

Supreme Court of Florida

No. AOSC08-23

IN RE: PROCEDURES GOVERNING CERTIFICATION OF MEDIATORS

ADMINISTRATIVE ORDER

Chapter 44, Florida Statutes, places in the Supreme Court of Florida the responsibility for certifying all persons who are eligible to receive court referrals for mediation. Pursuant to Article V, section 2(a) of the Florida Constitution, and Chapter 44, Florida Statutes, the Court adopted rule 10.100, Florida Rules for Certified and Court-Appointed Mediators, specifying the requirements for such mediators.

In re Rules Governing Certification of Mediators, No. AOSC06-9 (Fla. May 11, 2006), was issued in conjunction with the Court's opinion In re Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules for Certified and Court-Appointed Mediators, 931 So. 2d 877 (Fla. 2006), amending the Rules for Certified and Court-Appointed Mediators and approving new point-based mediator certification requirements, subject to the

submission of additional rule amendments by the Alternative Dispute Resolution Rules and Policy Committee.

In re Rules Governing Certification of Mediators, No. AOSC07-57 (Fla. Nov. 15, 2007), was entered after and pursuant to the Court's consideration and adoption of those additional amendments in In re Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules for Certified and Court-Appointed Mediators, 969 So. 2d 1003 (Fla. 2007). In that opinion, the Court requested that the Committee recommend a revised procedure for considering administrative reviews. This Administrative Order is adopted to incorporate those revisions. The provisions of this order supersede all previous orders on this subject.

I. Initial Certification

A. Application

The certification application provided by the Dispute Resolution Center (Center) shall be completed by all individuals seeking certification, in accordance with the following procedures:

The Center shall provide to all individuals who have successfully completed a certified mediation training program an application and information on the certification requirements.

An application shall be complete upon filing. However, if incomplete upon filing, such incomplete application may not remain pending for a period longer than one year. Any application pending more than one year from the date of original filing shall be denied and returned to the applicant. The one-year period shall be tolled during any review by the Center or Mediator Qualifications Board.

Applications must include two original letters of reference addressed to the Center attesting to the good moral character of the applicant as it relates to the applicant's qualifications to be a mediator. These letters must be written by non-family members who are familiar with the experience and qualifications of the applicant.

Any material misrepresentation by the applicant in the application process shall be automatically referred to the Mediator Qualifications Board.

B. Certification Requirements

To obtain certification, an applicant shall meet all certification requirements in rules 10.100 and 10.105, Florida Rules for Certified and Court-Appointed Mediators, and this order.

Point Categories

Mediation Training. Applicants must complete a Florida Supreme Court certified mediation training program for the type of mediation for which they are seeking certification. To qualify as a Florida Supreme Court certified mediation training program, a training program must satisfy all of the requirements of In re Mediation Training Standards and Procedures, No. AOSC00-9 (Fla. April 11, 2000), or any successor order. Applicants shall have completed the requisite certified mediation training program within the two years immediately preceding the date of application.

Education/Mediation Experience. Any applicant relying on an educational degree shall provide evidence of such degree in the form of a formal transcript mailed directly from the educational institution to the Center. Such applicant must also enclose a copy of the diploma evidencing the completion of the course of study and the degree. In the event that such documentation is unavailable, the applicant must submit another form of appropriate documentation, such as a sworn affidavit.

Any applicant relying on years of mediation experience shall include an affidavit attesting to such experience.

Mentorship. Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and

observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

The responsibility of structuring a mentorship rests with each trainee. The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year. The certified mediator shall not charge the trainee any fees to observe a mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts a mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation.

The certified mediator shall remain in control of the case.

For an applicant to be awarded mentorship points, the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act, sections 44.401-44.406, Florida Statutes, shall apply when a trainee serves as a mediator, co-mediator, or observer.

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Applicants shall provide original signatures of all mentors in relation to all mentorship activity claimed.

A trainee shall not fulfill any of the mentorship requirements before beginning the certified mediation training program which will be used for the pending application. The observation requirement may be completed prior to the conclusion of the certified mediation training program; however, in no case shall an observation which is part of the training be used to fulfill the observation requirements for certification. A supervised mediation shall only be conducted by a trainee after the completion of a certified mediation training program.

Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator in the same category for which certification is sought. The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation. An appellate or pre-suit mediation may be utilized for observation purposes if (1) it is or would have been the type of mediation for which certification is sought

if it had been filed in a trial court and (2) if it is conducted by a certified mediator of the type for which certification is sought. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements.

Supervised Mediations

A supervised mediation is defined as one in which the trainee conducts a mediation under the supervision and observation of a certified mediator or the trainee co-mediate with a certified mediator if, in the opinion of the certified mediator, the trainee made a substantial contribution to the mediation. At the conclusion of the mediation, the mentor shall determine if the trainee made a substantial contribution to the mediation. If so, the case may qualify as a “supervised” mediation. If not, the case will qualify only as an observation.

For purposes of conducting supervised mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be co-mediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multi-session mediation, such participation qualifies as an observation regardless of the trainee’s level of participation.

An appellate or pre-suit mediation may be utilized for the requirements to conduct mediations under supervision and observation if (1) it is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and (2) it is conducted by a certified mediator of the type for which certification is sought. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship.

Administrative agency mediation conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements.

Miscellaneous Points. Any applicant requesting certification on the basis of licensure in a profession shall provide all applicable information necessary for the Center to verify such licensure.

Any applicant requesting certification on the basis of specific experience shall provide a resume detailing the experience and any other information necessary for the Center to verify such experience.

Fees

Effective January 1, 2009, the following fees shall be required for the application and certification process:

Application Fee	\$20 (nonrefundable)
Certification Fees	
County	\$40
Family	\$125
Circuit	\$150
Dependency	\$100
Family/Circuit	\$250 (filed simultaneously)
Family/Dependency	\$200 (filed simultaneously)
Circuit/Dependency	\$225 (filed simultaneously)
Family/Dependency/Circuit	\$325 (filed simultaneously)

The \$20 application fee is nonrefundable. Certification fees shall be returned to applicants who, upon review of their applications, are deemed ineligible to be certified. Applicants who are denied certification may reapply upon compliance with the qualifications for certification.

Applicants who meet the requirements for mediator certification shall be certified for a two-year period and shall be provided with a certificate from the Supreme Court evidencing such certification.

Review Process

An applicant who disagrees with a finding of ineligibility may object in writing within thirty days of the initial determination of ineligibility as indicated in a certificate of mailing. Any such response shall be reviewed by a three-person

subcommittee of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy appointed to review such matters, which shall make a recommendation to the full Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The decision of the full committee shall be final.

II. Certification Renewal

A. Application for Renewal

Mediators seeking continued certification shall be required to file an application for renewal and a completed Continuing Mediator Education Reporting Form. Any material misrepresentation by a mediator in the renewal process shall be automatically referred to the Mediator Qualifications Board.

B. Continuing Mediator Education

The purpose of continuing mediator education (CME) shall be to enhance the participant's professional competence as a mediator. The requirement of CME and the reporting thereof shall apply to all certified mediators seeking renewal and shall be fulfilled in accordance with the following procedures.

General Requirement

To qualify as CME, a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience. All certified

mediators (mediators) must complete a minimum of sixteen hours of CME, which shall include a minimum four hours of mediator ethics, a minimum of two hours of domestic violence education, and a minimum of one hour of diversity/cultural awareness education in each two year renewal cycle, including the two years following initial certification. Family and dependency mediators must complete an additional two hours of the required 16 hours in domestic violence education per each renewal cycle, for a total of four hours. Mediator certification shall not be renewed until all CME requirements are completed.

Mediators who are certified in more than one area must complete sixteen hours of CME applicable to each of their areas of certification. Hours completed may be utilized toward more than one area of certification if the subject matter is relevant to each field of certification. For example, courses on such topics as mediator ethics, domestic violence, and general mediation skills may be credited to any or all of the areas of certification.

