counsel of record, promptly furnish the following: the names and addresses of all witnesses whose testimony is expected to be offered at the hearing; copies of all written statements and transcripts of the testimony of such witnesses in the possession of the prosecutor or the DRC which are relevant to the subject matter of the hearing and which have not previously been furnished; and copies of any exhibits which are expected to be offered at the hearing.
- (8) Prosecutor Discovery. The mediator, applicant, or their counsel of record shall, upon written demand of the prosecutor, promptly furnish the following: the names and addresses of all witnesses whose testimony is expected to be offered at the hearing; copies of all written statements and transcripts of the testimony of such witnesses in the possession of the mediator, applicant or their counsel of record which are relevant to the subject matter of the hearing and which have not previously been furnished; and copies of any exhibits which are expected to be offered at the hearing.

- (9) Complainant's Failure to Appear. Absent a showing of good cause, if the complainant fails to appear at the hearing, the panel may dismiss the case.
- (10) Mediator's or Applicant's Failure to Appear. If the mediator or applicant has failed to answer the underlying complaint or fails to appear, the panel may proceed with the hearing.
- (A) If the hearing is conducted in the absence of a mediator or applicant who failed to respond to the underlying complaint and the allegations were therefore admitted, no further notice to the mediator or applicant is necessary and the decision of the panel shall be final.
- (B) If the hearing is conducted in the absence of a mediator or applicant who submitted a response to the underlying complaint, the DRC shall notify the mediator or applicant that the hearing occurred and whether the matter was dismissed or if sanctions were imposed. The mediator or applicant may petition for rehearing by showing good cause for such absence. A petition for rehearing must be received by the DRC and the prosecutor no later than 10 days from receipt of the DRC notification. The prosecutor shall file a response, if any, within 5 days from receipt of the petition for rehearing. The disposition of the petition shall be decided solely by the chair of the panel and any hearing required by the chair of the panel may be conducted telephonically or by other communication equipment.
- (11) Reporting of Proceedings. Any party shall have the right, without any order or approval, to have all or any portion of the testimony in the proceedings reported and transcribed by a court reporter at the party's expense.
- (j) Decision of Panel. Upon making a determination that the case shall be dismissed or that the imposition of sanctions or denial of application is appropriate, the panel shall promptly notify the DRC of the decision including factual findings and conclusions signed by the chair of the panel. The DRC shall thereafter promptly mail a copy of the decision to all parties.
- (k) Notice to Circuits and Districts. In every case in which a mediator or applicant has had sanctions imposed by agreement or decision, such agreement or decision shall be sent by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators.
- (l) Publication. Upon the imposition of sanctions, whether by consent of the mediator or applicant and approval by the panel or by decision of the panel after a hearing, the DRC shall publish the name of the mediator or applicant, a summary of the case, a list of the rule or rules which were violated, the circumstances surrounding the violation, and a copy of the decision of the panel. Such publication shall be on the DRC page of the Florida Courts website and in any outside publication at the discretion of the DRC Director.

### **Rule 10.830 Burden of Proof**

(a) Rule Violation. The burden of proof for rule violations other than good moral character is clear and convincing evidence.

(b) Good Moral Character. The burden of proof for any good moral character issue is the preponderance of the evidence.

### **Rule 10.840 Sanctions**

(a) Generally. The mediator or applicant may be sanctioned pursuant to the following:

- (1) by agreement with a RVCC or QIC;
- (2) by agreement with a panel to the imposition of sanctions; or
- (3) by imposition of sanctions by a panel as a result of their deliberations.

(b) Types of Sanctions. Sanctions may include 1 or more of the following:

- (1) denial of an application;
- (2) oral admonishment;
- (3) written reprimand;
- (4) additional training, which may include the observation of mediations;
- (5) restriction on types of cases which can be mediated in the future;
- (6) supervised mediation;
- (7) suspension for a period of up to 1 year;
- (8) decertification or, if the mediator is not certified, bar from service as a mediator under any rule of court or statute pertaining to certified or court-appointed mediators;
- (9) costs incurred prior to, during, and subsequent to the hearing. The specific categories and amounts of such costs are to be decided by the chair of the panel upon submission of costs by the DRC or the prosecutor, and shall include only:
  - (A) all travel expenses for members of the panel;
  - (B) all travel expenses for witnesses, prosecutor, panel adviser, and DRC Director or designee;

- (C) court reporter fees and transcription;
- (D) fees and costs for all investigation services;
- (E) telephone/conference call charges;
- (F) postage and delivery;
- (G) notary charges;
- (H) interpretation and translation services; and
- (I) copy costs.

(10) any other sanctions as deemed appropriate by the panel.

(c) Failure to Comply With Sanctions.

