

Rules for Certified and Court-Appointed Mediators

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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.	95
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Part I Mediator Qualifications

Rule 10.100 Certification Requirements

- (a) General. For certification as a county court, family, circuit court or dependency mediator, a mediator must be at least 21 years of age, be of good moral character, and 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) **Senior Judges Serving As Mediators.** A senior judge may serve as a mediator in a court-ordered mediation only if certified by the Florida Supreme Court as a mediator for that type of mediation.
- (g) **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.
- (h) **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 resulting from a plea to a felony or misdemeanor of the first degree, regardless of whether adjudication was withheld or whether imposition of sentence was suspended. All Florida, federal, out-of-state, military, and foreign convictions as an adult or violations of county ordinances that bring within the municipal or county code the violation of a state statute or statutes shall qualify as convictions.
- (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. They 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 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 Judge.** If a mediator who is a senior judge 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 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 the same type of case the judge mediates in the circuit where the mediation services are provided; however, a senior judge may preside over other types of cases (e.g., criminal, juvenile, family law, probate) in the same circuit and 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 Advertising

A mediator shall not engage in marketing practices which contain false or misleading information. A mediator shall ensure that any advertisements of the mediator's qualifications, services to be rendered, or the mediation process are accurate and honest. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

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 Discipline

Rule 10.700 Scope and Purpose

These rules apply to all proceedings before all panels and committees of the mediator qualifications board involving the discipline or suspension of certified mediators or non-certified mediators appointed to mediate a case pursuant to court rules. The purpose of these rules of discipline is to provide a means for enforcing the Florida Rules for Certified and Court-Appointed Mediators.

Rule 10.710 Privilege to Mediate

Certification to mediate confers no vested right to the holder thereof, but is a conditional privilege that is revocable for cause.

Rule 10.720 Definitions

- (a) Board. The mediator qualifications board.
- (b) Center. The Florida Dispute Resolution Center of the Office of the State Courts Administrator.
- (c) Complaint. Formal submission of an alleged violation of the Rules for Certified and Court-Appointed Mediators, including allegations of a lack of good moral character. A complaint may originate from any person or from the center.
- (d) Complaint Committee. Three members of the board from the division in which a complaint against a mediator originates.

- (e) Counsel. Counsel appointed by the center, at the direction of the complaint committee, responsible for presenting the complaint to the panel.
- (f) Division. One of 3 standing divisions of the mediator qualifications board, established on a regional basis.
- (g) Investigator. A certified mediator, or attorney, or other qualified individual appointed by the center at the direction of a complaint committee.
- (h) Mediator. A person certified by the Florida Supreme Court or an individual mediating pursuant to court order.
- (i) Panel. Five members of the board from the division in which a complaint against a mediator originates.
- (j) Qualifications Complaint Committee. Three members of the board selected for the purpose of considering referrals pursuant to rule 10.800.

Rule 10.730 Mediator Qualifications Board

- (a) Generally. The mediator qualifications board shall be composed of 3 standing divisions that shall be located in the following regions:
 - (1) One division in north Florida, encompassing the First, Second, Third, Fourth, Eighth, and Fourteenth judicial circuits;
 - (2) One division in central Florida, encompassing the Fifth, Sixth, Seventh, Ninth, Tenth, Twelfth, Thirteenth, and Eighteenth judicial circuits;
 - (3) One division in south Florida, encompassing the Eleventh, Fifteenth, Sixteenth, Seventeenth, Nineteenth, and Twentieth judicial circuits.

Other divisions may be formed by the supreme court based on need.

- (b) Composition of Divisions. Each division of the board shall be composed of:
 - (1) three circuit or county judges;
 - (2) three certified county mediators;
 - (3) three certified circuit mediators;
 - (4) three certified family mediators, at least 2 of whom shall be non-lawyers;

- (5) not less than 1 nor more than 3 certified dependency mediators; and
 - (6) three attorneys licensed to practice law in Florida who have a substantial trial practice and are neither certified as mediators nor judicial officers during their terms of service on the board, at least 1 of whom shall have a substantial dissolution of marriage law practice.
- (c) Appointment; Terms. Eligible persons shall be appointed to the board by the chief justice of the Supreme Court of Florida for a period of 4 years. The terms of the board members shall be staggered.
- (d) Complaint Committee. Each complaint committee of the board shall be composed of 3 members. A complaint committee shall cease to exist after disposing of all assigned cases. Each complaint committee 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 Complaint Committee. One member of each division shall serve as a member of the qualifications complaint committee for a period of 1 year. The qualifications complaint committee shall be composed of:
- (1) one judge or attorney, who shall act as the chair of the committee; and
 - (2) two certified mediators.
- (f) Panels. Each panel of the board shall be composed of 5 members. A panel shall cease to exist after disposing of all assigned cases. Each panel shall be composed of:
- (1) one circuit or county 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 refers; and
 - (3) one attorney.
- (g) Panel Vice-Chair. Each panel once appointed shall elect a vice-chair. The vice-chair shall act as the chair of the panel in the absence of the chair.

