

## GRIEVANCES FILED WITH THE MQB

The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. To date, 95 grievances have been filed (and an additional 75 “good moral character” reviews have been considered]. The regular grievances fall into the following categories:

Cases by Division	Mediator Certification/ Type of Case Involved
Northern B 19 (20%)	County Mediators/County Cases .... 17
Central B 44 (46%)	County Mediators/CDS Cases ..... 2
Southern B 32 (34%)	County Mediator/Arbitration ..... 2
	County, Family Mediator/Condo ..... 1
	Family Mediator/County Case ..... 1
Who Filed Case	Family Mediators/Family Cases ..... 24
	Family Mediator/Circuit Case ..... 1
Parties Involved in Mediation ..... 69	Family Mediator/PC Case ..... 1
Attorneys ..... 12	Circuit Mediators/Circuit Cases ..... 26
Other ..... 14	Circuit Mediators/Family Cases ..... 3
	Circuit Mediators/Federal Cases ..... 3
	Circuit Mediator/Mobile Home ..... 1
	Circuit Mediator/Home Owner Association Case ..... 1
	Certified Mediators/No Case ..... 7
	Non-certified Mediator/Worker’s Comp Case ..... 1
	Non-certified mediator/County Case ..... 1
	Non-certified mediator/Family Case ..... 3

Updated: 11/22/06 (MQB 06-012)

# GRIEVANCES FILED WITH THE FLORIDA MEDIATOR QUALIFICATIONS BOARD

The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. To date, 94 grievances have been filed (and an additional 75 “good moral character” reviews have been considered]. The following grievances were resolved in 2006 and have not previously been published.

## Mediator Qualifications Board Grievances Involving Mediations Completed October 5, 1995 - March 31, 2000 Summary

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*The following is a summary of all grievances processed under the Florida Rules for Certified and Court-Appointed Mediators (effective October 5, 1995 - March 31, 2000).*

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### I. Hearings Held

This case involved a mediation of a dissolution of marriage case conducted by certified family mediator, Mark S. London (who has since allowed his certification to lapse). A primary issue in the mediation was the disposition of the parties’ frozen embryos that were on deposit with a fertility institute. The complainant alleged that the mediator violated rule 10.020(b), (c), and (d) mediation defined, mediator’s role, and general principles; 10.060 Self-Determination; and 10.070(a) and (b) Impartiality and Conflicts of Interest [NOTE: *the complainant used the standards of conduct currently in effect to draft her complaint so the rule references have been changed to reflect the rules in effect at the time the mediation took place.*] The complainant attached numerous transcripts and orders from subsequent hearings, including a reported appellate decision in the underlying case which related to the allegations of mediator misconduct.

*The complaint committee found facial sufficiency and requested that the mediator respond to rule 10.050(b) Appropriateness of Mediation; rule 10.060 (a) and (b), Self-Determination; 10.070(a)(1) Impartiality; 10.090 Professional Advice; 10.110 Concluding Mediation. After reviewing the mediator’s response, the complaint committee opted to meet with the mediator and the complainant in an effort to resolve the matter. This attempt was unsuccessful, so thereafter the complaint committee authorized the hiring of an investigator. Upon review of the investigator’s report, drafted the following formal charges:*

*The mediator violated rule 10.050(b), Florida Rules for Certified and Court-Appointed Mediators, which prohibits a mediator from unnecessarily or inappropriately prolonging a mediation session if it becomes apparent that the case is unsuitable for mediation or if one or more of the parties is unwilling or unable to participate in the mediation process in a meaningful manner, to wit, the mediator continued the mediation after it became clear that the issue of the*

*disposition of the frozen embryos was non-negotiable for both for strongly held practical or moral reasons.*

*The mediator violated rule 10.060(a), Florida Rules for Certified and Court-Appointed Mediators, which requires that decisions are to be made voluntarily by the parties themselves, to wit, the mediator used forceful tactics and placed undue pressure on the complainant to sign the agreement as evidenced by the statement in the written agreement that the complainant has reluctantly agreed to the frozen embryo issue.*

