

# Supreme Court of Florida

No. AOSC17-25

IN RE:       MEDIATION TRAINING STANDARDS AND PROCEDURES  
              INCLUDING APPOINTMENTS TO THE MEDIATION TRAINING  
              REVIEW BOARD

## ADMINISTRATIVE ORDER

The Mediation Training Review Board (MTRB), first appointed in 1995, has been the disciplinary body overseeing enforcement of the Mediation Training Standards and Procedures adopted by the Supreme Court of Florida in In re: Mediation Training Standards and Procedures Including Appointments to the Mediation Training Review Board, No. AOSC13-41 (Fla. September 4, 2013). The MTRB formerly consisted of 16 members whose terms have all expired.

The MTRB is hereby reconstituted and reconfigured to include nine members drawn from the Mediator Qualifications and Discipline Review Board (MQDRB) as follows: two state trial court judges, one certified county mediator, one certified family mediator, one certified circuit court mediator, one certified dependency mediator, one certified appellate mediator and two other certified mediators, one of whom shall be a non-lawyer.

The following members of the MQDRB are appointed to serve as members of the MTRB for four-year terms that expire on March 1, 2021:

**JUDICIAL SEATS:**

The Honorable Bryan Andrew Feigenbaum  
County Court Judge, Volusia County

The Honorable Angelica Zayas  
Circuit Court Judge, Eleventh Judicial Circuit

**COUNTY MEDIATOR:**

Mr. Mike Nichols  
Pensacola

**FAMILY MEDIATOR:**

Mr. Michael Carter  
Orlando

**DEPENDENCY MEDIATOR:**

Ms. Nancy Mag  
Palm Harbor

**CIRCUIT MEDIATOR:**

Ms. Joan Levy  
Miami

**APPELLATE MEDIATOR:**

Mr. Marc Sinensky  
Boynton Beach

**OTHER MEDIATORS:**

Ms. Bonnie Marmor  
Lakewood Ranch

Mr. Steven Leigh  
Non-Lawyer  
Fort Lauderdale

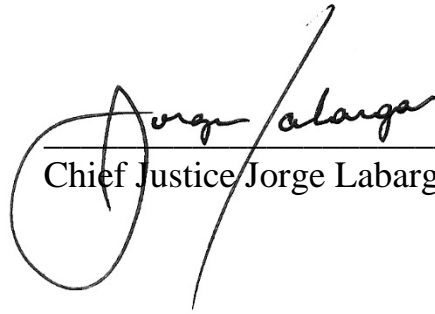
These appointments are effective upon the signing of this order.

This Court initially adopted standards for mediation training on July 7, 1989. The standards, with amendments over the last 24 years, have provided a sound basis by which the Supreme Court of Florida can ensure the quality of mediation training throughout the state. This administrative order supersedes all previous administrative orders adopting the Mediation Training Standards and Procedures.

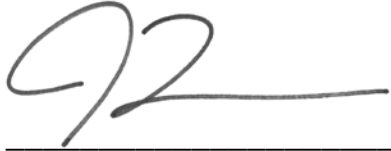
The attached Mediation Training Standards and Procedures are hereby adopted and shall be effective upon the signing of this order. Specifically, the changes, indicated by strikethrough and underlining, are to mediation training standard 4.03 regarding the composition of the Mediation Training Review Board.

The Dispute Resolution Center in the Office of the State Courts Administrator will continue to be charged with monitoring compliance with the Mediation Training Standards and Procedures and shall have the responsibility of reviewing applications for certification and renewal of training programs and for making recommendations to the Chief Justice. The Dispute Resolution Center may make a recommendation for certification or no certification. The Chief Justice, on behalf of the Supreme Court of Florida, will review and approve or disapprove the recommendation of the Dispute Resolution Center.

DONE AND ORDERED, at Tallahassee, Florida, on May 3, 2017.

  
\_\_\_\_\_  
Chief Justice Jorge Labarga

ATTEST:



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John A. Tomasino, Clerk of Court



# Mediation Training Standards & Procedures

## Part I General Provisions

### 1.01 Definitions

The following definitions shall apply.

- (a) Appellate Mediation. Appellate mediation as defined in section 44.1011(2)(a), Florida Statutes.
- (b) Assistant Trainer. Any person who meets the qualifications specified in section 2.04 and who may critique role plays, facilitate group discussions and deliver any portion of the training for which expertise through education or experience is demonstrated.
- (c) Board. The Mediation Training Review Board.
- (d) Center. The Florida Dispute Resolution Center of the Office of the State Courts Administrator, Supreme Court Building, Tallahassee, Florida 32399-1905.
- (e) Circuit Court Mediation. Circuit court mediation as defined in section 44.1011(b), Florida Statutes.
- (f) Committee. The Florida Supreme Court Committee on Alternative Dispute Resolution (ADR) Rules and Policy.
- (g) Complaint Committee. Three members of the Board appointed to determine probable cause.
- (h) Counsel. Attorney appointed by the Center, at the direction of the complaint committee, responsible for presenting the complaint to the panel.
- (i) County Court Mediation. County court mediation as defined in section 44.1011(c), Florida Statutes.
- (j) Dependency Mediation. Dependency mediation as defined in section 44.1011(e), Florida Statutes.
- (k) Family Mediation. Family mediation as defined in section 44.1011(d), Florida Statutes.
- (l) Investigator. A Florida Supreme Court certified mediator, attorney or other qualified individual, appointed by the Center at the direction of a complaint committee.
- (m) Panel. Five members of the Board appointed to conduct a hearing to determine whether a violation of the standards has occurred.

(n) Party. A complainant, a training program or any training program principal upon whom the complaint is served.

(o) Primary Trainer. Any person who meets the qualifications specified in section 2.04 and who may critique role plays, facilitate group discussions and deliver any portion of the training for which expertise through education or experience is demonstrated.

(p) Role Play Critiquer. Any person who meets the qualifications of an assistant or primary trainer.

(q) Standards. The Florida Supreme Court Mediation Training Program Standards and Procedures.

(r) Subject Matter Specialist. Any person who meets the qualifications specified in section 2.04 and who may only present specific subject matter material during the training for which expertise through education or experience is demonstrated.

(s) Training Program. A mediation training program certified by the Florida Supreme Court.

(t) Training Program Principals. The corporation or other entity, its officers, its principals and the trainer designated to attend the entire training program.

(u) Venue. Tallahassee or such other location in the State of Florida as determined by the Complaint Committee or Panel Chair.

For purposes of calculating dates of items filed with the Center, the filing date will be documented by the date of mailing or by the date of electronic transmittal.

## **1.02 Center Responsibilities**

(a) Monitoring and Oversight. The Center shall be responsible for monitoring compliance with the standards, maintaining files on Florida Supreme Court certified programs (including approved materials, agenda, application, evaluation summaries, trainer resumes and any changes submitted), responding to complaints and any other responsibility deemed appropriate by the Florida Supreme Court or the Committee.

(b) Fees. The fee for initial certification of a family, dependency and/or circuit court mediation training program shall be \$250 each and the renewal fee shall be \$250 each. The fee for initial certification of a county court and appellate mediation training program shall be \$150 and the renewal fee shall be \$150.

(c) Mediator Certification Orientation. The Center shall advise all participants in Florida Supreme Court certified county court, family, circuit court, dependency and appellate mediation training programs of the training and certification requirements. At the beginning of Florida Supreme Court certified county court, family, circuit court, and dependency mediation training programs, the training providers shall show a video (of approximately 15 minutes) provided and produced by the Center.

### **1.03 Training Program Responsibilities**

- (a) **Certification Requirements.** A training program shall meet the requirements specified in these standards to be certified by the Florida Supreme Court.
- (b) **Training Program Coordination.** For each Florida Supreme Court certified training program offered an individual shall be designated to be responsible for and held accountable on behalf of the program for:
- (1) providing the Center with copies of all advertisements for Florida Supreme Court certified mediation training programs;
  - (2) providing the Center with profile forms and resumes from all primary, assistant trainers, and subject matter specialists who will be used during the training;
  - (3) ensuring proper facilities are secured with appropriate equipment needs;
  - (4) ensuring that the training agenda is followed and that all content is covered;
  - (5) ensuring that evaluations are completed and maintained;
  - (6) ensuring that a primary trainer is in attendance at all times;
  - (7) ensuring that one single trainer (primary or assistant) is present for the complete program;
  - (8) ensuring that all participants complete the requirements of attendance and participation;
  - (9) ensuring that all trainers designated to critique role plays have viewed the Center's critique video prior to their participation as a role play critiquer; and
  - (10) all other requirements as may be adopted by the Florida Supreme Court or the Committee.

## **Part II Training Standards**

### **2.01 Training Parameters**

- (a) **Length of Training.** An instructional hour is defined as 60 minutes.
- (1) County court mediation training shall be a minimum of 20 instructional hours.
  - (2) Family mediation training shall be a minimum of 40 instructional hours.
  - (3) Circuit court mediation training shall be a minimum of 40 instructional hours.

(4) Dependency mediation training shall be a minimum of 40 instructional hours.

(5) Appellate mediation training shall be a minimum of seven instructional hours.

(b) **Span of Training.** County court mediation training shall be presented over a minimum of three days and a maximum of 30 days in blocks of time of at least three hours. Family, circuit court, and dependency mediation trainings shall be presented over a minimum of five days and a maximum of 30 days in blocks of time of at least three hours. Appellate mediation training shall be presented over a minimum of one day and a maximum of three days in blocks of time of at least two hours. An exemption from the two or three hour block requirement will be made for academic programs for which course credit is given; however, if the training is presented over a period longer than 30 days (in shorter time blocks), an additional hour shall be added for each additional week. Under no circumstances shall the training period exceed 120 days.

(c) **Breaks.** Trainers shall provide appropriate breaks during their training sessions which shall be in addition to the number of required hours for training. For every hour of training, five minutes of break time shall be added. Any training day which lasts two hours or less is exempt from the break requirement. In addition, during each day which lasts over six hours, there shall be a minimum of 30 minutes provided for a meal or extended break.

## **2.02 Course Content Requirements**

(a) **Learning Objectives.** Training programs shall incorporate the appropriate learning objectives for the type of Florida Supreme Court certified program offered, as specified:

(1) County court mediation programs shall cover all objectives set forth in section 3.01;

(2) Family mediation programs shall cover all objectives set forth in section 3.02;

(3) Circuit court mediation programs shall cover all objectives set forth in section 3.03;

(4) Dependency mediation programs shall cover all objectives set forth in section 3.04; and

(5) Appellate mediation programs shall cover all objectives set forth in section 3.05.

(b) **Submission of Training Materials.** When applying for Florida Supreme Court certification and renewal, training programs shall provide the Center with all training materials which will be used in the training program. These materials shall include, but are not limited to, the following: a training manual that is given to the participants including the required readings and an agenda annotated with the learning objectives to be covered in each section and the intended method of instruction; all exercises and handouts including exercises for reducing an agreement to writing and for completing a financial affidavit including child support calculations (if applicable); written exams; and a copy of all role plays. All training materials, handouts and exercises shall be accurate and reflect current mediation rules and procedures. Revisions,



deletions and/or additions to the training materials shall be reported to the Center prior to any course offering.

(c) **Agenda Approval.** Training programs shall seek approval from the Center 21 days in advance of each offering of a Florida Supreme Court certified mediation training program by filing a detailed program agenda and affirming that all materials are current and up-to date. The agenda shall be reviewed by the Center for compliance with the training standards. The agenda shall be submitted in a format as to easily identify the presentation topic, the trainer(s) for each topic, the time allotted to each topic, the learning objectives covered under each topic, any required activities (e.g., writing agreement exercise, showing of video simulation, etc.) covered under the presentation topic, the trainers utilized for role play critiques and the inclusion of the required break minutes. Any deficiencies in the program agenda shall be corrected prior to the commencement of the training program. Failure to correct deficiencies is a violation of the training standards.