At a minimum, fifty percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive Internet presentations may be counted as attendance at a live lecture. Non-interactive Internet presentations shall be applied toward the audio-visual category. A maximum of four hours of CME may be earned through

mentoring as defined above. Mentoring activities cannot be applied toward the required ethics, diversity/cultural awareness, or domestic violence CME components.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

Definition

A CME hour is defined as fifty minutes. CME may be completed during the mediator's renewal cycle in any of the following formats:

- (1) attending a live lecture or seminar;
- (2) listening to or viewing an audio or video presentation of a lecture or seminar with a group, and participating in a discussion of the materials presented;
- (3) listening to or viewing audio or video presentations;
- (4) serving as a mentor pursuant to rule 10.100, Florida Rules for Certified and Court-Appointed Mediators;
- (5) participating in Internet presentations;
- (6) lecturing or teaching in CME courses;
- (7) authoring or editing written materials submitted for publication that have significant intellectual or practical content directly related to the practice of mediation; and
- (8) successfully completing a self-directed program that is qualified for continuing education credit by a governmental licensing board.

Reporting Requirements

Mediators must maintain proof of attendance at CME programs or other appropriate documentation and must report their CME at the end of each two-year renewal cycle on the Center's renewal form. The mediator shall be responsible to maintain all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules; Chapter 44, Florida Statutes; and other relevant statutes.

Any CME hours completed may be utilized for only one renewal cycle. Hours in excess of the minimum requirement shall not be carried forward to the next renewal cycle.

Attending and lecturing or teaching at the same CME presentation will not entitle a mediator to additional credit. This prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

If all other qualifications for renewal are satisfied, but a mediator is deficient in CME credits, the mediator shall be notified in writing and certification shall be continued for ninety days from the notice of noncompliance. During those ninety days, the mediator shall complete all remaining CME requirements to be eligible for renewal.

Review Process

A mediator who disagrees with a finding of deficiency may object in writing within thirty days of the initial determination of deficiency as indicated in a certificate of mailing. Any such response shall be reviewed by a three-person subcommittee of the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy appointed to review such matters, which shall make a recommendation to the full Supreme Court Committee on Alternative Dispute Resolution Rules and Policy. The decision of the full committee shall be final.

C. Fees

Renewal fees shall be at the same levels as for initial certification. All mediators seeking renewal shall be responsible for these fees. However, for renewals that are filed timely, the \$40 county mediator renewal fee will be waived upon written confirmation from the ADR Program Director (or designee) that the mediator served as a volunteer in the county court mediation program during the prior certification period.

Mediators whose certification has lapsed may renew certification up to 180 days from the lapse date upon payment of a late fee in an amount equal to the mediator's renewal fee. Mediators who apply for renewal within 365 days after the lapse date will be required to pay a late fee equal to five times the mediator's renewal fee, up to a maximum of \$750. Mediators who apply for certification after

day 365 will be required to meet the requirements for certification as a new mediator, including satisfactory completion of a certified mediation training program and fulfillment of the mentorship requirements. For purposes of this paragraph, the lapse date reverts to the initial renewal date, notwithstanding any extensions.

A mediator may request an extension of the renewal requirements and a waiver of any penalties for an extraordinary hardship. If such request is denied, a request for review may be taken to the three-person subcommittee of the Alternative Dispute Resolution Rules and Policy Committee appointed to review such matters, which shall make a recommendation to the full Alternative Dispute Resolution Rules and Policy Committee. The decision of the full committee shall be final.

III. Administrative Responsibility

Administrative responsibility for implementation of the provisions of Chapter 44, Florida Statutes; rules 10.100 and 10.105, Florida Rules for Certified and Court-Appointed Mediators; and this administrative order shall be with the Dispute Resolution Center of the Office of the State Courts Administrator.

All certification, application, renewal, and late fees shall be deposited in the Supreme Court's Mediation and Arbitration Trust Fund to be used to provide support for implementing the applicable statutes, rules, and this administrative order.

DONE AND ORDERED at Tallahassee, Florida, on June 30, 2008.


Chief Justice R. Fred Lewis

ATTEST:



Thomas D. Hall
Clerk, Supreme Court