- (1) If there is a reasonable belief that a mediator or applicant failed to comply with any sanction, unless otherwise provided for in the agreement with a RVCC or QIC or the decision of the panel, the DRC may file a motion for contempt with the Contempt/Disqualification Judge of the division in which the sanctions were agreed to or imposed and serve the mediator or applicant with a copy of the motion.
- (2) The mediator or applicant shall file a response within 20 days of receipt of the motion for contempt.
- (3) If no response is filed, the allegations of the motion are admitted.
- (4) The DRC shall thereafter set a hearing with the Contempt/Disqualification Judge and provide notice to the mediator or applicant. The holding of a hearing shall not preclude subsequent hearings on any other alleged failure.
- (5) Any sanction in effect at the time that the DRC has a reasonable belief that a violation of the sanctions has occurred shall continue in effect until a decision is reached by the Contempt/Disqualification Judge.
- (6) A finding by the Contempt/Disqualification Judge that there was a willful failure to substantially comply with any imposed or agreed-to sanction shall result in the automatic decertification of the mediator for no less than 2 years after which the mediator shall be required to apply as a new applicant.

## **Rule 10.850 Suspension, Decertification, Denial of Application, and Removal**

(a) Suspension. During the period of suspension, compliance with all requirements for certification must be met including, but not limited to, submittal of renewal application, fees and continuing education requirements.

(b) Reinstatement after Suspension. A mediator who has been suspended shall be reinstated as a certified mediator, unless otherwise ineligible, upon the expiration of the suspension period and satisfaction of any additional obligations contained in the sanction document.

(c) Automatic Decertification or Automatic Denial of Application. A mediator or applicant shall automatically be decertified or denied application approval without the need for a hearing upon the following:

- (1) Conviction of Felony of Certified Mediator. If the DRC finds that a certified mediator has a felony conviction, the mediator shall automatically be decertified from all certifications and notification and publication of such decertification shall proceed pursuant to rule 10.820(j) and (k). The decertified mediator may not apply for any certification for a period of 2 years or until restoration of civil rights, whichever comes later.
- (2) Conviction of Felony of Applicant. If the DRC finds that an applicant for certification has a felony conviction and has not had civil rights restored, the application shall be automatically denied and may not be resubmitted for consideration until restoration of civil rights.
- (3) Revocation of Professional License of Certified Mediator. If the DRC finds that a certified mediator has been disbarred from any state or federal bar or has had any professional license revoked, the mediator shall be automatically decertified and cannot reapply for certification for a period of 2 years.
- (4) Revocation of Professional License of Applicant. If the DRC finds that an applicant for certification has been disbarred from any state or federal bar or has had any professional license revoked, the applicant shall be automatically denied approval and cannot reapply for certification for a period of 2 years.
- (5) Notification and Publication. In the event of an automatic denial of an application or decertification, the DRC shall follow all procedures for notification and publication as stated in rule 10.820(k) and (l).

(d) Decertified Mediators. If a mediator or applicant has been decertified or barred from service pursuant to these rules, the mediator or applicant shall not thereafter be assigned or appointed to mediate a case pursuant to court rule or order or be designated as a mediator by the parties in any court proceeding.

(e) Removal from Supreme Court Committees. If a member of the MQDRB, the ADR Rules and Policy Committee, the Mediator Ethics Advisory Committee, the Mediation Training Review Board, or any supreme court committee related to alternative dispute resolution processes established in the future, is disciplined, suspended, or decertified, the DRC shall immediately remove that member from the committee or board on which the member serves.

(f) Reinstatement after Decertification.

(1) Except if inconsistent with rule 10.110, or subdivision (b) of this rule, a mediator who has been decertified may be reinstated as a certified mediator after application unless the document decertifying the mediator states otherwise.

(2) Unless a greater time period has been imposed by a panel or rule, no application for reinstatement may be submitted prior to 1 year after the date of decertification.

(3) The reinstatement procedures shall be as follows:

(A) A petition for reinstatement shall be made in writing, sworn to by the petitioner, notarized under oath, and filed with the DRC.

(B) The petition shall contain:

(i) a new and current application for mediator certification along with required fees;

(ii) a description of the offense or misconduct upon which the decertification was based, together with the date of such decertification and the case number;

(iii) a copy of the sanction document decertifying the mediator;

(iv) a statement of facts claimed to justify reinstatement as a certified mediator; and

(v) if the period of decertification is 2 years or more, the petitioner shall complete a certified mediation training program of the type for which the petitioner seeks to be reinstated and complete all mentorship and other requirements in effect at the time.

(C) The DRC shall refer the petition for reinstatement to the current QIC.