(d) **Emergency Revisions.** If special circumstances require revisions to the program agenda or the inclusion of additional trainers after the program agenda has been filed with the Center, those changes shall be submitted to the Center no later than three business days after the change becomes known to the training program. It is the responsibility of the training program to ensure that revisions made to the program are in accordance with the requirements of the training standards and that all trainers are approved and/or up to date on all qualifications prior to their participation in the program.

(e) **Required Training Materials.** At a minimum, training providers shall provide each of their attendees with the following written materials:

- (1) an agenda annotated with the learning objectives to be covered in each section;
- (2) a training manual that includes the following required readings:
  - (i) Chapter 44, Florida Statutes.
  - (i) Section 415.1034, Florida Statutes.
  - (ii) Florida Rules for Certified and Court-Appointed Mediators.
  - (iii) Current Florida Supreme Court Administrative Order, In Re: Rules Governing Certification of Mediators.
  - (iv) Chapter 39, Florida Statutes (for dependency mediation programs only).
  - (v) Sections 39.201-206, Florida Statutes (for county court, family, circuit court and appellate mediation programs).
  - (vi) Chapter 61, Florida Statutes (for family mediation programs only).

- (vii) Sections 61.13; 61.30; 61.401 – 405, Florida Statutes (for dependency mediation programs only).
  - (viii) Section 69.081, Florida Statutes (for circuit court mediation programs only).
  - (ix) Section 286.011(8), Florida Statutes (for circuit court mediation programs only).
  - (x) Rules 1.700 - 1.750, Florida Rules of Civil Procedure (for county court and circuit court mediation programs only).
  - (xi) Rules 12.010, 12.610 and 12.740 – 12.741, Family Law Rules of Procedure (for family mediation programs only).
  - (xii) Rule 8.290, Florida Rules of Juvenile Procedure (for dependency mediation programs only).
  - (xiii) Rules 9.700 – 9.740, Appellate Rules of Procedure (for appellate mediation programs only).
  - (xiv) Model Screening Protocol (for family and dependency mediation programs only).
- (3) the Center’s bibliography;
  - (4) an exercise for reducing an agreement to writing (except for appellate mediation programs);
  - (5) for family mediation programs, written exercises shall include completion of a financial affidavit including child support calculations and reducing an agreement to writing;
  - (6) role play simulation materials for the required role plays (except for appellate mediation programs); and
  - (7) role play critique form (except for appellate mediation programs).

(f) Required Readings. All training programs shall provide the participants with the required readings listed in subsection 2.02 (e)(2) above. Time spent on reading required materials shall not count toward the required number of hours of training and shall be completed by participants at times when the training program is not being conducted. Trainers shall incorporate some method of ensuring that the required readings are completed. To the extent that rules or statutes are amended or re-numbered, trainers shall ensure that the current rules are provided to the training participants.

### **2.03 Training Methodology**

(a) Pedagogy. County court, family, circuit court and dependency mediation programs shall include, but are not limited to, the following: lecture, group discussion, written exercises,

mediation simulations and role plays. Appellate programs shall include, but are not limited to, the following: lecture and mediation simulation. In addition, outside readings shall be provided by the trainer to supplement the training.

(b) Written Exercises. At a minimum, written exercises shall include the reducing of an agreement to writing. For family mediation programs, written exercises shall include completion of a financial affidavit including child support calculations and reducing an agreement to writing. For dependency mediation programs, written exercises shall include reducing to writing, agreements in at least one of the following areas: juvenile dependency, foster care or termination of parental rights. There is no written agreement exercise required for appellate mediation training.

Completion of a fill in the blank form is not considered compliance with the written agreement exercise requirement. Prior to the conclusion of the training, a trainer shall review each written agreement and provide feedback individually or via group discussion.

(c) Role Play Requirements. The objective of a role play is for a participant to develop confidence and experience. Trainers should be mindful in designing role plays that the scenarios not be too complex and multi-faceted. These role plays are to be conducted under the observation of a qualified primary trainer or assistant trainer. At the conclusion of each role play, a minimum of 20 minutes shall be allocated for both oral and written feedback to the mediator trainee. The written feedback shall be provided on a form designed or approved by the Center, which shall be provided to the participant at the conclusion of his/her role play as mediator. Specific requirements for role plays shall be as follows:

(1) County Court Mediation Training Programs. At a minimum, every participant shall take part in at least one continuous role play acting as the sole mediator and one continuous role play acting as the disputant. A continuous role play is defined as one beginning with the mediator's opening statement and continuing for a minimum of 45 minutes.

(2) Family Mediation Training Programs. At a minimum, every participant shall take part in at least one continuous role play acting as the sole mediator and one continuous role play acting as a spouse. A continuous role play is defined as one beginning with the mediator's opening statement and continuing for a minimum of 60 minutes.

(3) Circuit Court Mediation Training Programs. At a minimum, every participant shall take part in at least one continuous role play acting as the sole mediator and one continuous role play acting as a disputant, attorney or insurance representative. A continuous role play is defined as one beginning with the mediator's opening statement and continuing for a minimum of 60 minutes.

(4) Dependency Mediation Training Programs. At a minimum, every participant shall take part in at least one continuous multi-party role play acting as the sole mediator and one continuous multi-party role play acting as a parent or legal guardian. A continuous role play is defined as one beginning with the mediator's opening statement and continuing for a minimum of 60 minutes.

(5) Appellate Mediation Training Programs. There is no role play requirement for appellate mediation training.

(d) Mediation Demonstration. All training programs shall present a role play mediation simulation (either live or by video). For county court, family, dependency and circuit court programs, this shall be done prior to the participant's role play experience as the mediator.

(e) Ethics. County court, family, circuit court and dependency training programs shall review with participants Rules 10.110 - 10.880, Florida Rules for Certified and Court-Appointed Mediators for at least 90 minutes, in blocks of time of at least 30 minutes which shall include application of ethical standards to specific scenarios and discussing common ethical grievances faced by mediators. Appellate mediation training programs shall review with participants Rules 10.100 - 10.880, Florida Rules for Certified and Court-Appointed Mediators, in a continuous 60 minute block of time. In addition, ethics shall be woven throughout the program.

Trainers shall include information on the most common types of ethics charges faced by mediators in Florida as well as ways to avoid unethical or questionable ethical mediator practices.

## **2.04 Trainer Qualifications**

(a) County Court Mediation Programs. Training programs shall employ primary trainers, assistant trainers and subject matter specialists who meet the applicable qualifications outlined below and who have been approved by the Center. Approval as an assistant or primary trainer shall be for two years.

(1) Primary Trainer. In order to be approved as a primary trainer, a trainer shall demonstrate the following qualifications.

(A) Mediation Training Received. Successful completion of a minimum of 20 hours of mediation training.

(B) Mediation Experience. Participation in a minimum of 50 court-connected mediation conferences (or their equivalent) which includes a minimum of 20 county court court-connected mediations as the mediator and a minimum of four county court court-connected mediation conferences as the mediator or as an observer within the last two years.

(C) Continuing Education. Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Training Delivery Experience. One item from (i) and all of (ii)

(i) Participation as a lecturer for no less than one hour in a Florida Supreme Court certified county court mediation training program; critiquing a mock role play in a Florida Supreme Court certified county court mediation training program; completion of six hours of attendance in a program for trainers on adult teaching techniques; completion of six hours at a train the mediator trainer program; teaching a single continuing mediator education class for no less than three hours; teaching a mediation related program for no less than three hours or 30% of the total program whichever is greater; or teaching via live attendance a graduate or undergraduate course on ADR in a university setting; and in addition

(ii) Participation as a primary trainer or assistant trainer in four distinct county court mediation training programs deemed to be the equivalent of a Florida Supreme Court certified county court mediation training program including:

(a) Participation as a role play critiquer in a minimum of two programs; and

(b) Participation as a lecturer for no less than one hour in a minimum of two programs.

(E) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(2) Assistant Trainer. In order to be approved as an assistant trainer, a trainer shall demonstrate the following qualifications.

(A) Mediation Training Received. Successful completion of a minimum of 20 hours of mediation training.

(B) Mediation Experience. Participation in a minimum of 20 court-connected mediation conferences (or their equivalent) as the mediator with a minimum of four county court-connected mediation conferences as the mediator or as an observer within the last two years.

(C) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(3) Subject Matter Specialist. Subject matter specialists shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the mediation process.

(4) **Renewing or Reinstating Approval as a Primary Trainer.** Once approved, a primary trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

(A) Participation in a minimum of five county court-connected mediation conferences as the mediator or as an observer within the last two years.

(B) Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(5) **Renewing or Reinstating Approval as an Assistant Trainer.** Once approved, an assistant trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

(A) Participation in a minimum of five county court-connected mediation conferences as the mediator or as an observer within the last two years.

(B) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(b) **Family Mediation Programs.** Training programs shall employ primary trainers, assistant trainers and subject matter specialists who meet the applicable qualifications outlined below and who have been approved by the Center. Approval as an assistant or primary trainer shall be for two years.

(1) **Primary Trainer.** In order to be approved as a primary trainer, a trainer shall demonstrate the following qualifications.

(A) **Mediation Training Received.** Successful completion of a minimum of 40 hours of family mediation training.

(B) Mediation Experience. Participation in a minimum of 50 complete Florida family mediation conferences (or their equivalent) as the mediator with a minimum of four Florida family mediation conferences (or their equivalent) as the mediator or as an observer within the last two years.

(C) Continuing Education. Completion of 16 hours of continuing mediator education including three hours of train the mediator trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Training Delivery Experience. One item from (i) and all of (ii)

(i) Participation as a lecturer for no less than one hour in a Florida Supreme Court certified family mediation training program; critiquing a mock role play in a Florida Supreme Court certified family mediation training program; completion of six hours of attendance in a program for trainers on adult teaching techniques; completion of six hours at a train the mediator trainer program; teaching a single continuing mediator education class for no less than three hours; teaching a mediation related program for no less than three hours or 30% of the total program whichever is greater; or teaching via live attendance a graduate or undergraduate course on ADR in a university setting; and in addition

(ii) Participation as a primary trainer or assistant trainer in four distinct family mediation training programs deemed to be the equivalent of a Florida Supreme Court certified family mediation training program including:

(a) Participation as a role play critiquer in a minimum of two programs; and

(b) Participation as a lecturer for no less than one hour in a minimum of two programs.

(E) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(2) Assistant Trainer. In order to be approved as an assistant trainer, a trainer shall demonstrate the following qualifications.

(A) Mediation Training Received. Successful completion of a minimum of 40 hours of family mediation training.

(B) Mediation Experience. Participation in a minimum of 20 Florida family mediation conferences (or their equivalent) as the mediator with a minimum of

four Florida family mediation conferences (or their equivalent) as the mediator or as an observer within the last two years.

(C) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(3) Subject Matter Specialist. Subject matter specialists shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the mediation process. Lectures on family law shall be presented by a Florida attorney with at least five years of family law practice. Lectures on psychological issues in separation and divorce, family dynamics, and needs of children shall be presented by a master or doctoral level mental health professional<sup>1</sup> or a licensed mental health professional (see Chapters 490 - 491, Florida Statutes).

(4) Renewing or Reinstating Approval as a Primary Trainer. Once approved, a primary trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

(A) Participation in a minimum of five Florida family mediation conferences as the mediator or as an observer within the last two years.