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 three areas of certification, the full complement of three representatives per division should be realized.

Rule 10.740 Jurisdiction

- (a) **Complaint Committee.** Each complaint committee 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 presiding over the complaint committee shall have the power to compel the attendance of witnesses, to take or to cause to be taken the depositions of witnesses, and to order the production of records or other documentary evidence, and the power of contempt. The complaint committee shall perform its investigatory function and have concomitant power to resolve cases prior to panel referral.
- (b) **Qualifications Complaint Committee.** The qualifications complaint committee shall have jurisdiction over all matters referred pursuant to rule 10.800. The qualifications complaint committee shall have such jurisdiction and powers as are necessary to conduct the proper and speedy investigation and disposition of any good moral character complaint or other matter referred by the center. The judge or attorney presiding over the qualifications complaint committee shall have the power to compel the attendance of witnesses, to take or to cause to be taken the depositions of witnesses, and to order the production of records or other documentary evidence, and the power of contempt. The qualifications complaint committee 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. The judge presiding over each panel shall have the power to compel the attendance of witnesses, to take or to cause to be taken the depositions of witnesses, to order the production of records or other documentary evidence, and the power of contempt. The panel shall perform the adjudicatory function, but shall not have any investigatory functions.
- (d) **Contempt.** Should any witness fail, without justification, to respond to the lawful subpoena of the complaint committee, the qualifications complaint committee, or the 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 or contemptuous conduct before any proceeding of the complaint committee, the

qualifications complaint committee, or the panel, a motion may be filed by the complaint committee, the qualifications complaint committee, or the panel before the circuit court of the county in which the contemptuous act was committed. The motion shall allege the specific failure on the part of the witness or the specific disorderly or contemptuous act of the person which forms the basis of the alleged contempt of the complaint committee, the qualifications complaint committee, or the panel. Such motion shall pray for the issuance of an order to show cause before the circuit court why the circuit court should not find the person in contempt of the complaint committee, the qualifications complaint committee, or the panel and the person should not be punished by the court therefor. The circuit court shall issue such orders and judgments therein as the court deems appropriate.

Rule 10.750 Staff

The center shall provide all staff support to the board necessary to fulfill its duties and responsibilities under these rules.

Rule 10.800 Good Moral Character; Professional Discipline

(a) Good Moral Character.

- (1) Prior to approving an applicant for certification or renewal as a mediator the center shall review the application to determine whether the applicant appears to meet the standards for good moral character. If the center's review of an application for certification or renewal raises any questions regarding the applicant's good moral character, the center shall request the applicant to supply additional information as necessary. Upon completing this extended review, the center shall forward the application and supporting material as a complaint to the qualifications complaint committee.
- (2) If the center becomes aware of any information concerning a certified mediator which could constitute credible evidence of a lack of good moral character, the center shall refer such information as a complaint to the qualifications complaint committee.
- (3) The qualifications complaint committee shall review all documentation relating to the good moral character of any applicant or certified mediator in a manner consistent, insofar as applicable, with rule 10.810. In relation to an applicant, the qualifications complaint committee shall either recommend approval or, if it finds there is probable cause to believe that the applicant lacks good moral character, it shall refer the matter to a hearing panel for further action. In relation to a certified mediator, the qualifications complaint committee shall dismiss or, if there is probable cause to believe that the mediator lacks good moral character, refer the matter to a hearing panel for further action.

- (4) The panel shall take appropriate action on the issue of good moral character by dismissing the charges, denying the application in relation to an applicant, or imposing sanctions against a certified mediator pursuant to rule 10.830.
 - (5) All such hearings shall be held in a manner consistent, insofar as applicable, with rule 10.820.
- (b) Professional Licenses and Certifications.
- (1) A certified mediator shall inform the center, in writing, of the change in status of any professional license held by the mediator within 30 days of such change.
 - (2) Upon becoming aware that a certified mediator has been disciplined by a professional organization of which that mediator is a member, the center shall refer the matter to the qualifications complaint committee.