(D) The QIC shall review the petition for reinstatement. If there are no matters which make the mediator otherwise ineligible and if the petitioner is found to have met the requirements for certification, the QIC shall notify the DRC and the DRC shall reinstate the petitioner as a certified mediator. However, if the decertification was for 2 or more years, reinstatement shall be contingent on the petitioner's

completion of a certified mediation training program of the type for which the petitioner seeks to be reinstated.

### **Rule 10.860 Subpoenas**

(a) RVCC or QIC. Subpoenas for the production of documents or other evidence and for the appearance of any person before a RVCC or QIC, or any member thereof, may be issued by the chair of the RVCC or QIC. If the chair is unavailable, the subpoena may be issued by the remaining members of the RVCC or QIC.

(b) Panel. Subpoenas for the attendance of witnesses and the production of documents or other evidence before a panel may be issued by the chair of the panel. If the chair of a panel is unavailable, the subpoena may be issued by the vice-chair.

(c) Service. Subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.

(d) Failure to Obey. Any person who, without good cause shown, fails to obey a duly served subpoena may be cited for contempt in accordance with rule 10.750.

### **Rule 10.870 Confidentiality**

(a) Generally. Until the finding of probable cause, all communications and proceedings shall be confidential. Upon the filing of formal charges, the formal charges and all documents created subsequent to the filing of formal charges shall be public with the exception of those matters which are otherwise confidential under law or rule of the supreme court, regardless of the outcome of any appeal. If a consensual agreement is reached between a mediator or applicant and a RVCC or QIC, only a summary of the allegations and a link or copy of the agreement may be released to the public and placed on the DRC page of the Florida Courts website.

(b) Breach of Confidentiality. Violation of confidentiality by a member of the MQDRB shall subject the member to discipline under these rules and removal from the MQDRB by the chief justice of the Supreme Court of Florida.

#### *Committee Notes*

2008 Revision. The recent adoption of the Florida Mediation Confidentiality and Privilege Act, sections 44.401 - 44.406, Florida Statutes, renders the first paragraph of the 1995 Revision Committee Notes inoperative. The second paragraph explains the initial rationale for the rule, which is useful now from a historical standpoint.

1995 Revision. The Committee believed the rule regarding confidentiality should be amended in deference to the 1993 amendment to section 44.102, Florida Statutes, that engrafted an exception to the general confidentiality requirement for all mediation sessions for the purpose of investigating complaints filed against mediators. Section 44.102(4) specifically provides that “the disclosure of an otherwise privileged communication shall be used only for the internal use of the body conducting



the investigation” and that “[Prior] to the release of any disciplinary files to the public, all references to otherwise privileged communications shall be deleted from the record.”

These provisions created a substantial potential problem when read in conjunction with the previous rule on confidentiality, which made public all proceedings after formal charges were filed. In addition to the possibly substantial burden of redacting the files for public release, there was the potentially greater problem of conducting panel hearings in such a manner as to preclude the possibility that confidential communications would be revealed during testimony, specifically the possibility that any public observers would have to be removed prior to the elicitation of any such communication only to be allowed to return until the next potentially confidential revelation. The Committee believes that under the amended rule the integrity of the disciplinary system can be maintained by releasing the results of any disciplinary action together with a redacted transcript of panel proceedings, while still maintaining the integrity of the mediation process.

### **Rule 10.880 Disqualification and Removal of Members of a Committee, Panel or Board**

(a) Disqualification of Member. A member of the MQDRB is disqualified from serving on a RVCC, QIC or panel involving that member’s own discipline or decertification.

(b) Party Request for Disqualification of a MQDRB Member. Any party may move to disqualify a member of the committee or panel before which the case is pending. Factors to be considered include, but are not limited to:

- (1) the member or some person related to that member is interested in the result of the case;
- (2) the member is related to an attorney or counselor of record in the case; or
- (3) the member is a material witness for or against 1 of the parties to the case.

(c) Facts to Be Alleged. Any motion to disqualify shall be in writing, allege the facts relied on to show the grounds for disqualification and shall be made under oath by the moving party.

(d) Time for Motion. A party shall file a motion to disqualify with the DRC not later than 10 days after the movant discovered or reasonably should have discovered the facts which would constitute grounds for disqualification.

(e) Action by Contempt/Disqualification Judge. One of the Contempt/Disqualification Judges shall rule on any motions for disqualification.

(f) Board Member Initiative. A member of any committee or panel may disqualify him/herself on the member’s own initiative at any time.

(g) Replacement. Depending on the circumstances, the DRC may replace any disqualified member.

(h) Qualifications for New Member. Each new member serving as a replacement shall have the same qualifications as the disqualified member, but, if needed, may be chosen from a different division of the MQDRB.