(B) Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(5) Renewing or Reinstating Approval as an Assistant Trainer. Once approved, an assistant trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

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<sup>1</sup> Mental health defined as social work, psychology or psychiatry. Does not include masters in sociology or divinity.



(A) Participation in a minimum of five Florida family mediation conferences as the mediator or as an observer within the last two years.

(B) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(c) Circuit Court Mediation Training Programs. Training programs shall employ primary trainers, assistant trainers and subject matter specialists who meet the applicable qualifications outlined below and who have been approved by the Center. Approval as an assistant or primary trainer shall be for two years.

(1) Primary Trainer. In order to be approved as a primary trainer, a trainer shall demonstrate the following qualifications.

(A) Mediation Training Received. Successful completion of a minimum of 40 hours of mediation training.

(B) Mediation Experience. Participation in a minimum of 50 complete Florida circuit court (non-family) mediation conferences (or their equivalent) as the mediator with a minimum of four Florida circuit court (non-family) mediation conferences (or their equivalent) as the mediator or as an observer within the last two years.

(C) Continuing Education. Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Training Delivery Experience. One item from (i) and all of (ii)

(i) Participation as a lecturer for no less than one hour in a Florida Supreme Court certified circuit court mediation training program; critiquing a mock role play in a Florida Supreme Court certified circuit court mediation training program; completion of six hours of attendance in a program for trainers on adult teaching techniques; completion of six hours at a train the mediator trainer program; teaching a single continuing mediator education class for no less than three hours; teaching a mediation related program for no less than three hours or 30% of the total program

whichever is greater; or teaching via live attendance a graduate or undergraduate course on ADR in a university setting; and in addition

(ii) Participation as a primary trainer or assistant trainer in four distinct circuit court mediation training programs deemed to be the equivalent of a Florida Supreme Court certified circuit court mediation training program including:

(a) Participation as a role play critiquer in a minimum of two programs; and

(b) Participation as a lecturer for no less than one hour in a minimum of two programs.

(E) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(2) Assistant Trainer. In order to be approved as an assistant trainer, a trainer shall demonstrate the following qualifications.

(A) Mediation Training Received. Successful completion of a minimum of 40 hours of mediation training.

(B) Mediation Experience. Participation in a minimum of 20 Florida circuit court (non-family) mediation conferences (or their equivalent) as the mediator with a minimum of four Florida circuit court (non-family) mediation conferences (or their equivalent) as the mediator or as an observer within the last two years.

(C) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(3) Subject Matter Specialist. Subject matter specialists shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the mediation process.

(4) Renewing or Reinstating Approval as a Primary Trainer. Once approved, a primary trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

- (A) Participation in a minimum of five Florida circuit court (non-family) mediation conferences as the mediator or as an observer within the last two years.
  - (B) Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.
  - (C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.
- (5) Renewing or Reinstating Approval as an Assistant Trainer. Once approved, an assistant trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.
- (A) Participation in a minimum of five Florida circuit court (non-family) mediation conferences as the mediator or as an observer within the last two years.
  - (B) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.
  - (C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.
- (d) Dependency Mediation Training Programs. Training programs shall employ primary trainers, assistant trainers and subject matter specialists who meet the applicable qualifications outlined below and who have been approved by the Center. Approval as an assistant or primary trainer shall be for two years.
- (1) Primary Trainer. In order to be approved as a primary trainer, a trainer shall demonstrate the following qualifications.
    - (A) Mediation Training Received. Successful completion of a Florida Supreme Court certified dependency mediation training.
    - (B) Mediation Experience. Participation in a minimum of 20 complete Florida dependency mediation conferences (or their equivalent) as the mediator with a minimum of four Florida dependency mediation conferences (or their equivalent) as the mediator or as an observer within the last two years.

(C) Continuing Education. Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Training Delivery Experience. One item from (i) and all of (ii)

(i) Participation as a lecturer for no less than one hour in a Florida Supreme Court certified dependency mediation training program; critiquing a mock role play in a Florida Supreme Court certified dependency mediation training program; completion of six hours of attendance in a program for trainers on adult teaching techniques; completion of six hours at a train the mediator trainer program; teaching a single continuing mediator education class for no less than three hours; teaching a mediation related program for no less than three hours or 30% of the total program whichever is greater; or teaching via live attendance a graduate or undergraduate course on ADR in a university setting; and in addition

(ii) Participation as a primary trainer or assistant trainer in four distinct dependency mediation training programs deemed to be the equivalent of a Florida Supreme Court certified dependency mediation training program including:

(a) Participation as a role play critiquer in a minimum of two programs; and

(b) Participation as a lecturer for no less than one hour in a minimum of two programs.

(E) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(2) Assistant Trainer. In order to be approved as an assistant trainer, a trainer shall demonstrate the following qualifications.

(A) Mediation Training Received. Successful completion of a Florida Supreme Court dependency mediation training.

(B) Mediation Experience. Participation in a minimum of 10 Florida dependency mediation conferences (or their equivalent) as the mediator with a

minimum of four Florida dependency mediation conferences (or their equivalent) as the mediator or as an observer within the last two years.

(C) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(D) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(3) Subject Matter Specialist. Subject matter specialists shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the mediation process. Lectures on Florida Dependency Law shall be presented by a Florida attorney with dependency experience. Lectures on Family Dynamics and Psychological Issues and Issues Concerning the Needs of Children in the Context of Dependency Proceedings shall be presented by a master or doctoral level mental health professional<sup>2</sup> or a licensed mental health professional (see Chapters 490 - 491, Florida Statutes).

(4) Renewing or Reinstating Approval as a Primary Trainer. Once approved, a primary trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

(A) Participation in a minimum of five Florida dependency mediation conferences as the mediator or as an observer within the last two years.

(B) Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(5) Renewing or Reinstating Approval as an Assistant Trainer. Once approved, an assistant trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

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<sup>2</sup> Mental health defined as social work, psychology or psychiatry. Does not include masters in sociology or divinity.

- (A) Participation in a minimum of five Florida dependency mediation conferences as the mediator or as an observer within the last two years.
  - (B) Completion of 16 hours of continuing mediator education within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.
  - (C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.
- (e) Appellate Mediation Training Programs. Training programs shall employ primary trainers and subject matter specialists who meet the applicable qualifications outlined below and who have been approved by the Center. Approval as a primary trainer shall be for two years.
- (1) Primary Trainer. In order to be approved as a primary trainer, a trainer shall demonstrate the following qualifications.
    - (A) Mediation Training Received. Successful completion of a minimum of 40 hours of mediation training and a minimum of seven hours of appellate mediation training in a program certified by the Florida Supreme Court (or the equivalent).
    - (B) Mediation Experience. Participation in a minimum of 10 complete appellate mediation conferences (or their equivalent) as the mediator with a minimum of two appellate mediations (or their equivalent) as the mediator or as an observer within the last two years.
    - (C) Continuing Education. Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.
    - (D) Training Delivery Experience: One item from (i) and all of (ii)
      - (i) Participation as a lecturer for no less than one hour in a Florida Supreme Court certified county court, family, circuit court, dependency or appellate mediation training program; completion of six hours of attendance in a program for trainers on adult teaching techniques; teaching a single continuing mediator education class for no less than three hours; teaching a mediation related program for no less than three hours or 30% of the total program whichever is greater; or teaching a graduate course on ADR in a university setting; and in addition

(ii) Participation in four distinct mediation training programs that include participation as primary trainer or assistant trainer in county court, family, circuit court, or dependency mediation training programs deemed to be the equivalent of a Florida Supreme Court certified county court, family, circuit court or dependency mediation training and/or participation as a primary trainer or subject matter specialist in appellate mediation training programs deemed to be the equivalent of a Florida Supreme Court certified appellate mediation training.

(E) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(2) Subject Matter Specialist. Subject matter specialists shall have a substantial part of his or her professional practice in the area about which the specialist is lecturing and shall have the ability to connect his or her area of expertise with the mediation process.

(3) Renewing or Reinstating Approval as a Primary Trainer. Once approved, a primary trainer shall demonstrate the following qualifications irrespective of whether such approval has lapsed.

(A) Participation in a minimum of two appellate mediation conferences as the mediator or as an observer within the last two years.

(B) Completion of 16 hours of continuing mediator education including three hours of train the mediation trainer or adult teaching techniques within the last two years. Lecturing in and/or attending a Florida Supreme Court certified mediation training program in which the trainer conducted the program does not qualify toward the required continuing mediator education for trainers.

(C) Examination. Successful completion of an open-book examination on Chapter 44, mediation training standards, standards of conduct for mediators, mediator certification requirements, and mediator certification renewal requirements.

(4) Notwithstanding section 2.05 (b), during the two years immediately following the adoption of the appellate mediation training standards, a primary trainer or subject matter specialist may fulfill the attendance requirements at a training wherein the trainer participated in the delivery of the training program.

## **2.05 Trainers - Miscellaneous**

(a) Attendance. The attendance requirement for a Florida Supreme Court certified mediation training program is two-fold:

(1) A primary trainer shall be in attendance during the entire training program. It is preferable that a single primary trainer fulfill this obligation, but it is permissible that this be accomplished by more than one primary trainer; and

(2) To ensure continuity and answer questions, at least one trainer (primary or assistant) shall attend the entire program.

(b) Attendance as Trainer. Trainers cannot fulfill the attendance requirement at training programs in which they present.

(c) Role Play Critiquing. It is the responsibility of the training program to see that any trainer who will be critiquing role plays reviews the critique video provided by the Center prior to their initial participation as a role play critiquer and returns the Center's verification form no later than 14 days from the conclusion of the program.

## **2.06 Student:Faculty Ratio**

(a) Class Size. Class size shall be limited to 40 participants.

(b) Role Play Observations. A trainer shall observe no more than one role play group at a time. Role play refers to the "continuous" role play requirement as outlined in section 2.03(c) and does not apply to the use of role plays to practice a single component of a mediation such as the opening statement or caucus.

## **2.07 Participant Attendance**

Participants shall complete their training requirement by physically attending one entire live training program. The training program, in conjunction with a primary trainer, is responsible for ensuring that the integrity of each portion of the program is not compromised. Under no circumstances may a participant be excused from attending portions of the training due to scheduled appointments or obligations (e.g. doctor appointments, hearings, court appearances, or conference calls). Scheduled appointments or obligations shall not include legitimate religious observation, thereby allowing trainers to accommodate the religious obligations of attendees, if the trainer is still able to ensure the integrity of the training program. Trainers may adjust the training schedule for persons with disabilities covered by the Americans with Disabilities Act (ADA) to reasonably accommodate their disability provided that the trainer is still able to ensure the integrity of the training program.

Any portion of training missed shall be made up as directed by the trainer. If a participant misses any portion or portions of the training program which compromise(s) the integrity of the program, the training program shall require the participant to repeat an entire program.

## **2.08 Notice of Training**

The training program shall notify the Center of the dates for any Florida Supreme Court certified mediation training program prior to advertising the program to the public or accepting registration.



## **2.09 Completion of Training**

(a) Reporting Requirements. A training program shall provide, at the conclusion of the training, written documentation of completion to participants who successfully complete the program and shall file a list of successful participants with their addresses, telephone numbers and email addresses with the Center within 14 days of course completion. Successful completion of the program is defined as:

- (1) the attendance by the participant of the complete training program;
- (2) completion of all requirements; and
- (3) effective demonstration of the skills necessary to become a mediator.

For appellate training, successful completion is defined as (1) and (2).