Rule 10.810 Committee Process

- (a) **Initiation of Complaint.** Any individual wishing to make a complaint alleging that a mediator has violated one or more provisions of these rules shall do so in writing under oath. The complaint shall state with particularity the specific facts that form the basis of the complaint.
- (b) **Filing.** The complaint shall be filed with the center, or, in the alternative, the complaint may be filed in the office of the court administrator in the circuit in which the case originated or, if not case specific, in the circuit where the alleged misconduct occurred.
- (c) **Referral.** The complaint, if filed in the office of the court administrator, shall be referred to the center within 5 days of filing.
- (d) **Assignment to Committee.** Upon receipt of a complaint in proper form, the center shall assign the complaint to a complaint committee or the qualifications complaint committee within 10 days.
- (e) **Facial Sufficiency Determination.** The complaint committee or the qualifications complaint committee shall convene, either in person or by conference call, to determine whether the allegation(s), if true, would constitute a violation of these rules. If the committee finds a complaint against a certified mediator to be facially insufficient, the complaint shall be dismissed without prejudice and the complainant and the mediator shall be so notified. If the qualifications complaint committee finds a complaint against an applicant to be facially insufficient, the complaint shall be dismissed and the application approved if all other requirements are met. If the complaint is found to be facially

sufficient, the committee shall prepare a list of any rule or rules which may have been violated and shall submit such to the center.

- (f) **Service.** The center shall serve a copy of the list of alleged rule violations prepared by the committee, a copy of the complaint, and a copy of these rules to the mediator or applicant in question. Service on the mediator or applicant shall be made by certified mail addressed to the mediator or applicant at the mediator's or applicant's place of business or residence on file with the center. Mailing to such an address shall constitute service.
- (g) **Response.** Within 20 days of the receipt of the list of violations prepared by the committee and the complaint, the mediator or applicant shall send a written, sworn response to the center by registered or certified mail. If the mediator or applicant does not respond, the allegations shall be deemed admitted.
- (h) **Preliminary Review.** Upon review of the complaint and the mediator's or applicant's response, the committee may find that no violation has occurred and dismiss the complaint. The committee may also resolve the issue pursuant to subdivision (j) of this rule.
- (i) **Appointment of Investigator.** The committee, after review of the complaint and response, may direct the center to appoint an investigator to assist the committee in any of its functions. Such person shall investigate the complaint and advise the committee when it meets to determine the existence of probable cause. In the alternative to appointing an investigator, the committee or any member or members thereof may investigate the allegations, if so directed by the committee chair. Such investigation may include meeting with the mediator, the applicant and the complainant.
- (j) **Committee Meeting with the Mediator or Applicant.** Notwithstanding any other provision in this rule, at any time while the committee has jurisdiction, it may meet with the complainant and the mediator or applicant, jointly or separately, in an effort to resolve the matter. This resolution may include sanctions if agreed to by the mediator or applicant. If sanctions are accepted, all relevant documentation shall be forwarded to the center. Such conferences shall be in person, by video-conference or teleconference at the discretion of the committee.
- (k) **Review.** If no other disposition has occurred, the committee 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 committee finds no probable cause, it shall dismiss the complaint and so advise the complainant and the mediator or applicant in writing.

- (m) Probable Cause Found. If probable cause exists, the committee may draft formal charges and forward such charges to the center for assignment to a panel. In the alternative, the committee may decide not to pursue the case by filing a short and plain statement of the reason or reasons for non-referral and so advise the complainant and the mediator or applicant in writing.
- (n) Formal Charges and Counsel. If the committee refers a complaint to the center, the committee shall submit to the center formal charges which shall include a short and plain statement of the matters asserted in the complaint and references to the particular sections of the rules involved. After considering the circumstances of the complaint and the complexity of the issues to be heard, the committee may direct the center to appoint a member of The Florida Bar to investigate and prosecute the complaint. Such counsel may be the investigator appointed pursuant to this rule if such person is otherwise qualified.
- (o) Dismissal. Upon the filing of a stipulation of dismissal signed by the complainant and the mediator with the concurrence of the complaint committee, the action shall be dismissed. If an application is withdrawn by the applicant, the complaint shall be dismissed with or without prejudice depending on the circumstances.

Rule 10.820 Hearing Procedures

- (a) Assignment to Panel. Upon referral of a complaint and formal charges from a committee, the center shall assign the complaint and formal charges or other matter to a panel for hearing, with notice of assignment to the complainant and the mediator or applicant. No member of the committee shall serve as a member of the panel.
- (b) Hearing. The center shall schedule a hearing not more than 90 days nor less than 30 days from the date of notice of assignment of the matter to the panel. At any time prior to the hearing, the panel may accept an admission to any or all charges and impose sanctions upon the mediator. The panel shall not be required to physically meet in person to accept such admission.
- (c) Dismissal. Upon the filing of a stipulation of dismissal signed by the complainant and the mediator, and with the concurrence of the panel, a complaint shall be dismissed.
- (d) Procedures for Hearing. The procedures for hearing shall be as follows:
 - (1) No hearing shall be conducted without 5 panel members being physically present.
 - (2) The hearing may be conducted informally but with decorum.
 - (3) The rules of evidence applicable to trial of civil actions apply but are to be liberally construed.