*The mediator violated rule 10.060(b), Florida Rules for Certified and Court-Appointed Mediators, which prohibits a mediator from coercing or unfairly influencing a party into a settlement agreement, to wit, the mediator exhibited physical and verbal behavior having the effect of pressuring the complainant into a settlement.*

*The mediator violated rule 10.070(a), Florida Rules for Certified and Court-Appointed Mediators, which requires a mediator to maintain impartiality, defined as freedom from favoritism or bias in word, action and appearance and mandating a commitment to aid all parties, to wit, the mediator asserted that the complainant's position on the frozen embryos was contrary to settled law in an effort to force a concession on the issue and that if he were the other party's attorney he would not concede on the frozen embryo issue.*

*The mediator violated rule 10.090(d), Florida Rules for Certified and Court-Appointed Mediators, which prohibits a mediator from offering a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute, to wit, the mediator stated his opinion of the law applicable to disposal of the frozen embryos and how the judge to whom the case was assigned would decide the issue if it went to trial.*

*The mediator violated rule 10.110(b)(2), Florida Rules for Certified and Court-Appointed Mediators, which prohibits the mediator from prolonging unproductive discussions that would result in emotional and monetary costs to the participants, to wit, the mediator continued discussion of the embryo issue without discussing the possibility of leaving that issue for the court to decide and allowing the parties to resolve the other issues in a partial settlement, despite the fact that the embryo issue was non-negotiable on both sides and was a matter of significant moral importance to the complainant, thereby resulting in the continuance of the mediation for hours beyond the time an impasse should have been declared or partial settlement reached.*

*A hearing was held and the hearing panel issued a written reprimand to the mediator for violating rule 10.090(d) for providing a personal and professional legal opinion regarding the frozen embryos and the judge in the case would rule. The Panel also expressed its concern regarding the length of the mediation session that took place "without adequate breaks" considering the nature of the issues and emotions involved. Because the mediator was no longer certified by the Florida Supreme Court, the Panel opted not to pursue any further action, but*

*suggested that if the individual were to continue to mediate, that he complete additional training on ethical standards.*

## **Mediator Qualifications Board Grievances Filed April 1, 2000 - Present Summary**

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*The following is a summary of all grievances processed under the Florida Rules for Certified and Court-Appointed Mediators (April 1, 2000 - Present).*

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### **I. Hearings Held**

On August 1, 2005, Robert O. Wilhelm submitted a Petition for Reinstatement as a Mediator. A Hearing Panel was convened and, after reviewing the Petition and additional documentation, the Hearing Panel unanimously found that the mediator should be reinstated effective December 30, 2005.

### **II. Complaint Committee Meetings with Mediator and Complainant**

This grievance was filed by an attorney in a court-ordered county mediation against certified county mediator, Ricardo Woods-Obinna. The complainant alleged that the mediator violated rules 10.300, Mediator Responsibility to the Parties; 10.310(a) and (b), Self-Determination; 10.330(a) and (b), Impartiality; and 10.350, Demeanor; by making statements, in front of the other side, that favored the other party and “explod[ing]” in anger towards the end of the mediation when the complainant brought up an additional term for the agreement while the mediator was writing up the stipulation.

*The complaint committee found facial sufficiency and requested a response from the mediator regarding possible violation of rules 10.310, 10.330(a) and (b) and 10.350. The complaint committee did not receive a response from the mediator within the 20 day response period and authorized the Center to hire an investigator. The mediator provided a copy of the response which he stated had been sent to the complaint committee. The response denied “all allegations of violations.”*

*After reviewing the investigator’s report, the complaint committee decided to meet with the mediator and the complainant in an effort to resolve the complaint pursuant to rule 10.810(j). On the call, the mediator agreed to accept a written reprimand for the violation of Rule 10.350, Demeanor. Specifically, the Complaint Committee found that there was probable cause to believe that the mediator became frustrated with the complainant on the issue of monetary interest and responded to him in a manner which was not patient, dignified, nor courteous. The Complaint Committee opted not to pursue any further action beyond this written reprimand because no actual prejudice seemed to have been suffered by the parties to the underlying case and the Complaint Committee believed that the mediator will be more sensitive to this requirement in the future.*