(b) Remedial Training. It is the responsibility of the training program to delineate a specific remedial course of action for participants who do not successfully complete the program.

(c) Each participant shall evaluate the training program on a form designed by the Center. Training programs shall file with the Center a summary of the training on a form designed by the Center within 14 days of the completion of the program. Each trainer shall affirm in writing that she/he has covered all of the required learning objectives when she/he turns in the final course evaluation.

(d) Audit Forms. Each participant shall evaluate the training program on an audit form at the conclusion of the program. Training programs shall file with the Center a collection verification form and all original audit forms within 14 days of the completion of the training program.

## **2.10 Modifications**

Any mediation training program certified by the Florida Supreme Court as meeting the standards outlined herein shall be certified for a period of five years. During such time, training programs shall provide the Center with any and all changes made to training materials, including any modifications and updates of information. The Center will review these amendments and determine if such substantial changes have been made to render the program a new program requiring separate certification.

## **2.11 Records**

(a) The individual program evaluations referenced in section 2.09(c) shall be retained by the training program for no less than one year.

(b) Except for the individual program evaluations referenced in section 2.09(c), all other training records and materials shall be retained for no less than three years.

## **2.12 Renewals**

To ensure continued uninterrupted certification, application for renewal by the Florida Supreme Court may be submitted up to six months before certification expires.

## **2.13 Advertising**

All advertisements shall be truthful and shall be provided to the Center in accordance with section 2.08. A training program may state that it is certified by the Florida Supreme Court. It shall be clear from the statement that the program itself and not the trainer, mode of its presentation or location have been certified by the Florida Supreme Court.

## **Part III Learning Objectives**

### **3.01 County Court Mediation Training**

At the conclusion of the training, the participants shall be able to:

#### **(a) Conflict Resolution Concepts in County Court Mediation**

- (1) Explain the difference between the following methods of dispute resolution: negotiation, mediation, arbitration (binding and non-binding), early neutral evaluation, and litigation.
- (2) Identify the strengths and weaknesses of various dispute settlement methods.
- (3) Identify and demonstrate the basic principles of negotiation.
- (4) Distinguish between the professional roles and responsibilities of judges, lawyers, experts, mediators and arbitrators.
- (5) Recognize the importance of party empowerment and self-determination in county court mediation.

#### **(b) Court Process in County Court Mediation**

- (1) Identify the route and manner by which a case is referred to mediation by the court.
- (2) Explain the consequences of a full or partial mediated agreement as well as the lack of an agreement.
- (3) Identify the state rules, state statutes, local procedures and forms governing court mediation, including small claims court.
- (4) Recognize the mediator's obligations to comply with the American with Disabilities Act (ADA) and strategies for handling situations when faced with disability issues or special needs.

- (5) Identify the various types of disputes which may be presented in county court.
- (6) Identify the protections, constraints, and exceptions of the Florida Mediation Confidentiality and Privilege Act.
- (7) Recognize the mandatory reporting requirements pursuant to Florida law which may apply when an individual becomes aware of possible abuse, neglect or abandonment of a child or abuse, neglect or exploitation of a vulnerable adult.
- (8) Identify the certification and renewal requirements for Florida Supreme Court certified county court mediators.
- (9) Distinguish between court-ordered and non-court-ordered mediation such as pre-suit, voluntary, contractual, and statutory mediation.

(10) Describe the structure of the Florida state courts.

**(c) Mediation Process and Techniques in County Court Mediation**

- (1) Identify components of a mediation.
- (2) Explain and demonstrate the role of the mediator in conducting a mediation such as conducting an opening statement, preparing a disputant to mediate, maintaining decorum, professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location and number of conferences, establishing the format of each conference and focusing discussion.
- (3) Explain the importance of and demonstrate building rapport, establishing trust, setting a cooperative tone, maintaining neutrality and impartiality, listening and questioning, promoting party empowerment and remaining non-judgmental.
- (4) Identify procedural elements which should be addressed prior to the entry of the parties into the mediation room, including seating of parties and set-up of the room.
- (5) Demonstrate an appropriate opening statement.
- (6) Explain the mediator's role in assisting parties in identifying and clarifying their issues.
- (7) Frame issues in neutral language.
- (8) Develop a framework for discussing the issues in a dispute.
- (9) Identify issues which are appropriate for mediation and those which are not appropriate.
- (10) Identify individuals who are essential participants as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.

- (11) Identify appropriate techniques for mediating when one or more parties are not physically present but participate in the mediation.
- (12) Identify appropriate techniques for mediating when persons not required to attend are present in mediation.
- (13) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are represented by counsel.
- (14) Identify and demonstrate techniques a mediator may use to assist a party to reconsider his/her position.
- (15) Identify and demonstrate techniques to conclude a mediation.
- (16) Identify techniques to address unresolved issues.
- (17) Explain when and how to use caucuses.
- (18) Identify appropriate techniques for mediating with multiple parties.
- (19) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.
- (20) Discuss the dynamics of mediating when one or more parties or representatives repeatedly participate in mediation.
- (21) Identify appropriate techniques for handling difficult or dangerous situations.
- (22) Describe techniques for addressing situations where there is a language barrier and for appropriately utilizing the services of an interpreter in mediation.
- (23) Identify appropriate courses of action when confronted with substance abuse during the mediation session.

**(d) Communication Skills in County Court Mediation**

- (1) Identify and demonstrate essential elements for effective listening and responding.
- (2) Identify and demonstrate essential elements for effective note-taking.
- (3) Identify and demonstrate essential elements for effective questioning.
- (4) Identify and demonstrate appropriate non-verbal communication.
- (5) Demonstrate how to record the parties' agreement.

(6) Demonstrate the ability to communicate in an understandable manner with the parties and participants and avoid the use of legalese and jargon which inhibit the communication process.

**(e) Standards of Conduct/Ethics for Mediators in County Court Mediation**

(1) Identify potential ethical dilemmas.

(2) Discuss appropriate courses of action when confronted with an ethical dilemma.

(3) Identify acts specifically required and acts specifically prohibited by the Florida Rules for Certified and Court-Appointed Mediators.

(4) Recognize that it is more important for the mediator to conduct the mediation process consistent with the Standards of Professional Conduct for mediators than it is for the parties to settle their case.

(5) Discuss the mediator's obligations regarding impartiality.

(6) Discuss the mediator's obligation to be neutral with regard to the outcome of the mediation.

(7) Explain when a mediator shall adjourn or terminate a mediation session.

(8) Discuss the mediator's ethical responsibilities with respect to confidentiality.

(9) Discuss ethical considerations of mediating when domestic violence may compromise safety, self-determination or the mediation process.

(10) Explain the interplay between other professional standards and the Florida Rules for Certified and Court-Appointed Mediators.

(11) Recognize that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of mediator impartiality and the preservation of party self-determination.

(12) Recognize that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.

(13) Recognize that a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense only if such can be done in a manner consistent with standards of mediator impartiality and preservation of party self-determination.

(14) Explain how 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.

- (15) Discuss the mediator's ethical obligations regarding advertising and billing practices.
- (16) Explain how a mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.
- (17) Explain the grievance procedure contained in the Florida Rules for Certified and Court-Appointed Mediators.
- (18) Recognize that a mediator shall discuss with the parties and counsel the process for formalization and implementation of the agreement and ensure that the terms of any agreement be memorialized appropriately.
- (19) Identify when a mediator shall advise the parties of the right to seek independent legal counsel.
- (20) Identify when a mediator shall adjourn or terminate mediation.
- (21) Explain a mediator's ethical duty to inform mediation parties and participants that mediation is a consensual process; that the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required or permitted by law.
- (22) Recognize that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator.
- (23) Recognize when and how to use outside experts effectively and how to assist the parties in deciding on appropriate community resources.
- (24) Recognize the ethical issues that arise when some parties or representatives are repeat participants in mediation.

**(f) Diversity Issues in County Court Mediation**

- (1) Recognize personal biases, prejudices and styles which are the product of one's background and personal experiences which may impact the mediation.
- (2) Develop an awareness of and techniques for addressing cultural, racial, ethnic, age, gender, religious, sexual orientation, socio-economic and disability issues which may arise in mediation or affect the parties' negotiation style, ability or willingness to engage in mediation.
- (3) Develop an awareness that people differ in how they make decisions, how they process information and how they communicate.

**3.02 Family Mediation Training**

At the conclusion of the training, the participants shall be able to:

**(a) Conflict Resolution Concepts in Family Mediation**

- (1) Explain the difference between the following methods of dispute resolution: negotiation, mediation, arbitration (binding and non-binding), early neutral evaluation, parent coordination, collaborative law, and litigation.
- (2) Identify the strengths and weaknesses of various dispute settlement methods.
- (3) Identify and demonstrate the basic principles of negotiation.
- (4) Distinguish between the professional roles and responsibilities of judges, lawyers, experts, mediators, arbitrators, general magistrates, case managers, parent coordinators, and guardians ad litem.
- (5) Recognize the importance of party empowerment and self-determination in family mediation.

**(b) Court Process in Family Mediation**

- (1) Identify the route and manner by which a case is referred to mediation by the court.
- (2) Recognize the characteristics of pre-judgment and post-judgment mediation.
- (3) Explain the consequences of a full or partial mediated agreement as well as the lack of an agreement.
- (4) Identify the state rules, state statutes and local procedures and forms governing family mediation.
- (5) Recognize the mediator's obligations to comply with the American with Disabilities Act (ADA) and strategies for handling situations when faced with disability issues or special needs.
- (6) Identify the various types of disputes which may be presented in a family mediation.
- (7) Identify the protections, constraints, and exceptions of the Florida Mediation Confidentiality and Privilege Act.
- (8) Recognize the mandatory reporting requirements pursuant to Florida law which may apply when an individual becomes aware of possible abuse, neglect or abandonment of a child or abuse, neglect, or exploitation of a vulnerable adult.
- (9) Identify the certification and renewal requirements for Florida Supreme Court certified family mediators.
- (10) Distinguish between court-ordered and non-court ordered mediation such as pre-suit, voluntary, contractual, or statutory.

(11) Describe the structure of the Florida state courts, including the concepts of the unified family court.

**(c) Mediation Process and Techniques in Family Mediation**

(1) Identify components of a mediation.

(2) Explain and demonstrate the role of the mediator in conducting a mediation such as conducting an opening statement, preparing a disputant to mediate, maintaining decorum, professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location and number of conferences, establishing the format of each conference and focusing discussion.

(3) Explain the importance of and demonstrate building rapport, establishing trust, setting a cooperative tone, maintaining neutrality and impartiality, listening and questioning, promoting party empowerment and remaining non-judgmental.

(4) Identify procedural elements which should be addressed prior to the entry of the parties into the mediation room, including seating of parties and set-up of the room.

(5) Demonstrate an appropriate opening statement.

(6) Explain the mediator's role in assisting parties in identifying and clarifying their issues.

(7) Frame issues in neutral language.

(8) Develop a framework for discussing the issues in a dispute.

(9) Identify issues which are appropriate for mediation and those which are not appropriate.

(10) Identify individuals who are essential participants in mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful.

(11) Recognize techniques for mediating with a self-represented party.

(12) Identify appropriate techniques for mediating when persons not required to attend are present in mediation.

(13) Identify appropriate techniques for mediating when one or more parties are not physically present but participate in the mediation.

(14) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are presented by counsel.

(15) Identify and demonstrate techniques a mediator may use to assist a party to reconsider his or her position.