- (4) Upon a showing of good cause to the panel, testimony of any party or witness may be presented over the telephone.
- (e) Right to Defend. A mediator or applicant shall have the right to defend against all charges and shall have the right 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.
- (f) Mediator or Applicant Discovery. The center 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, together with copies of all written statements and transcripts of the testimony of such witnesses in the possession of the counsel or the center which are relevant to the subject matter of the hearing and which have not previously been furnished.
- (g) Panel Discovery. The mediator, applicant, or counsel of record shall, upon written demand of the counsel or the center, promptly furnish the following: the names and addresses of all witnesses whose testimony is expected to be offered at the hearing, together with copies of all written statements and transcripts of the testimony of such witnesses in the possession of the mediator, applicant, or counsel of record which are relevant to the subject matter of the hearing and which have not previously been furnished.
- (h) Failure to Appear. Absent a showing of good cause, if the complainant fails to appear at the hearing, the panel may dismiss a complaint for want of prosecution.
- (i) Mediator's or Applicant's Absence. If the mediator or applicant fails to appear, absent a showing of good cause, the hearing shall proceed.
- (j) Rehearing. If the matter is heard in the mediator's or applicant's absence, the mediator or applicant may petition for rehearing, for good cause, within 10 days of the date of the hearing.
- (k) Recording. 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.
- (l) Dismissal. Upon dismissal, the panel shall promptly file a copy of the dismissal order with the center.
- (m) Sanctions. If, after the hearing, a majority of the panel finds that there is clear and convincing evidence to support a violation of the rules, the panel shall impose such sanctions included in rule 10.830 as it deems appropriate and report such action to the center.

- (n) Denial of Application for Certification. If, after a hearing, a majority of the panel finds by the preponderance of the evidence that an applicant should not be certified as a mediator, the panel shall deny the application and report such action to the center.

Rule 10.830 Sanctions

- (a) Generally. The panel may impose one or more of the following sanctions:
 - (1) Imposition of costs of the proceeding.
 - (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) Suspension for a period of up to 1 year.
 - (7) Decertification or, if the mediator is not certified, bar from service as a mediator under Florida Rules of Civil Procedure.
 - (8) Such other sanctions as are agreed to by the mediator and the panel.
- (b) Conviction of Felony. If the panel finds that a certified mediator has a felony conviction, it shall decertify the mediator for a period of not less than two years or until restoration of civil rights, whichever comes later. In order to become a reinstated, such decertified mediator must comply with the requirements of subdivision (h).
- (c) Failure to Comply. If there is reason to believe that the mediator failed to timely comply with any imposed sanction, a hearing shall be held before a panel convened for that purpose within 60 days of the date when the center learned of the alleged failure to comply. The hearing shall also include any additional alleged failures to comply of which the center becomes aware prior to the date of the hearing. The holding of a hearing shall not preclude a subsequent hearing on an alleged failure occurring after the first alleged failure. Any suspension in effect at the time of discovery of the violation by the center shall continue in effect until a decision is reached at the hearing. A finding of the panel that there was a willful failure to substantially comply with any imposed sanction shall result in the decertification of the mediator.
- (d) Decertified Mediators. If a mediator has been decertified or barred from service pursuant to these rules, the mediator shall not thereafter be certified or assigned to mediate a case pursuant to court rule or be designated as mediator pursuant to court rule unless reinstated.

