

## GRIEVANCES FILED WITH THE FLORIDA MEDIATOR QUALIFICATIONS BOARD

Since May 28, 1992, 90 grievances have been filed (and an additional 84 “good moral character” reviews have been considered). Three cases have been filed since the last update. One case reached closure and two new cases have been filed. The information from the case that was resolved is provided for educational purposes. The regular grievances fall into the following categories:

Cases by Division	Mediator Certification/ Type of Case Involved
Northern 18 (20%)	County Mediators / County Cases ..15
Central 37 (41%)	County Mediators / CDS Cases .....2
Southern 35 (39%)	County Mediator / Arbitration .....2
	County Mediator / Condo .....1
	County Mediator / No Mediation Involved .....3
<b>Who Filed Case</b>	Family Mediators / Family Cases ...23
	Family Mediator/Circuit Case.....1
Parties Involved in Mediation ..... 65	Family, Dependency Mediator/ No Mediation Involved .....1
Attorneys ..... 13	Circuit Mediators / Circuit Cases....28
Other ..... 11	Circuit Mediators / Family Cases.....2
	Circuit Mediators / Federal Cases.....3
	Circuit Mediator / Mobile Home .....1
	Circuit Mediator / Workers’ Comp Case.....1
	Circuit Mediator/Home Owner Association Case.....1
	County, Family, Circuit Mediator / No Mediation Involved .....1
	Non-certified mediator / Family Case..... 4
	Non-certified mediator/ Circuit Case..... 1

This grievance was filed by an attorney in a court ordered county mediation against a certified mediator. The mediator had been certified in both county and family but had not renewed his county certification due to an oversight and thus was only certified as a family mediator at the time the mediation took place. Subsequently, the mediator renewed his county certification and is currently certified in both county and family. The complaint alleged that the complainant and his clients appeared for the scheduled mediation and that opposing counsel appeared without his client. The complainant's clients wished to terminate the mediation upon learning that opposing counsel did not have "full settlement authority." The complainant alleged that the complainant's clients requested a non-appearance be filed with the court. The mediator allegedly declined to file a non-appearance, but offered to impasse the mediation. Faced with the alternatives, the complainant alleged that he felt coerced into continuing the mediation, in violation of rules 10.310(b) and 10.420(b). The complainant also alleged that the mediator misled him, in violation of rule 10.310(c), into believing that opposing counsel did have or could obtain authority from the opposing party. Finally, the complainant alleged that the mediator demonstrated unprofessional demeanor, as required by rule 10.350, by losing his temper and making inappropriate remarks to the complainant. Based on these allegations, the complainant also reported that the mediator violated rules 10.300 (mediator's responsibility to the parties), 10.500 (mediator's responsibility to the court) and 10.510 (information to the court), 10.600 (mediator's responsibility to the mediation profession), and 10.370 (professional advice or opinions).

*The complaint committee found facial sufficiency and requested a response from the mediator with regards to rules 10.300, 10.310(b) and (c), 10.370(c), 10.410, 10.420(b)(2) – (b)(4), and 10.600. The complaint committee also requested the mediator to respond to rule 10.520 and rule 1.720(b), Florida Rules of Civil Procedure, which cover appearance at county mediation (above small claims). The mediator responded that he was unable to file a nonappearance because the two attorneys talked and the complainant decided to continue the mediation to "see how close [they] could get," thus waiving rule 1.720 regarding appearance. He specifically denied violations of rules 10.420(b)(4)[termination] and 10.310(b) and (c) [self-determination]. Once the mediation started under modified rules, the mediator stated that his only recourse was to file an impasse. The mediator did acknowledge telling the complainant that he "had better live with the decision because he would have to mediate with [the mediator] again," but denied having lost his temper and denied a violation of rule 10.350. The mediator alleged that it was the complainant who lost his temper. The mediator also denied violating rules 10.300, 10.370, 10.500, 10.520, and 10.600. Finally, the mediator alleged that the complainant was the subject of Bar grievances filed by two judges. Based on the response, the complaint committee opted to hire an investigator to talk with the mediator, the complainant, opposing counsel, the parties, and the mediator's supervisor. Opposing counsel admitted that he did not have any authority from his client (he stated that he had "full authority to offer zero"). The investigator found that there were no Bar complaints against the complainant, but the mediator's supervisor had told the mediator of the alleged complaints. Finally, the investigator was unable, despite numerous*

*attempts, to interview any of the parties. Thereafter, the complaint committee decided to interview the two attorneys and the mediator. Based on these discussions, the complaint committee was concerned that the following rules may have been violated: rules 10.350, Demeanor; 10.410, Balanced Process; 10.420(b)(2) – (4), Adjournment or Termination; and 10.520, Compliance with Authority as it related to rule 1.720(b), Florida Rules of Civil Procedure. The complaint committee offered and the mediator, Bryce Smink, accepted prior to a finding of probable cause, the following sanctions:*

- research and write an article clarifying the procedural and ethical issues related to the requirements for “appearance” at mediation, the ethical responsibilities of a mediator when someone has “appeared,” and recommendations on best practices for how a mediator should handle situations when a party has not appeared.*
- complete an additional four hours of CME in mediator ethics beyond the four hours required for renewal*