This grievance was filed by an attorney in a Homeowners' Association Mediation conducted by certified circuit mediator, Myron Berman. The complainant alleged that the mediator exhibited "unprofessional conduct, [failed] to follow statutory procedures, [lacked] impartiality, [made] threats and [engaged in] improper billing" in violation of rules 10.300, Mediator's Responsibility to the Parties; 10.350, Demeanor; 10.360, Confidentiality; 10.370, Professional Advice or Opinions; 10.380, Fees and Expenses; 10.400, Mediator's Responsibility to the Mediation Process; 10.410, Balanced Process; and 10.420, Conduct of Mediation. The specific allegations arose when the complainant appeared with his client at mediation and learned that the petitioner party would only be attending by telephone and that the petitioner's spouse (a "non-party") would attend in person. The complainant objected. The complainant alleged that the mediator became "visibly angered," and attempted to "qualify the spouse as some type of representative for the petitioner." After brief opening statements and exchange of information, the mediator allegedly terminated the mediation, stating that the complainant had no "desire to mediate." The complainant further alleged that although the mediation only lasted 15 minutes, he would be charged for 4 hours at \$150/per hour (which also did not comport with the mediator's own written fee schedule).

*The complaint committee found facial sufficiency and requested a response from the mediator in relation to the following rules: 10.330(a) and (b), Impartiality; 10.350, Demeanor; 10.370(c), Professional Advice or Opinions; 10.380(b)(1), Fees and Expenses; 10.410, Balanced Process; 10.420(b)(2) and (b)(3), Conduct of Mediation; and section 730.11, Florida Statutes, and rule 1.720(b), Florida Rules of Civil Procedure, through rule 10.520, Compliance. After reviewing the mediator's response, in which the mediator denied any violation of 10.380, based on actual work performed and the fee schedule for non-court ordered mediation. He also denied having violated any of the other rules, statutes or regulations. The complainant committee opted to investigate the complaint themselves through one member. After interviewing the complainant and the mediator, the member recommended that the complaint committee convene a meeting of the mediator and the complainant pursuant to rule 10.810(j) in an effort to resolve the complaint.*

*At the meeting, the mediator accepted the following sanction, prior to a finding of probable cause: The mediator will research and write an article, which must be of a quality satisfactory to the complaint committee, which discusses the interaction of court rules, statutes, and regulations relating to the mediation procedure, using the "appearance requirements" for Homeowner Association mediation as the focal point. The mediator completed the article and the case was closed.*

This grievance was filed by a party in a family mediation against a family mediator. The complainant alleged that the mediator made no attempt to reduce obstacles to communication in violation of rule 10.220, Mediator's Role; the mediator displayed bias towards the opposing side in violation of rules 10.300, Mediator's Responsibility to the Parties, and 10.330, Impartiality; the mediator interfered with the parties' self-determination by visibly reacting to the child support order which was already in place and inquiring if the opposing party was intending to get an attorney and/or appeal the order in violation of rule 10.310, Self-Determination; after the mediation concluded, the mediator shared with the party her personal story of divorce and it appeared that she was biased against men as a result of her experience in violation of rule

10.340, Conflict of Interest; the mediator was “rude, short and impatient” with the complainant throughout the process in violation of rule 10.350, Demeanor.

*The complaint committee found facial sufficiency and requested a response from the mediator in relation to the following rules: 10.220, 10.300, 10.310(a) and (b), 10.330(a) and (b), 10.350, 10.370(b), Professional Advice or Opinion, and 10.410, Balanced Process. The mediator failed to respond and the complaint committee opted to hire an investigator. After reviewing the investigator’s report, the complaint committee continued to have concerns with regards to rules 10.310, 10.330, and 10.370. The complainant committee requested to meet with the mediator and the complainant in an effort to resolve the complaint. At that meeting, the mediator confirmed that she is not currently certified as a Florida Supreme Court mediator (having let her certification lapse) and she agreed that she has no intention of applying for certification as a Florida Supreme Court certified mediator in the future.*