- (e) Decision to be Filed. Upon making a determination that discipline is appropriate, the panel shall promptly file with the center a copy of the decision including findings and conclusions certified by the chair of the panel. The center shall promptly mail to all parties notice of such filing, together with a copy of the decision.
- (f) Notice to Circuits. The center shall notify all circuits of any mediator who has been decertified or suspended unless otherwise ordered by the Supreme Court of Florida.
- (g) Publication. Upon the imposition of sanctions, the center shall publish the name of the mediator, a short summary of the rule or rules which were violated, the circumstances surrounding the violation, and any sanctions imposed.
- (h) Reinstatement. Except if inconsistent with rule 10.110, a mediator who has been suspended or decertified may be reinstated as a certified mediator. Except as otherwise provided in the decision of the panel, no application for reinstatement may be tendered within 2 years after the date of decertification. The reinstatement procedures shall be as follows:
 - (1) A petition for reinstatement, together with 6 copies, shall be made in writing, verified by the petitioner, and filed with the center.
 - (2) The petition for reinstatement shall contain:
 - (A) the name, age, residence, and address of the petitioner;
 - (B) the offense or misconduct upon which the suspension or decertification was based, together with the date of such suspension or decertification; and
 - (C) a concise statement of facts claimed to justify reinstatement as a certified mediator.
 - (3) The center shall refer the petition for reinstatement to a hearing panel in the appropriate division for review.
 - (4) The panel shall review the petition and, if the petitioner is found to be unfit to mediate, the petition shall be dismissed. If the petitioner is found fit to mediate, the panel shall notify the center and the center shall reinstate the petitioner as a certified mediator; provided, however, if the decertification has continued for more than 3 years, the reinstatement may be conditioned upon the completion of a certified training course as provided for in these rules. Successive petitions for reinstatement based upon the same grounds may be reviewed without a hearing.

Rule 10.840 Subpoenas

- (a) Issuance. Subpoenas for the attendance of witnesses and the production of documentary evidence for discovery and for the appearance of any person before a complaint committee, a panel, or any member thereof, may be issued by the chair of the complaint committee or panel or, if the chair of the panel is absent, by the vice-chair. Such subpoenas may be served in any manner provided by law for the service of witness subpoenas in a civil action.
- (b) Failure to Obey. Any person who, without adequate excuse, fails to obey a duly served subpoena may be cited for contempt of the committee or panel in accordance with rule 10.740.

Rule 10.850 Confidentiality

- (a) Generally. Until sanctions are imposed, whether by the panel or upon agreement of the mediator, all proceedings shall be confidential. After sanctions are imposed by a panel or an application is denied, all documentation including and 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 and a complaint committee, only the basis of the complaint and the agreement shall be released to the public.
- (b) Witnesses. Each witness in every proceeding under these disciplinary rules shall be sworn to tell the truth and not disclose the existence of the proceeding, the subject matter thereof, or the identity of the mediator until the proceeding is no longer confidential under these disciplinary rules. Violation of this oath shall be considered an act of contempt of the complaint committee or the panel.
- (c) Papers to be Marked. All notices, papers, and pleadings mailed prior to formal charges being filed shall be enclosed in a cover marked "confidential."
- (d) Breach of Confidentiality. Violation of confidentiality by a member of the board shall subject the member to removal by the chief justice of the Supreme Court of Florida.

Committee Notes

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.

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.

Rule 10.860 Interested Party

A mediator is disqualified from serving on a committee or panel proceeding involving the mediator’s own discipline or decertification.

Rule 10.870 Disqualification of Members of a Panel or Committee

- (a) Procedure. In any case, any party may at any time before final disciplinary action show by a suggestion filed in the case that a member of the board before which the case is pending, or some person related to that member, is a party to the case or is interested in the result of the case or that the member is related to an attorney or counselor of record in the case or that the member is a material witness for or against one of the parties to the case.
- (b) Facts to be Alleged. A motion to disqualify shall allege the facts relied on to show the grounds for disqualification and shall be verified by the party.
- (c) Time for Motion. A motion to disqualify shall be made within a reasonable time after discovery of the facts constituting grounds for disqualification.
- (d) Action by Chair. The chair of the appropriate committee or panel shall determine only the legal sufficiency of the motion. The chair shall not pass on the truth of the facts alleged. If the motion is legally sufficient, the chair shall enter an order of disqualification and the disqualified committee or panel member shall proceed no further in the action. In the

event that the chair is the challenged member, the vice-chair shall perform the acts required under this subdivision.

- (e) Recusals. Nothing in this rule limits a board member's authority to enter an order of recusal on the board member's own initiative.
- (f) Replacement. The center shall assign a board member to take the place of any disqualified or recused member.
- (g) Qualifications. Each assignee shall have the same qualifications as the disqualified or recused member.

Rule 10.880 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 10.810(j).
- (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 submitting an original and one copy of a Notice of Review of Mediator Disciplinary Action to the chief justice within 30 days of the panel's decision. A copy shall also be provided to the Center.
 - (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 9.220, 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 10.900 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, 3 from each geographic division served by the Mediator Qualifications Board. No member of the Mediator Qualifications Board shall serve on the committee.
- (c) **Membership and Terms.** The membership of the committee shall be composed of 1 county mediator, 1 family mediator, and 1 circuit mediator from each division and shall be appointed by the chief justice. At least one of the 9 members shall also be a certified dependency mediator. 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 in the Dispute Resolution Center newsletter, 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.