- (16) Identify and demonstrate techniques to conclude a mediation.
- (17) Identify techniques to address unresolved issues.
- (18) Explain when and how to use caucuses.
- (19) Discuss the dynamics of mediating when one or more parties, participants, or representatives repeatedly participates in mediation.
- (20) Identify appropriate techniques for handling difficult or dangerous situations.
- (21) Describe techniques for addressing situations where there is a language barrier and for appropriately utilizing the services of an interpreter in mediation.
- (22) Recognize when and how to use experts.
- (23) Identify appropriate courses of action when confronted with substance abuse during the mediation session.

**(d) Communication Skills in Family Mediation**

- (1) Identify and demonstrate essential elements for effective listening and responding.
- (2) Identify and demonstrate essential elements for effective note-taking.
- (3) Identify and demonstrate essential elements for effective questioning.
- (4) Identify and demonstrate appropriate non-verbal communication.
- (5) Demonstrate how to record the parties' agreement.
- (6) Demonstrate the ability to communicate in an understandable manner with the parties and participants and avoid the use of legalese and jargon which inhibit the communication process.

**(e) Standards of Conduct/Ethics for Mediators in Family Mediation**

- (1) Identify potential ethical dilemmas.
- (2) Discuss appropriate courses of action when confronted with an ethical dilemma.
- (3) Identify acts specifically required and acts specifically prohibited by the Florida Rules for Certified and Court-Appointed Mediators.

- (4) Recognize that it is more important for the mediator to conduct the mediation process consistent with the Standards of Professional Conduct for Mediators than it is for the parties to settle their case.
- (5) Discuss the mediator's obligations regarding impartiality.
- (6) Discuss the mediator's obligation to be neutral with regard to the outcome of the mediation.
- (7) Explain when a mediator shall adjourn or terminate.
- (8) Recognize the statutory constraints of mediating cases where domestic violence exists.
- (9) Discuss the mediator's ethical responsibilities with respect to confidentiality.
- (10) Discuss ethical considerations of mediating when domestic violence may compromise safety, self-determination, or the mediation process.
- (11) Recognize the issue of confidentiality as it relates to child abuse, neglect and abandonment, domestic violence advocate-victim privilege, domestic violence centers, vulnerable adult, abuse, neglect or exploitation, and the safety of the victim.
- (12) Explain the interplay between other professional standards and the Florida Rules for Certified and Court-Appointed Mediators.
- (13) Recognize that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of mediator impartiality and the preservation of party self-determination.
- (14) Recognize that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- (15) Recognize that a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense only if consistent with standards of mediator impartiality and preservation of party self-determination.
- (16) Discuss the mediator's ethical obligations regarding advertising and billing practices.
- (17) Explain how 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.
- (18) Explain how a mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.

- (19) Recognize how a mediator shall promote awareness by the parties of the interest of persons affected by actual or potential agreements who are not represented at mediation.
- (20) Explain the grievance procedure contained in the Florida Rules for Certified and Court-Appointed Mediators.
- (21) Discuss the ethical and practical ramifications involved when the mediator writes the agreement.
- (22) Recognize that a mediator shall discuss with the parties and counsel the process for formalization and implementation of the agreement and ensure that the terms of any agreement be memorialized appropriately.
- (23) Explain a mediator's ethical duty to inform mediation parties and participants that mediation is a consensual process; that the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required or permitted by law.
- (24) Recognize that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator.
- (25) Recognize when and how to use outside experts effectively or how to assist the parties in deciding on appropriate community resources.
- (26) Identify when a mediator shall advise the parties of the right to seek independent legal counsel.
- (27) Identify when a mediator shall adjourn or terminate mediation.
- (28) Recognize the ethical issues that arise when some parties, participants or representatives repeatedly participate in mediation.

**(f) Community Resources and Referral Process in Family Mediation**

- (1) Develop a list of the types of resources which may be available for domestic violence situations.
- (2) Recognize the potential value of utilizing outside resources.

**(g) Diversity Issues in Family Mediation**

- (1) Recognize personal biases, prejudices and styles which are the product of one's background and personal experiences and which may impact the mediation.
- (2) Develop an awareness of and techniques for addressing cultural, racial, ethnic, age, gender, religious, sexual orientation, socio-economic and disability issues which may arise in mediation or affect the parties' negotiation style, ability or willingness to engage in mediation.

(3) Develop an awareness that people differ in how they make decisions, how they process information and how they communicate.

**(h) Psychological Issues in Separation and Divorce and Family Dynamics in Family Mediation**

- (1) Explain the impact divorce has on individuals and on family dynamics and the implications for the mediation process.
- (2) Discuss how emotions affect divorce issues and a party's ability to effectively mediate.
- (3) Identify factors which may indicate the presence of domestic violence.
- (4) Identify domestic violence lethality indicators.
- (5) Identify safety issues before, during and after mediation for victims of domestic violence and their families.
- (6) Recognize the impact domestic violence and abuse has on the parties and their capacity to participate meaningfully in the mediation session.
- (7) Discuss how to assess whether domestic violence is present.
- (8) Explain how to screen cases for domestic violence issues which may compromise the self-determination of one of the parties.
- (9) Identify the stages of divorce and grief and the implications for the mediation process.
- (10) Discuss the impact of grandparents, stepparents and significant others on family systems and the mediation process.

**(i) Issues Concerning the Needs of Children in the Context of Divorce in Family Mediation**

- (1) Discuss the needs of children and the effect of divorce on their relationships with their mother, father, step families, siblings and others in the family relationship.
- (2) Discuss the impact the mediation process can have on the children's well-being and behavior and recognize when and how to involve children in mediation.
- (3) Identify child(ren)'s developmental stages and how they relate to divorce and parenting arrangements.
- (4) Identify the impact of parental conflict on children's well-being and the parental alienation syndrome.

(5) Assist parties in developing options for different parenting arrangements which consider the needs of the child(ren) and each parent's capacity to parent.

(6) Identify the indicators of child abuse and/or neglect.

**(j) Florida Family Law in Family Mediation**

(1) Identify issues of geographic relocation.

(2) Identify issues of equitable distribution.

(3) Identify issues of shared and sole parental responsibility laws.

(4) Identify issues of parenting plan including time sharing schedule.

(5) Identify issues of child support and child support guidelines.

(6) Identify issues of spousal support.

(7) Identify issues of grandparent rights.

(8) Identify issues of domestic violence.

(9) Identify issues of abuse and neglect.

(10) Identify issues of paternity.

**(k) Financial Issues in Family Mediation**

(1) Identify sources of information necessary for parties to complete a financial affidavit.

(2) Complete a financial affidavit.

(3) Explain the significance of asset valuation issues (e.g., valuation date; cost basis; future tax liabilities; and valuation basis.)

(4) Discuss the importance of full financial disclosure.

(5) Explain the significance of business valuation issues (e.g., businesses; sole proprietorships; partnerships; and corporations.)

(6) Explain the significance of tax issues relating to dependency exemptions; sale of marital residence; earned income tax credit; transfers of stock or property; legal expenses; innocent spouse rule; filing status issues; life insurance products; property transfer rules; alimony; and pensions and retirement plans.

- (7) Explain the significance of valuation and division issues relating to pension and retirement plans, including, but not limited to, the use of Qualified Domestic Relation Order (QDRO) and its implications.
- (8) Explain the issues of valuation of life insurance for equitable distribution purposes.
- (9) Discuss the role of life insurance to secure support.
- (10) Calculate child support based on child support guidelines and consideration of additional economic needs of children.
- (11) Identify different types of financial experts and resources.

### **3.03 Circuit Court Mediation Training**

#### **(a) Conflict Resolution Concepts in Circuit Court Mediation**

- (1) Explain the difference between the following methods of dispute resolution: negotiation, mediation, arbitration (binding and non-binding), early neutral evaluation, voluntary trial resolution, and litigation.
- (2) Identify the strengths and weaknesses of various dispute settlement methods.
- (3) Distinguish between the professional roles and responsibilities of judges, lawyers, experts, mediators, arbitrators, general magistrates, special masters, and case managers.
- (4) Recognize the importance of party empowerment and self-determination in circuit court mediation.

#### **(b) Negotiation Dynamics in Circuit Court Mediation**

- (1) Identify and demonstrate the basic principles of negotiation.
- (2) Recognize the issues of settlement authority as they relate to institutional (private and governmental) litigants in mediation.
- (3) Recognize the role of insurance representatives in the mediation process.
- (4) Recognize techniques for assessing risks including how an insurance carrier assesses its liability in a case.
- (5) Recognize how parties and their attorneys assess interests in a case.
- (6) Recognize the relationship of a defense attorney and his/her client to the client's insurance carrier.

(7) Recognize common negotiation techniques and tactics employed by the parties and participants in mediation.

(8) Recognize concept of “good faith” and distinguish it from state court appearance requirements.

(9) Recognize basic insurance nomenclature.

**(c) Court Process in Circuit Court Mediation**

(1) Recognize the characteristics of appellate, voluntary, pre-suit, and court-ordered mediation.

(2) Describe the structure of the Florida state courts.

(3) Identify the route and manner by which a case is referred to mediation by the court.

(4) Explain the consequences of a full or partial mediated agreement as well as the lack of an agreement.

(5) Identify the state rules, state statutes and local procedures and forms governing circuit court mediation.

(6) Recognize the mediator’s obligations to comply with the American with Disabilities Act (ADA) and strategies for handling situations when faced with disability issues or special needs.

(7) Recognize how mediation confidentiality and Chapter 286 (Sunshine Law) impact each other in mediation involving public entities.

(8) Identify the protections, constraints, and exceptions of the Florida Mediation Confidentiality and Privilege Act.

(9) Recognize the mandatory reporting requirements pursuant to Florida law which may apply when an individual becomes aware of possible abuse, neglect or abandonment of a child or abuse, neglect or exploitation of a vulnerable adult.

(10) Identify the certification and renewal requirements for Florida Supreme Court circuit court mediators.

(11) Identify the various types of disputes which may be presented in circuit court.

**(d) Mediation Process and Techniques in Circuit Court Mediation**

(1) Identify the components of a mediation.

(2) Explain and demonstrate the role of the mediator in conducting a mediation, such as conducting an opening statement, preparing a party to mediate, maintaining decorum,

professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location and number of conferences, establishing the format of each conference and focusing discussion.

- (3) Explain the importance of and demonstrate building rapport, establishing trust, setting a cooperative tone, maintaining neutrality and impartiality, listening and questioning, promoting party empowerment and remaining non-judgmental.
- (4) Identify procedural elements which should be addressed prior to the parties entry into the mediation room, including seating of parties and set-up of the room.
- (5) Demonstrate an appropriate opening statement.
- (6) Explain the mediator's role in assisting parties in identifying and clarifying their issues.
- (7) Frame issues in neutral language.
- (8) Develop a framework for discussing the issues in a dispute.
- (9) Identify issues which are appropriate for mediation and those that are not appropriate.
- (10) Identify individuals who are essential participants in mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.
- (11) Identify appropriate techniques for mediating when one or more parties are not physically present but participate in the mediation.
- (12) Identify appropriate techniques for mediating when persons not required to attend are present in mediation.
- (13) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are presented by counsel.
- (14) Identify and demonstrate techniques a mediator may use to assist a party to reconsider his/her position.
- (15) Identify techniques to address unresolved issues.
- (16) Identify and demonstrate techniques to conclude a mediation.
- (17) Explain when and how to use caucuses.
- (18) Identify appropriate techniques for mediating with multiple parties.
- (19) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.



- (20) Discuss the dynamics of mediating when one or more parties, participants or representatives frequently participate in mediation.
- (21) Identify appropriate techniques for handling difficult or dangerous situations.
- (22) Describe techniques for addressing situations where there is a language barrier and for appropriately utilizing the services of an interpreter in mediation.
- (23) Identify appropriate courses of action when confronted with substance abuse during the mediation session.
- (24) Recognize when and how to use experts.

