

<p><b>Florida Rules for Certified and Court-Appointed Mediators</b></p>	<p><b>Reasons for Change</b></p>
<p><b>Rule 10.610 <del>Advertising</del> <u>Marketing Practices</u></b></p> <p><u>(a) False or Misleading Marketing Practices.</u> A mediator shall not engage in <u>any marketing practices, including advertising,</u> which contains false or misleading information. A mediator shall ensure that any <del>advertisements of marketing of</del> the mediator’s qualifications, services to be rendered, or the mediation process <del>are</del> <u>is</u> accurate and honest.</p> <p><u>(b) Supreme Court Certification.</u> <u>Any marketing practice in which a mediator indicates that such mediator is “Florida Supreme Court certified” is misleading unless it also identifies at least one area of certification in which the mediator is certified.</u></p> <p><u>(c) Other Certifications.</u> <u>Any marketing publication that generally refers to a mediator being “certified” is misleading unless the advertising mediator has successfully completed an established process for certifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term “certified” in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.</u></p>	<p>Substituting “marketing practices” for “advertising” better reflects proposed rule’s new content</p> <p>Generally preserving existing text, but substituting “marketing” for “advertising” and otherwise referring to advertising as a subset of marketing practices constituting an aggregation of activities potentially involved when mediators communicate with the public about mediation services</p> <p>Codifying MEAC Op. 2002-003, concluding generic references to certification are misleading unless also identifying one or more specific areas in which the mediator has been certified by the Court</p> <p>Claims of certification not conferred by the Court must be linked to an established process involving actual instruction and identify the issuing entity as well as any area of specialization</p>

<p>(d) <u>Prior Adjudicative Experience.</u> Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified mediator.</p> <p>(e) <u>Prohibited Claims or Promises.</u> A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.</p> <p>(f) <u>Additional Prohibited Marketing Practices.</u> A mediator shall not engage in any marketing practice that diminishes the importance of a party’s right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial system.</p>	<p>Disavows the notion prior adjudicative experience qualifies former judges and others for service as mediators or necessarily enhances mediation skills</p> <p>With addition of catchline, retains existing language relating to prohibited claims or promises without change</p> <p>Prohibits other marketing practices unrelated to prior adjudicative experience which blur the distinction between mediation and litigation and otherwise undermine public confidence in the mediation process or the courts</p>
<p style="text-align: center;"><i><u>Committee Notes</u></i></p> <p><u>200X Revision.</u> Areas of certification, in subdivision (b) include county, family, circuit, dependency and other Supreme Court certifications.</p> <p><u>The roles of a mediator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any mediation marketing practice, a former adjudicative officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For example, the depiction of a mediator in judicial robes or use of the word “judge” with or</u></p>	<p>Specifying areas in which one may be certified by the Florida Supreme Court, leaving open the possibility other areas may later be approved</p> <p>Clarifying rule provisions by way of explanation and example, the notes underscore the difference between mediators and judges and warn against misuse of prestige of judicial office</p> <p>Exemplifying misuse of prior adjudicative experience, including use of the title “judge”</p>

without modifiers preceding the mediator's name would be inappropriate. However, an accurate representation of the mediator's judicial experience would not be inappropriate. This rule is not intended to prohibit appropriate reference to prior adjudicative service by use of such terms as "circuit judge retired," former judge of compensation claims," and "former general magistrate."

Exemplifying permissible descriptions of prior adjudicative experience in references to background and experience in bios, resumes, letterheads, business cards, and so forth where the roles of mediator and judge are not as readily confused as may be true of a mediator who retains a judicial title

Appendix B.side-by-side 7-16-09 draft