### **III. Investigations Conducted**

This grievance was filed by an attorney in a circuit mediation (involving multiple plaintiffs in a land use case) against a certified circuit mediator. The complainant alleged that the mediator violated rules 10.310 (Self-Determination), by trying to coerce the plaintiffs into a decision; 10.330 (Impartiality), by inappropriately acting as a conduit for threats and coercion from the defendants; 10.360 (Confidentiality), by discussing “the mediation, the motions, and the events during caucus with opposing counsel” after the mediation was terminated; 10.370 (Professional Advice or Opinions), by “continuing the discussion on sanctions and giving advice to opposing counsel;” 10.410 (Balanced Process), by “encouraging coercive and adversarial conduct by passing along threats” from opposing counsel; 10.420 (Conduct of Mediation), by “not starting the mediation process as described” and for not adjourning or terminating the mediation “after [the mediator] feared for his physical safety;” 10.610 (Advertising), by “falsely claiming that litigators and trial attorneys have greater success and that an attorney who does not select the mediator’s association or another trial attorney or litigator does a disservice to his clients;” 10.640 (Skills and Experience), by making representations during the mediation even though “the facts and circumstances of the case were clearly beyond his experience and knowledge;” and 10.670 (Relationship with Other Professionals), by “failing to respect the complainant’s role as attorney for the plaintiffs.” The complainant also alleged violations of the following general rules based on the allegations described above: 10.210 (Mediation Defined); 10.230 (Mediation Concepts); and 10.300 (Mediator’s Responsibility to the Parties).

*The complaint committee found the complaint facially sufficient and requested a response from the mediator with regards to rules 10.310 (Self-Determination), 10.330 (Impartiality) and 10.370 (Professional Advice or Opinions). Based on the mediator’s response, the complaint committee hired an investigator to talk to the complainant, opposing counsel, the parties who attended mediation, and the mediator, and also to review the court file to determine who were the named parties, what happened to the case procedurally, and the outcome of the motion filed by opposing counsel for sanctions for failure to appear. The complaint committee also requested information related to allegations raised by the mediator that the complainant had been arrested for a “violent felony.” The investigator spoke to everyone as requested, with the exception of the complainant and one of the complainant’s clients. The investigator attempted*

*seven telephone calls and one personal visit to the complainant's office, but never made contact. Based on the investigator's report, the complaint committee dismissed the complaint, finding there was no probable cause to believe that the mediator violated any of the standards of conduct.*

This grievance was filed by a party against a family mediator conducting a family mediation. The complainant alleged that he felt coerced and was treated unfairly during the mediation. He alleged that the mediator violated rules 10.230(c), Mediation Concepts; 10.300, Mediator's Responsibility to the Parties; 10.310(b), Self-Determination; 10.330, Impartiality; 10.370(b) and (c), Professional Advice and Opinions; and 10.42, Conduct of Mediation.

*The complaint committee reviewed the complaint, found it to be facially sufficient, and requested the mediator to respond to possible violations of rules 10.310(a), (b) and (d); 10.330(a) and (b); 10.350, Demeanor; 10.370(a) – (c); and 10.420(b)(4). After reviewing the mediator's response, in which he denied having committed any violations, the complaint committee hired an investigator to interview the mediator, the complainant, the opposing party, the mediator mentee who was present, and any one else deemed necessary. After reviewing the investigator's report, the complaint committee dismissed the complaint for lack of probable cause. While the complainant did feel "coerced," it appeared that the source of the pressure was his situation and his ex-wife, not the mediator.*

This grievance was filed by a party against a family mediator who was appointed as a parenting coordinator. The complainant alleged that the "certified family mediator" participated with the parties in the role of mediator and then switched to a parenting coordinator role. During the course of her involvement, the complainant alleged that the "mediator" was not impartial and there were some anomalies with regards to the mediator's billing.