### **Rule 10.890 Limitation on Time to Initiate a Complaint**

(a) Rule Violations. Except as otherwise provided in this rule, complaints alleging violations of the Florida Rules for Certified and Court-Appointed Mediators shall not be filed later than 2 years after the date on which the party had a reasonable opportunity to discover the violation, but in no case more than 4 years after the date of the violation.

(b) Felonies. There shall be no limit on the time in which to file a complaint alleging a conviction of a felony by an applicant or mediator.

(c) Good Moral Character. A complaint alleging lack of good moral character in connection with an application under these rules shall not be filed later than 4 years after the date of the discovery by the DRC of the matter(s) evidencing a lack of good moral character.

### **Rule 10.900 Supreme Court Chief Justice Review**

(a) Right of Review. Any mediator or applicant found to have committed a violation of these rules or otherwise sanctioned by a hearing panel shall have a right of review of that action. Review of this type shall be by the chief justice of the Supreme Court of Florida or by the chief justice's designee. A mediator shall have no right of review of any resolution reached under rule 10.800(g) and 10.810(i).

(b) Rules of Procedure. The Florida Rules of Appellate Procedure, to the extent applicable and except as otherwise provided in this rule, shall control all appeals of mediator disciplinary matters.

(1) The jurisdiction to seek review of disciplinary action shall be invoked by filing a Notice of Review of Mediator Disciplinary Action with the clerk of the supreme court within 30 days of the panel's decision. A copy shall be provided to the DRC.

(2) The notice of review shall be substantially in the form prescribed by rule 9.900(a), Florida Rules of Appellate Procedure. A copy of the panel decision shall be attached to the notice.

(3) Appellant's initial brief, accompanied by an appendix as prescribed by rule 9.210, Florida Rules of Appellate Procedure, shall be served within 30 days of submitting the notice of review. Additional briefs shall be served as prescribed by rule 9.210, Florida Rules of Appellate Procedure.

(c) Standard of Review. The review shall be conducted in accordance with the following standard of review:

(1) The chief justice or designee shall review the findings and conclusions of the panel using a competent substantial evidence standard, neither reweighing the evidence in the record nor substituting the reviewer's judgment for that of the panel.

(2) Decisions of the chief justice or designee shall be final upon issuance of a mandate under rule 9.340, Florida Rules of Appellate Procedure.

### **Rule 10.910 Mediator Ethics Advisory Committee**

(a) Scope and Purpose. The Mediator Ethics Advisory Committee shall provide written advisory opinions to mediators subject to these rules in response to ethical questions arising from the Standards of Professional Conduct. Such opinions shall be consistent with supreme court decisions on mediator discipline.

(b) Appointment. The Mediator Ethics Advisory Committee shall be composed of 9 members, 2 from each of the 4 divisions of the Mediator Qualifications and Discipline Review Board and the ninth member from any of the 4 divisions. No member of the Mediator Qualifications and Discipline Review Board shall serve on the committee.

(c) Membership and Terms. The membership of the committee, appointed by the chief justice, shall be composed of 1 county mediator, 1 family mediator, 1 circuit mediator, 1 dependency mediator, 1 appellate mediator and 4 additional members who hold any type of Florida Supreme Court mediator certification. All appointments shall be for 4 years. No member shall serve more than 2 consecutive terms. The committee shall select 1 member as chair and 1 member as vice-chair.

(d) Meetings. The committee shall meet in person or by telephone conference as necessary at the direction of the chair to consider requests for advisory opinions. A quorum shall consist of a majority of the members appointed to the committee. All requests for advisory opinions shall be in writing. The committee may vote by any means as directed by the chair.

(e) Opinions. Upon due deliberation, and upon the concurrence of a majority of the committee, the committee shall render opinions. A majority of all members shall be required to concur in any advisory opinion issued by the committee. The opinions shall be signed by the chair, or vice-chair in the absence of the chair, filed with the Dispute Resolution Center, published by the Dispute Resolution Center, in its newsletter, or by posting on the DRC website, and be made available upon request.

(f) Effect of Opinions. While reliance by a mediator on an opinion of the committee shall not constitute a defense in any disciplinary proceeding, it shall be evidence of good faith and may be considered by the board in relation to any determination of guilt or in mitigation of punishment.

(g) Confidentiality. Prior to publication, all references to the requesting mediator or any other real person, firm, organization, or corporation shall be deleted from any request for an opinion, any document associated with the preparation of an opinion, and any opinion issued by the committee.

This rule shall apply to all opinions, past and future.

(h) Support. The Dispute Resolution Center shall provide all support necessary for the committee to fulfill its duties under these rules.

*Committee Notes*

2000 Revision. The Mediator Ethics Advisory Committee was formerly the Mediator Qualifications Advisory Panel.