

## 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, 101 grievances have been filed (and an additional 111 “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 – 20 (20%)	County Mediators/County Cases .... 18
Central – 46 (45%)	County Mediators/CDS Cases ..... 2
Southern – 35 (35%)	County Mediator/Arbitration ..... 2
	County, Family Mediator/Condo ..... 1
	Family Mediator/County Case ..... 1
Who Filed Case	Family Mediators/Family Cases ..... 26
	Family Mediator/Circuit Case ..... 1
Parties Involved in Mediation ..... 74	Family Mediator/PC Case ..... 1
Attorneys ..... 13	Circuit Mediators/Circuit Cases ..... 27
Other ..... 14	Circuit Mediators/Family Cases ..... 3
	Circuit Mediators/Federal Cases ..... 3
	Circuit Mediator/Mobile Home ..... 1
	Circuit Mediator/Home Owner Association Case ..... 1
	County Mediator/Home Owner Association Case ..... 1
	Non-certified Mediator/Worker’s Comp Case ..... 1
	Non-certified mediator/County Case ..... 1
	Non-certified mediator/Family Case ..... 3
	Non-certified mediator/

	Circuit Case.....	1
	Certified Mediators/No Case .....	7

**Complaint Committee Meeting with Mediator and Complainant**

■ This grievance was filed by a party in a county court (small claims) mediation against a county mediator. The complainant alleged that the contrary to the directions on the summons, the other party brought witnesses to the mediation. The complainant reported that she made several attempts to bring this fact to the attention of the mediator because the presence of the witnesses created a “hostile environment” for the complainant and “precipitated a confrontation” between the other party, the witnesses and the complainant. The mediator allegedly did nothing to address the situation.

*The complaint committee reviewed the grievance and found it to be facially sufficient. The committee requested a response from the mediator with regards to rules 10.220, Mediator’s Role, and 10.410, Balanced Process. After reviewing the mediator’s response, the complaint committee authorized the hiring of an investigator to talk with the mediator, the complainant, the defendant in the underlying case and anyone else deemed necessary to complete the investigation. After reviewing the investigator’s report, the complaint committee continued to have concerns with regards to rules 10.220 and 10.410. In addition, based on the mediator’s response, the committee also had questions regarding rule 10.420(a), Conduct of Mediation, and rule 10.350, Demeanor. The complainant committee requested to meet with the mediator and the complainant in an effort to continue the investigation and to attempt to resolve the complaint. As a result of the meeting, the Committee found probable cause that: (1) Allowing the opposing party’s children to sit behind the Complainant during mediation did not reduce obstacles to communication, as required in rule 10.220, and (2) Failing to establish who was to be present at the mediation (parties and those agreed to by both parties) prior to starting the mediation did not facilitate a balanced process, as required by rule 10.410. The mediator, Jean Owen, accepted sanctions (sending a letter of apology to the complainant and completing additional continuing education).*

■ This case involved two grievances which were filed regarding the same mediation. One was filed by one of the named parties to the underlying case, and the other was filed by her mother who attended the mediation. The grievances were consolidated for review by a single complaint committee since the grievances were filed together and each referenced the other’s grievance. The underlying case was a modification of a dissolution of marriage in which the former husband attended via telephone. The husband was represented by counsel who was physically present; the complainant was not represented by an attorney, but physically appeared at the mediation with her mother. The complainants alleged that the mediator did not behave in a professional manner, in violation of rule 10.350, and that the mediator failed to accurately explain confidentiality prior to the commencement of the mediation, in violation of rule 10.420(a). The complainants also alleged that the mediator misled them regarding their ability to discuss the mediation with their spouses. Specifically, the complainants believed that the mediator was going to prepare a confidentiality agreement to be signed by their spouses. The complainants also alleged that the mediator had violated their self-determination in violation of rule 10.310(b).

*The complaint committee found facial sufficiency with regards to rules 10.300, Mediator's Responsibility to the Parties; 10.310, Self-Determination; 10.350, Demeanor; 10.420(a), Orientation Session, and 10.520, Compliance with Authority, and requested a response from the mediator. After reviewing the mediator's response, the complaint committee authorized the hiring of an investigator to talk with the mediator, the complainants, the opposing party in the underlying case, his attorney, and anyone else deemed necessary to complete the investigation. After reviewing the investigator's report, the complaint committee continued to have concerns with regards to rules 10.420(a) and 10.520 and requested a meeting with the mediator and the complainants. At that in person meeting, the complaint committee found no probable cause and dismissed the grievance, finding that although the complainants were confused regarding the confidentiality requirements, the mediator had not violated any of the ethical standards.*

### **Case Dismissed After Mediator's Response**

- This grievance was filed against a certified family and circuit mediator in relation to a mediator advertisement which ran in a legal periodical. The complaint alleged that the mediator violated rule 10.610, Advertising, because the advertisement stated that the mediator was "Board Certified by the Florida Supreme Court in all areas of mediation and arbitration," when there is no "Board Certification," the mediator is not certified in county or dependency, and the Florida Supreme Court does not "certify" arbitrators.

*The complaint committee found facial sufficiency and requested a response from the mediator in relation to rule 10.610, Advertising. The mediator provided a comprehensive response. Based on the mediator's response, the Complaint Committee found probable cause that the mediator violated rule 10.610 by engaging in marketing practices which were misleading, but dismissed the complaint pursuant to rule 10.810(m) because the violation was of an isolated nature and was recognized and understood by the mediator. In addition, the mediator represented to the Committee that he had already modified all of his advertising and marketing to comply with a strict reading of rule 10.610 and will comply with all rules and regulations in the future.*

Updated: 05/08/07 (MQB 07-06)