*The complaint committee reviewed the complaint and found it to be facially sufficient and requested a response from the mediator in relation to rules 10.330(a), (b) and (c), Impartiality; 10.340(a) and (d), Conflicts of Interest; 10.380(a) – (d), Fees and Expenses; and 10.620, Integrity and Impartiality. After receiving the mediator's response, the complaint committee decided to hire an investigator to interview the mediator, the complainant, the attorneys for the complainant and the other party, and the ex-husband. After reviewing the investigator's report, the complaint committee dismissed the complaint because there was no probable cause to believe that the mediator acted in any capacity other than as a parenting coordinator, and thus there were no violations of the mediator ethical standards.*

This grievance was filed by a party against a circuit mediator in a circuit case. The complainant alleged that the mediator failed to memorialize the agreement in its entirety in violation of rules 10.300, Mediator's Responsibility to the Parties; 10.400, Mediator's Responsibility to the Process; and 10.420, Conduct of Mediation. The complainant also alleged that the mediator failed to provide a certified copy of the agreement upon request of the party.

*The complaint committee reviewed the complaint and found it to be facially insufficient. The*

*complaint received a dismissal without prejudice. Thereafter, the complainant re-filed the complaint with specific documentation including a copy of the hand-written agreement. The complaint committee found the subsequent filing to be facially sufficient with respect to possible violations of rule 10.420(c), Closure, and requested a response from the mediator. The mediator responded that the agreement was written by the complainant “with direction and input from her husband and [her attorney],” not by the mediator and therefore, he was not responsible for the content. The complainant filed an additional response to the mediator’s response indicating that she did not write the agreement. A member of the complaint committee conducted an investigation by contacting the complainant’s attorney who acknowledged that he had written the agreement. Based on this information, the complaint committee dismissed the complaint against the mediator.*

#### **IV. Cases Dismissed After Mediator=s Response**

This grievance was filed against a circuit mediator conducting a circuit mediation. The complainant alleged that she did not understand the agreement, which she was “induced to sign” by her attorney and the mediator. The complainant also alleged that the mediator “systematically criticized, berated, ignored, preached to and cursed” at the complainant; blocked the complainant from leaving the mediation; and billed the complainant at a different rate than that which the mediator had initially indicated.

*The complaint committee found facial sufficiency and requested a response from the mediator in relation to rules 10.310(a) – (d), Self-determination; 10.330(a) and (b), Impartiality; 10.350, Demeanor; 10.380, Fees and Expenses; and 10.410, Balanced Process. The mediator provided a very comprehensive response, which included documentation refuting each of the allegations, including: copies of the fee arrangements, court transcripts from the complainant’s attempt to set aside the agreement, and a copy of the final agreement. While denying any improper conduct, the mediator also apologized to the complainant “to the extent that the complainant’s experience in mediation was perceived as dissatisfying.” Based on the mediator’s response, the complaint was dismissed for lack of probable cause.*

## **V. Facial Insufficiency**

This grievance was filed against a certified county and circuit mediator in relation to a mediation in which the accused mediator was a party, but not the mediator in the dispute. The complainant alleged violations of rules 10.340(a), (b) and (c), Conflicts of Interest, and 10.620, Integrity and Impartiality.

*The complaint committee reviewed the grievance and dismissed it as facially insufficient because the certified mediator against whom the grievance was filed was not acting in the capacity of mediator.*

*After the complainant received the dismissal, he re-filed the complaint, which was again dismissed as lacking facial sufficiency.*

This grievance was filed against a certified family mediator in a family mediation. The complainant alleged that during the mediation, the parties agreed to a visitation schedule without consulting a calendar. The complainant further alleged that the agreement was written in such a way that the complainant would have long periods of time in which he would be unable to spend weekends with his son, and that the agreement contained other terms which the complainant did not like.

*The complaint committee reviewed the grievance and dismissed the complaint as facially insufficient.*

This grievance was filed against a certified circuit mediator in a circuit case. The complainant alleged that he was not present at the mediation due to illness and that his wife (who was “of feeble mind”) “was forced to sign [the complainant’s] name without her having a power of attorney.”

*The complaint committee reviewed the grievance and dismissed the complaint as facially insufficient because there was no specific allegation that the mediator committed any violations.*