**(e) Communication Skills in Circuit Court Mediation**

- (1) Identify and demonstrate essential elements for effective listening and responding.
- (2) Identify and demonstrate essential elements for effective note-taking.
- (3) Identify and demonstrate essential elements for effective questioning.
- (4) Identify and demonstrate appropriate non-verbal communication.
- (5) Demonstrate the ability to communicate in an understandable manner with the parties and participants and avoid the use of legalese and jargon which inhibit the communication process.
- (6) Demonstrate how to record the parties' agreement.

**(f) Standards of Conduct/Ethics for Mediators in Circuit Court Mediation**

- (1) Identify potential common ethical dilemmas.
- (2) Discuss appropriate courses of action when confronted with an ethical dilemma.
- (3) Identify acts specifically required and acts specifically prohibited by the Florida Rules for Certified and Court-Appointed Mediators.
- (4) Recognize that it is more important for the mediator to conduct the mediation process consistent with the Standards of Professional Conduct for mediators than it is for the parties to settle their case.
- (5) Discuss the mediator's obligations regarding impartiality.
- (6) Discuss the mediator's obligation to be neutral with regard to the outcome of the mediation.

- (7) Explain when a mediator shall adjourn or terminate.
- (8) Discuss the mediator's ethical responsibilities with respect to confidentiality.
- (9) Discuss the ethical considerations of mediating when domestic violence may compromise safety, self-determination or the mediation process.
- (10) Recognize the issue of confidentiality as it relates to child abuse, neglect and abandonment, domestic violence advocate-victim privilege, domestic violence centers, and vulnerable adult, abuse, neglect or exploitation.
- (11) Explain the interplay between other professional standards and the Florida Rules for Certified and Court-Appointed Mediators.
- (12) Recognize that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of mediator impartiality and the preservation of party self-determination.
- (13) Recognize that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- (14) Recognize that a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense only if such can be done in a manner consistent with standards of impartiality and preservation of party self-determination.
- (15) Explain how 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.
- (16) Discuss the mediator's ethical obligations regarding advertising and billing practices.
- (17) Explain how a mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.
- (18) Explain the grievance procedure contained in the Florida Rules for Certified and Court-Appointed Mediators.
- (19) Recognize that a mediator shall discuss with the parties and counsel the process for formalization and implementation of the agreement and ensure that the terms of any agreement reached be memorialized appropriately.
- (20) Recognize that a mediator shall promote awareness by the parties of the interest of persons affected by actual or potential agreements who are not represented at mediation.
- (21) Identify when a mediator shall advise the parties of the right to seek independent legal counsel.

- (22) Identify when a mediator shall adjourn or terminate mediation.
- (23) Explain a mediator's ethical duty to inform mediation parties and participants that mediation is a consensual process; that the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required or permitted by law.
- (24) Recognize that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator.
- (25) Recognize when and how to use outside experts effectively or how to assist the parties in deciding on appropriate community resources.
- (26) Recognize the ethical issues that arise when some parties, participants or representatives are frequent participants in mediation.

**(g) Diversity Issues in Circuit Court Mediation**

- (1) Recognize personal biases, prejudices and styles which are the product of one's background and personal experiences which may impact the mediation.
- (2) Develop an awareness of and techniques for addressing cultural, racial, ethnic, age, gender, religious, sexual orientation, socio-economic and disability issues which may arise in mediation or affect the parties' negotiation style, ability or willingness to engage in mediation.
- (3) Develop an awareness that people differ in how they make decisions, how they process information and how they communicate.

**(h) Attorneys in Circuit Court Mediation**

- (1) Recognize the role of litigants' attorneys in the mediation process and the potential for conflicts.
- (2) Recognize the attorney-client relationship within the context of mediation.
- (3) Recognize issues of attorneys' fees, fee shifting statutes and contingency fee arrangements.
- (4) Recognize the use of private sessions with attorneys.

**(i) Basic Legal Concepts in Circuit Court Mediation**

- (1) Recognize basic legal concepts, procedures, and nomenclature of civil issues.

- (2) Recognize basic casualty insurance coverage and exclusions (e.g., CGL Policies; E&O Policies; Homeowner's Policies; and Auto Liability Policies).
- (3) Recognize the impact on the mediation process of identification of outstanding discovery issues and options for proceeding.
- (4) Recognize the significance of the Uniform Contribution Among Joint Tortfeasor's Act.
- (5) Recognize the significance of Section 768.81, Florida Statutes, Comparative Fault Act.
- (6) Identify the Fabre Verdict Form.
- (7) Identify the Florida Economic Loss Rule.
- (8) Identify basic concepts of actionable negligence (e.g., duty, breach, causation, damages).
- (9) Identify basic concepts of contract claims (e.g., privity, breach, foreseeable consequences, and limitations).
- (10) Recognize basic rules and standards of recoverable damages.

**(j) Financial Issues in Circuit Court Mediation**

- (1) Recognize that a mediated agreement may have financial and tax implications in addition to legal implications.
- (2) Recognize various structured settlement options.

**3.04 Dependency Mediation Training**

At the conclusion of the training, the participants shall be able to:

**(a) Conflict Resolution Concepts in Dependency Mediation**

- (1) Explain the difference between the following methods of dispute resolution: negotiation, mediation, arbitration (binding and non-binding), family group conferencing, parent coordination, child protection agency case status conference, and litigation.
- (2) Identify the strengths and weaknesses of various dispute settlement methods.
- (3) Identify and demonstrate the basic principles of negotiation.
- (4) Distinguish between the professional roles and responsibilities of judges, lawyers, experts, general magistrates, mediators, arbitrators, guardian ad litem (GAL), attorney ad litem, child protection investigators, child protection case workers and other service providers.

(5) Recognize the importance of party empowerment and self-determination in dependency mediation.

**(b) Court Process in Dependency Mediation**

(1) Identify the route and manner by which a case is referred to mediation by the court.

(2) Distinguish between court-ordered and non court ordered mediation such as pre-suit, voluntary, contractual and statutory mediation.

(3) Explain the consequences of a full or partial mediated agreement as well as the lack of an agreement.

(4) Identify the state rules, state statutes, local procedures, and forms governing dependency mediation.

(5) Recognize the mediator's obligations to comply with the American with Disabilities Act (ADA) and strategies for handling situations when faced with disability issues or special needs.

(6) Identify the protections, constraints, and exceptions of the Florida Confidentiality and Privilege Act.

(7) Recognize the mandatory reporting requirements pursuant to Florida law which may apply when an individual becomes aware of possible abuse, neglect or abandonment of a child or abuse, neglect or exploitation of a vulnerable adult.

(8) Identify the certification and renewal requirements for Florida Supreme Court dependency mediators.

(9) Describe the structure of the Florida state courts, including the concepts of the unified family court.

(10) Identify the various types of disputes which may be presented in dependency court.

**(c) Mediation Process and Techniques in Dependency Mediation**

(1) Identify the components of a mediation.

(2) Explain and demonstrate the role of the mediator in conducting a mediation, such as conducting an opening statement, preparing a party and participant to mediate, maintaining decorum, professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location and number of conferences, establishing the format of each conference and focusing discussion.

(3) Explain the importance of and demonstrate building rapport, establishing trust, setting a cooperative tone, maintaining neutrality and impartiality, listening and questioning, promoting party empowerment and remaining non-judgmental.

- (4) Identify procedural elements which should be addressed prior to the entry of the parties into the mediation room, including seating of parties and set up of the room.
- (5) Demonstrate an appropriate opening statement.
- (6) Explain the mediator's role in assisting parties in identifying and clarifying their issues.
- (7) Frame issues in neutral language.
- (8) Develop a framework for discussing the issues in a dispute.
- (9) Identify issues which are appropriate for mediation and those that are not appropriate.
- (10) Identify individuals who are essential participants in mediation as well as those who are entitled to be present and those who are not required to participate but whose participation may be helpful in mediation.
- (11) Identify appropriate techniques for mediating when one or more parties are not physically present but participate in the mediation.
- (12) Identify appropriate techniques for mediating when persons not required to attend are present in mediation.
- (13) Describe techniques for mediating when all parties are self-represented, some parties are self-represented, or all parties are represented by an attorney.
- (14) Identify and demonstrate techniques for a mediator to use to assist a party or participant to reconsider his/her position.
- (15) Identify and demonstrate techniques to conclude a mediation.
- (16) Identify techniques to address unresolved issues.
- (17) Explain when and how to use caucuses.
- (18) Identify appropriate techniques for handling difficult or dangerous situations.
- (19) Discuss the dynamics of mediating when one or more parties or participants frequently participate in mediation.
- (20) Identify appropriate techniques for mediating with multiple parties.
- (21) Identify appropriate techniques for handling a situation where a representative appearing for a party does not have full authority to settle.
- (22) Describe techniques for addressing situations where there is a language barrier and for appropriately utilizing the services of an interpreter in mediation.

(23) Identify appropriate courses of action when confronted with substance abuse during the mediation.

**(d) Communication Skills in Dependency Mediation**

- (1) Identify and demonstrate essential elements for effective listening and responding.
- (2) Identify and demonstrate essential elements for effective note-taking.
- (3) Identify and demonstrate essential elements for effective questioning.
- (4) Identify and demonstrate appropriate non-verbal communication.
- (5) Demonstrate how to record the parties' agreement.
- (6) Demonstrate the ability to communicate in an understandable manner with the parties and participants and avoid the use of legalese and jargon which inhibit the communication process.

**(e) Standards of Conduct/Ethics for Mediators in Dependency Mediation**

- (1) Identify potential ethical dilemmas.
- (2) Discuss appropriate courses of action when confronted with ethical dilemmas.
- (3) Identify acts specifically prohibited required and acts specifically prohibited by the Florida Rules for Certified and Court-Appointed Mediators.
- (4) Recognize that it is more important for the mediator to conduct the mediation process consistent with the Standards of Professional Conduct for mediators than it is for the parties to settle their case.
- (5) Discuss the mediator's obligations regarding impartiality.
- (6) Discuss the mediator's obligation to be neutral with regard to the outcome of the mediation.
- (7) Explain when a mediator shall adjourn or terminate.
- (8) Discuss the mediator's ethical responsibilities with respect to confidentiality.
- (9) Discuss ethical considerations of mediating where domestic violence may compromise safety, self-determination or the mediation process.
- (10) Explain the interplay between other professional standards and the Florida Rules for Certified and Court-Appointed Mediators.

- (11) Recognize that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of mediator impartiality and the preservation of party self-determination.
- (12) Recognize that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- (13) Recognize that a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense only if such can be done in a manner consistent with standards of impartiality and preservation of party self-determination.
- (14) Recognize the mediator's ethical obligations regarding advertising and billing practices.
- (15) Explain how 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.
- (16) Explain how a mediator shall respect the roles of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.
- (17) Recognize the ethical issues that arise when a mediator suggests specific service providers.
- (18) Recognize how a mediator shall promote awareness by the parties of the interest of persons affected by actual or potential agreements who are not represented at mediation.
- (19) Explain the grievance procedure contained in the Florida Rules for Certified and Court-Appointed Mediators.
- (20) Identify when a mediator shall advise the parties of the right to seek independent legal counsel.
- (21) Identify when a mediator shall adjourn or terminate mediation.
- (22) Recognize that a mediator shall discuss with the parties and counsel the process for formalization and implementation of the agreement and ensure that the terms of any agreement be memorialized appropriately.
- (23) Explain a mediator's ethical duty to inform mediation parties and participants that mediation is a consensual process; that the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required or permitted by law.
- (24) Recognize that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator.



(25) Recognize when and how to use outside experts effectively or how to assist the parties in deciding on appropriate community resources.

(26) Recognize the ethical issues related to mediating with parties, participants or representatives who frequently participate in mediation.

**(f) Treatment Options and Community Resources in Dependency Mediation**

(1) Recognize when and how to use outside experts to evaluate and treat or provide assistance to child(ren), parents, families and others.

(2) Recognize the types of social services and community resources available through federal, state, local and private sources.

(3) Recognize the potential conflict if one expert serves as both evaluator and treatment provider.

(4) Recognize the need for outside resources.

**(g) Diversity Issues in Dependency Mediation**

(1) Recognize personal biases, prejudices and styles which are the product of one's background and personal experiences and which may impact the mediation.

(2) Develop an awareness of and techniques for addressing cultural, racial, ethnic, age, gender, religious, sexual orientation, socio-economic and disability issues which may arise in mediation or affect the parties' negotiation style, ability or willingness to engage in mediation.

(3) Recognize that people differ in how they make decisions, how they process information and how they communicate.

**(h) Family Dynamics and Psychological Issues in Dependency Mediation**

(1) Recognize the effect separation (removal of the child(ren) or the alleged perpetrator from the home) has on individuals and family dynamics and the implications for the mediation process.

(2) Recognize how emotions affect dependency issues and a party's ability to participate effectively in mediation.

(3) Identify factors which may indicate the presence of domestic violence.

(4) Recognize domestic violence lethality warnings.

(5) Identify safety issues before, during and after mediation for victims of domestic violence and their families.

- (6) Recognize the impact of parental conflict on the mediation process.
- (7) Recognize the impact domestic violence and abuse has on the parties and their capacity to participate meaningfully in the mediation session.
- (8) Explain how to screen cases for domestic violence issues which may compromise the self-determination of one of the parties.
- (9) Recognize appropriate actions to undertake if a dangerous situation should arise.
- (10) Recognize the dynamics of child abuse, neglect or abandonment.
- (11) Recognize the impact child neglect and abuse (physical, emotional and sexual) has on the parties and their capacity to participate meaningfully in the mediation session.
- (12) Recognize the dynamics of child(ren)'s disclosure and recantation and family members' denial and the impact these have on the mediation.
- (13) Recognize the impact grandparents, step-parents, foster parents and significant others have on family systems and the mediation process.
- (14) Recognize the impact mental illness or disability of a party or participant has on the family system, the child(ren)'s well being and the mediation.

**(i) Issues Concerning the Needs of Children in the Context of Dependency Proceedings in Dependency Mediation**

- (1) Recognize the needs of child(ren) and the effect of removal or non-removal from the home on the child(ren) and on his/her relationships with their mother, father, step families, siblings and others in the family relationship.
- (2) Recognize the impact the mediation process can have on the child(ren)'s well-being and behavior and recognize when and how to involve children in mediation.
- (3) Recognize the significance of child(ren)'s developmental stages in understanding the impact of child abuse and neglect.
- (4) Recognize the impact of parental conflict on child(ren)'s well-being.
- (5) Assist parties in developing options for different parenting arrangements which consider the needs of the child(ren) and each parent's capacity to parent.
- (6) Recognize the dynamics of disclosure/recantation relating to child sexual abuse.
- (7) Recognize short- and long-term psychological effects of placement of a child(ren) in protective services, in foster care, in long term relative/nonrelative placement, when parental rights have been terminated and/or in adoption.

(8) Recognize the importance of permanency and stability in a child(ren)'s life.

**(j) Florida Dependency Law in Dependency Mediation**

(1) Recognize Florida dependency mediation rules and statutes.

(2) Recognize the stages of a dependency case and the options available at each stage.

(3) Recognize the legal definition of abandoned.

(4) Recognize the legal definition of abuse.

(5) Recognize the legal definition of neglect.

(6) Recognize the legal concepts of and interplay between the statutes and relevant rules dealing with mediation, dependency, and protection from abuse, abandonment and neglect.

(7) Recognize the implications of parents' right to counsel at every stage in the dependency proceedings.

(8) Recognize the interplay between other past, present, or possible future civil or criminal proceedings and the dependency mediation.

(9) Recognize grandparent rights which may arise in a dependency mediation.

(10) Recognize child support issues and implications in a dependency mediation.

(11) Recognize paternity issues as they relate to dependency proceedings.

(12) Recognize the implications of mediation at each stage of the dependency proceedings.

(13) Recognize the differences between "parties" and "participants" in Chapter 39.

**(h) Role of Parties and Participants in Dependency Mediation**

(1) Recognize the role of the GAL program, the GAL program attorney and the attorney ad litem in dependency cases and dependency mediation.

(2) Recognize the roles of Department of Children & Families (DCF) staff, DCF attorneys, and/or agency representatives that have been contracted to provide services in dependency cases and dependency mediation.

(3) Recognize the role of the parent's attorney in assessing the case, advising the parent (explaining legal rights and process), negotiating on behalf of the parent, minimizing the parent's liability and ensuring the parent's right to due process.

- (4) Recognize the role of others who may participate in the mediation.
- (5) Recognize the role of community-based providers in dependency cases and in mediation.
- (6) Recognize the role of law enforcement in dependency cases and mediation, particularly in those areas in which law enforcement has assumed duties formerly handled by DCF.
- (7) Recognize the role of the Attorney General's Office in dependency cases and mediation in those areas in which the Attorney General's office has assumed duties formerly handled by DCF.
- (8) Recognize the respective roles of attorneys for children, domestic violence advocates/counselors, Children's Advocacy Centers, and visitation programs in dependency cases.

### **3.05 Appellate Mediation Training**

At the conclusion of the training, the participants shall be able to:

#### **(a) Court Process in Appellate Mediation**

- (1) Identify the rules and procedures applicable to the processing of an appeal, including applicable time frames and estimated costs.
- (2) Recognize common concepts addressed by appellate courts, including scope of review, standard of review, and preservation of error.
- (3) Identify possible results of an appeal, including affirmance, reversal, affirmance in part and reversal in part, and remand for further proceedings.
- (4) Identify the procedures by which an appellate case is referred to mediation by the court.
- (5) Identify the state court rules, state statutes and local procedures and forms governing appellate mediation.
- (6) Identify the certification and renewal requirements for Florida Supreme Court certified appellate mediators.
- (7) Explain the consequences of a full or partial mediated agreement as well as the lack of an agreement.
- (8) Recognize the characteristics of appellate mediation and the differences with voluntary, pre-suit, and trial court-ordered mediation.
- (9) Identify the protections, constraints, and exceptions of the Florida Confidentiality and Privilege Act.

(10) Identify the various types of disputes which may be presented in an appellate mediation.

**(b) Mediation Process and Techniques in Appellate Mediation**

(1) Recognize how an appellant and appellee assesses his/her interest in a case.

(2) Recognize the role of attorneys in the appellate mediation process and the potential for conflicts.

(3) Recognize issues of attorneys' fees, fee shifting statutes and contingency fee arrangements.

(4) Explain the role of the mediator in conducting an appellate mediation such as conducting an opening statement, preparing a disputant to mediate, maintaining decorum, professionalism, control of the session, structuring and managing the discussion, building on partial agreements, scheduling the time, location and number of conferences, establishing the format of each conference and focusing discussion.

(5) Identify individuals who are essential participants in appellate mediation as well as those who are not required to participate but whose participation may be helpful in mediation.

(6) Identify the unique dynamics of mediating a case which is on appeal.

(7) Identify techniques to conclude an appellate mediation.

(8) Identify techniques to address unresolved issues in appellate mediation.

(9) Identify techniques for recording the parties' agreement in appellate mediation.

**(c) Standards of Conduct/Ethics for Mediators in Appellate Mediation**

(1) Identify potential ethical dilemmas in an appellate mediation context.

(2) Discuss appropriate courses of action when confronted with an ethical dilemma in appellate mediation.

(3) Identify acts specifically prescribed and those acts specifically prohibited by the Florida Rules for Certified and Court-Appointed Mediators.

(4) Understand that it is more important for the mediator to conduct the mediation process consistent with the standards of professional conduct for mediators than it is for the parties to settle their case.

(5) Explain the interplay between other professional standards and the Florida Rules for Certified and Court-Appointed Mediators.

- (6) Recognize that a mediator may provide information that the mediator is qualified by training or experience to provide only if such can be done in a manner consistent with the standards of mediator impartiality and the preservation of party self-determination.
- (7) Understand that a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, direct a resolution of any issue or indicate how the court in which the case has been filed will resolve the dispute.
- (8) Understand that a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense only if such can be done in a manner consistent with standards of impartiality and preservation of party self-determination.
- (9) Explain how 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.
- (10) Discuss the mediator's ethical obligations regarding advertising and billing practices.
- (11) Understand that a mediator shall discuss with the parties and counsel the process for formalization and implementation of the agreement and ensure that the terms of any agreement be memorialized appropriately.
- (12) Explain a mediator's ethical duty to inform mediation parties and participants that mediation is a consensual process; that the mediator is an impartial facilitator without the authority to impose a resolution or adjudicate any aspect of the dispute; and communications made during the process are confidential except where disclosure is required or permitted by law.
- (13) Understand that upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator.
- (14) Recognize how a mediator shall promote awareness by the parties of the interest of person affected by actual or potential agreements and who are not present at mediation.
- (15) Recognize the importance of party empowerment and self-determination in appellate mediation.

## **Part IV Mediation Training Review Board Procedures**

### **4.01 Scope and Purpose**

These procedures apply to all proceedings before all panels and committees of the Mediation Training Review Board involving the discipline of mediation training programs certified by the Florida Supreme Court and the discipline of training program principals. The purpose of these procedures is to provide a means for enforcing the Mediation Training Standards and Procedures adopted by the Florida Supreme Court.

#### 4.02 Privilege to Train Mediators

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

#### 4.03 Mediation Training Review Board

(a) Composition of Board. The Board shall consist of nine members of the Mediator Qualifications Discipline and Review Board~~Eligible persons shall be appointed to the Board and who serve at the pleasure of the chief justice of the Florida Supreme Court. The Board shall be composed of:~~

- (1) ~~two~~three circuit court or county court judges;
- (2) ~~one~~three Florida Supreme Court certified county court mediators;
- (3) ~~one~~three Florida Supreme Court certified circuit court mediators;
- (4) ~~one~~three Florida Supreme Court certified family mediators, at least two of whom shall be non-lawyers; and
- (5) ~~one~~three Florida Supreme Court certified dependency mediators, at least one of whom shall be a non-lawyer.
- (6) one Florida Supreme Court certified appellate mediator; and
- (7) Two Florida Supreme Court certified mediators of any type, at least one of whom shall be a non-lawyer.

~~At least two of the members shall also be Florida Supreme Court certified appellate mediators.~~

- (b) Term Limits: A person who has served two consecutive terms as a member of the Board shall not be eligible for reappointment until four years after two consecutive terms of service. In no event shall a person be eligible for reappointment after serving twelve years.
- (c) Board Chair. The members of the Board shall select a chair to serve for a period of two years.
- (d) Complaint Committee. Each complaint committee of the Board shall be composed of three 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 mediator who is a member of The Florida Bar, who shall act as the chair of the committee;

- (2) one mediator who is Florida Supreme Court certified in the area to which the complaint refers; and
  - (3) one other Florida Supreme Court certified mediator.
- (e) Panel. Each panel of the Board shall be composed of five members. A panel shall cease to exist after disposing of all assigned cases. Each panel shall be composed of:
- (1) one circuit court or county court judge, who shall serve as the chair; and
  - (2) four Florida Supreme Court certified mediators, at least one of whom shall be certified in the area in which the complaint arose.
- (f) Panel Vice-Chair. Each panel shall elect a vice-chair. The vice-chair shall act as the chair of the panel in the absence of the chair.

#### **4.04 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, 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) 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.
- (c) Contempt. Should any witness fail, without justification, to respond to the lawful subpoena of the complaint committee or 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 or panel, a motion may be filed by the complaint committee or panel before the circuit court of the county court 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 or 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 or 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.



#### **4.05 Staff**

The Center, excluding the person responsible for preparing complaints, shall provide all staff support to the Board necessary to fulfill its duties and responsibilities.

#### **4.06 Complaint Process**

- (a) **Initiation of Complaint.** A complaint may be initiated by an individual, hereinafter the complainant, or by the Center. Any individual wishing to make a complaint alleging that a training program has violated one or more provisions of the standards shall do so in writing under oath. In either case, the complaint shall state with particularity the specific facts that form the basis of the complaint. No complaint shall be processed in relation to a training program which concluded more than three years prior to the complaint.
- (b) **Filing.** The complaint, if submitted by an individual, shall be filed with the Center.
- (c) **Assignment to Committee.** Upon verification of a complaint in proper form, the Center shall assign the complaint to a complaint committee within 10 days.
- (d) **Facial Sufficiency Determination.** The complaint committee shall convene, either in person or by conference call, to determine whether the allegation(s), if true, would constitute a violation of the standards. If the committee finds the complaint to be facially insufficient, the complaint shall be dismissed without prejudice and the complainant and the training program shall be so notified. If the complaint is found to be facially sufficient, the committee shall prepare a list of standards which may have been violated and shall submit such to the Center.
- (e) **Service.** The Center shall send a copy of the list of violations of the standards prepared by the complaint committee, a copy of the complaint and a copy of these procedures to the training program and the training program principals in question. Service on the training program and the training program principals shall be made by registered or certified mail addressed to them at the location listed in the application for certification.
- (f) **Response.** Within 20 days of the receipt of the list of violations prepared by the complaint committee and the complaint, the training program and the training program principals shall send a written, sworn response to the Center by registered or certified mail. If the training program and any training program principal who has received the complaint do not respond, the allegations shall be deemed admitted as to that party and forwarded to the panel for imposition of sanctions.
- (g) **Preliminary Review.** Upon review of the complaint and any responses received, the complaint committee may find that no violation has occurred and dismiss the case. The complaint committee may also resolve the issue pursuant to subsection (i).
- (h) **Appointment of Investigator.** The complaint committee, after review of the complaint and response, may direct the Center to appoint an investigator to assist the complaint committee in any of its functions. Such person shall investigate the complaint and advise the complaint committee when it meets to determine the existence of probable cause. In the alternative to

appointing an investigator, the complaint committee or any member or members thereof may investigate the allegations, if so directed by the committee chair. Such investigation may include, but is not limited to, meeting with the training program, the training program principals, the complainant or any combination thereof.

(i) **Complaint Committee Meeting with the Parties.** Notwithstanding any other provision in this rule, at any time while the complaint committee has jurisdiction, it may meet with the training program and/or the training program principals in an effort to resolve the complaint. At the discretion of the complaint committee, the complainant may be asked to attend such meeting. The resolution may include sanctions if agreed to by the party accepting the sanctions. If sanctions are accepted, all relevant documentation shall be forwarded to the Center.

(j) **Review.** If no other disposition has occurred, the complaint 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 standards.

(k) **No Probable Cause.** If the complaint committee finds no probable cause, it shall dismiss the complaint and so advise the Center, the complainant, the training program and the training program principals in writing.

(l) **Probable Cause Found.** If probable cause exists, the complaint committee may draft formal charges and forward such charges to the Center for assignment to a panel. In the alternative, the complaint committee may decide not to pursue the case by filing a short and plain statement of the reason(s) for non-referral and so advise in writing the Center, the complainant, the training program and/or the training program principals.

(m) **Formal Charges and Counsel.** If the complaint committee, upon finding probable cause, refers a complaint to the Center, the complaint 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 standards involved. After considering the circumstances of the complaint and the complexity of the issues to be heard, the complaint 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 section if such person is otherwise qualified.

(n) **Dismissal.** Upon the filing of a request for dismissal signed by the complainant with the concurrence of the complaint committee, the complaint shall be dismissed.

#### **4.07 Hearing Procedures**

(a) **Assignment to Panel.** Upon referral of a complaint and formal charges from a complaint committee, the Center shall assign the complaint and formal charges to a panel for hearing, with notice of assignment to the complainant, the training program and the training program principals. No member of the complaint 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. There shall be a minimum of 30 days written notice of the scheduled panel hearing.
- (c) **Dismissal.** Upon the filing of a request for dismissal signed by the complainant with the concurrence of the panel, the action shall be dismissed.
- (d) **Procedures for Hearing.** The procedures for hearing shall be as follows:
- (1) No hearing shall be conducted without five panel members being 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; and
  - (4) Upon a showing of good cause to the panel, testimony of any party, witness or the Center may be presented over the telephone.
- (e) **Right of the Training Program and the Training Program Principals to Defend.** A training program and its training program principals 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) **Discovery.** The Center shall, upon written demand of any party or any party's counsel of record made no later than 20 days prior to the scheduled hearing, 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. Any party or any party's counsel 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 training program, its training program principals, or their counsel which are relevant to the subject matter of the hearing and which have not previously been furnished. All discovery shall be completed 10 days prior to the scheduled hearing date.
- (g) **Continuing Duty to Disclose.** If, subsequent to compliance with subsections (e) or (f), the training program or the Center discovers additional witnesses or material that it would have been under a duty to disclose or produce at the time of the previous compliance, it shall promptly disclose or produce the witnesses or material in the same manner as required under the procedures for initial discovery.
- (h) **Failure to Appear.** Absent a showing of good cause, if the complainant or Center fails to appear at the hearing, the panel may dismiss the action for want of prosecution.

- (i) Training Program's Absence. If either or both the training program and its training program principals fail to appear, absent a showing of good cause, the hearing shall proceed.
- (j) Rehearing. If the matter is heard in the training program's and/or the training program principal's absence or if sanctions are imposed by the panel after a failure to respond pursuant to section 4.06(f), the training program and/or its training program principals 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 of formal charges by the panel, the panel shall promptly file a copy of the decision with the Center.

#### **4.08 Sanctions**

- (a) Generally. If, after the hearing, a majority of the panel finds that there is clear and convincing evidence to support a finding of a violation of the standards, 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 to participants at the expense of the training program and/or the training program principals;
  - (5) Restriction on type of training which can be offered in the future;
  - (6) Suspension for a period of up to 1 year;
  - (7) Decertification which shall include the loss of the privilege to make representations that the training program is certified by the Florida Supreme Court; and
  - (8) Such other sanctions as are agreed to by the training program, the training program principals and the panel.
- (b) Failure to Comply. If there is reason to believe that the training program or the training program principals 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. A finding of the panel that there was a failure to substantially comply with any imposed sanction shall result in the decertification of the training program.

- (c) 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.
- (d) Notice. The Center shall notify all trial court administrators and mediation program directors of any training program which has been decertified or suspended unless otherwise ordered by the Florida Supreme Court.
- (e) Publication. Upon the imposition of sanctions, the Center shall publish the name of the training program and the training program principals, a short summary of the standard or standards which were violated, the circumstances surrounding the violation and any sanctions imposed.
- (f) Future Certification. A training program which has been decertified may apply to be eligible for certification. Except as otherwise provided in the decision of the panel, no petition may be filed within two years after the date of decertification. The procedure shall be as follows:
- (1) A petition, together with five copies, shall be written, verified by the training program and filed with the Center;
  - (2) The petition shall contain:
    - (A) the name and address of the training program;
    - (B) the offense or misconduct upon which the decertification was based, together with the date of such decertification; and
    - (C) a concise statement of facts claimed to justify eligibility for certification.
  - (3) The Center shall refer the petition to a panel for review; and
  - (4) The panel shall review the petition and, if the training program is found to be unfit to provide mediation training, the petition shall be dismissed. Successive petitions based upon the same grounds may be reviewed without a hearing. If the training program is found fit to provide mediation training, the panel shall notify the Center that the training program may apply for certification.

#### **4.09 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 good cause, fails to obey a duly served subpoena may be cited for contempt of the committee or panel in accordance with section 4.04(c).

#### **4.10 Confidentiality**

- (a) Generally. Until formal charges are filed, all proceedings shall be confidential. Upon filing of formal charges, such charges and all further proceedings shall be public. Sanctions as provided for in 4.08(a)(4-7), when agreed to under 4.06(i) shall not be confidential.
- (b) Witnesses. Each witness in every proceeding under these disciplinary standards shall be sworn to tell the truth and not disclose the existence of the proceeding, the subject matter thereof, or the identity of the training program, the training program principals, or person providing training for such program until the proceeding is no longer confidential under these disciplinary procedures. 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 Florida Supreme Court.

#### **4.11 Disqualification of Members of a Panel or Complaint Committee**

- (a) Procedure. In any case, any party may at any time before final disciplinary action file a motion 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 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 complaint committee or panel shall determine only the facial sufficiency of the motion. The chair shall not pass on the truth of the facts alleged. The test for facial sufficiency shall be whether any well-founded allegations raise a serious question as to whether a panel or complaint committee member would consider the matters fairly. If the motion is facially sufficient, the chair shall enter an order of disqualification and the disqualified complaint 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) Automatic Disqualifications. A member of the Board shall be disqualified from serving on a complaint committee or panel proceeding:
  - (1) which involves a training program in which the member has served as training faculty within two years of the filing of the complaint;

- (2) if the Board member has been promised work with the training program which is under investigation;
  - (3) if the Board member has any current or past business, representation or consulting relationship with the training program which is under investigation; or
  - (4) if the Board member has personal relationships which might impinge on his or her objectivity relating to the training program which is under investigation.
- (f) Recusals. Nothing in this rule limits a Board member's right of self-recusal.
- (g) Replacement. The Center shall assign a Board member to take the place of any disqualified or recused member.

#### **4.12 Right of Review**

Any training program or training program principal found to have committed a violation of these standards shall have a right of review of the action taken by the panel. Review of this type shall be under the jurisdiction of the chief justice of the Florida Supreme Court. Notice of review shall be filed with the Center. There shall be no right of review of any resolution reached pursuant to section 4.06(i).

#### **5.01 Late Filing Penalties**

The Center shall impose a monetary penalty for the late filing of required pre or post training documents. Training program providers in circuit court, family, and dependency will be charged \$50 per day that they are late in filing either pre or post training documents with the Center. A maximum fee of \$400 per program applies. Training program providers in county court and appellate will be charged \$25 per day that they are late in filing either pre or post training documents with the Center. A maximum fee of \$200 per program applies.

Training program providers who disagree with the imposition of a monetary penalty or the amount of the penalty may request a review of the issue(s) by the Mediation Training Review Board (MTRB). The request shall be filed with the Center no later than 30 days from the Center's serving notice imposing the penalty. Training program providers who fail to file pre or post training documents within two weeks of the required date for filing shall be referred to the MTRB. If an imposed penalty is not paid within 30 days of imposition or within 30 days after the MTRB issues a decision upholding the imposition, the failure to pay will be submitted to the MTRB.