

Florida Rules for Certified and Court-Appointed Mediators

Part I. Mediator Qualifications

Rule 10.100. ~~General Qualifications~~ Certification Requirements

(a) General. For certification as a county court, family, circuit court, or dependency mediator, a mediator must be at least 21 years of age, and be of good moral character.

~~(b)(a)~~ County Court Mediators. For initial certification as a mediator of county court matters, an applicant must satisfy the requirements adopted pursuant to Administrative Order of the Chief Justice. Such order shall establish minimum requirements in the categories of training, education, and mentorship. For certification a mediator of county court matters must be certified as a circuit court or family mediator or:

- ~~(1) complete a minimum of 20 hours in a training program certified by the supreme court;~~
- ~~(2) observe a minimum of 4 county court mediation conferences conducted by a court certified mediator and conduct 4 county court mediation conferences under the supervision and observation of a court certified mediator; and~~
- ~~(3) be of good moral character.~~

The title has been changed to reflect the new system. See below.

This new provision contains the two requirements which are necessary for all mediators. Good moral character is carried over from the present rule. The minimum age requirement is new and was thought to be appropriate in order to establish a minimal age maturity requirement.

In converting from a checklist system to a point system, the Committee recommends that the authority for developing the details for the order rest with the Chief Justice, who would be able to make adjustments more efficiently. Presently, the Administrative Order SC00-8 contains numerous matters of a similar nature and should serve as the repository for the details of the point system. By requiring that specific requirements be moved to the order, the need for much of this rule disappears and has been deleted.

(c)(b) Family Mediators. For initial certification as a mediator of family and dissolution of marriage issues, an applicant must satisfy the requirements adopted pursuant to Administrative Order of the Chief Justice. Such order shall establish minimum requirements in the categories of training, education, experience, and mentorship. For certification a mediator of family and dissolution of marriage issues must:

- (1) ~~complete a minimum of 40 hours in a family mediation training program certified by the supreme court;~~
- (2) ~~have a master's degree or doctorate in social work, mental health, or behavioral or social sciences; be a physician certified to practice adult or child psychiatry; or be an attorney or a certified public accountant licensed to practice in any United States jurisdiction; and have at least 4 years practical experience in one of the aforementioned fields or have 8 years family mediation experience with a minimum of 10 mediations per year;~~
- (3) ~~observe 2 family mediations conducted by a certified family mediator and conduct 2 family mediations under the supervision and observation of a certified family mediator; and~~
- (4) ~~be of good moral character.~~

(d)(e) Circuit Court Mediators. For initial certification as a mediator of circuit court matters, other than family matters, an applicant must satisfy the requirements adopted pursuant to Administrative Order of the Chief Justice. Such order shall establish minimum requirements in the categories of training,

In addition to the three categories for obtaining points for county court mediator certification, the fourth category of experience has been added for family, as well as circuit (d) and dependency (e), mediator certification.

education, experience, and mentorship. ~~For certification a mediator of circuit court matters, other than family matters, must:~~

~~(1) complete a minimum of 40 hours in a circuit court mediation training program certified by the supreme court;~~

~~(2) be a member in good standing of The Florida Bar with at least 5 years of Florida practice and be an active member of The Florida Bar within 1 year of application for certification; or be a retired trial judge from any United States jurisdiction who was a member in good standing of the bar in the state in which the judge presided for at least 5 years immediately preceding the year certification is sought;~~

~~(3) observe 2 circuit court mediations conducted by a certified circuit mediator and conduct 2 circuit mediations under the supervision and observation of a certified circuit court mediator; and~~

~~(4) be of good moral character.~~

(e)(d) Dependency Mediators. For initial certification as a mediator of dependency matters, as defined in Florida Rules for Juvenile Procedure 8.290, an applicant must satisfy the requirements adopted pursuant to Administrative Order of the Chief Justice. Such order shall establish minimum requirements in the categories of training, education, experience, and mentorship. For certification a mediator of dependency matters, as defined in Florida Rules for Juvenile Procedure 8.290(a) must:

~~(1) — complete a supreme court certified dependency mediation training program as follows:~~

~~(A) — 40 hours if the applicant is not a certified family mediator or is a certified family mediator who has not mediated at least 4 dependency cases; or~~

~~(B) — 20 hours if the applicant is a certified family mediator who has mediated at least 4 dependency cases; and~~

~~(2) — have a master’s degree or doctorate in social work, mental health, behavioral sciences or social sciences; or be a physician licensed to practice adult or child psychiatry or pediatrics; or be an attorney licensed to practice in any United States jurisdiction; and~~

~~(3) — have 4 years experience in family and/or dependency issues or be a licensed mental health professional with at least 4 years practical experience or be a supreme court certified family or circuit mediator with a minimum of 20 mediations; and~~

~~(4) — observe 4 dependency mediations conducted by a certified dependency mediator and conduct 2 dependency mediations under the supervision and observation of a certified dependency mediator; and~~

~~(5) — be of good moral character.~~

(f) Referral for Discipline. If the certification or licensure necessary for any person to be certified as a family or circuit

mediator is suspended or revoked, or if the mediator holding such certification or licensure is in any other manner disciplined, such matter shall be referred to the Mediator Qualifications Board for appropriate action pursuant to rule 10.800.

(g)(f) Special Conditions. ~~Mediators who have been duly certified as circuit court or family mediators before July 1, 1990, shall be deemed qualified as circuit court or family mediators pursuant to these rules. Certified family mediators who have mediated a minimum of 4 dependency cases prior to July 1, 1997, shall be granted temporary certification and may continue to mediate dependency matters for no more than 1 year from the time that a training program pursuant to subdivision (d)(1)(B) is certified by the supreme court. Such mediators shall be deemed qualified to apply for certification as dependency mediators upon successful completion of the requirements of subdivision (d)(1)(B) and (d)(5) of this rule.~~ Mediators who are certified prior to [the effective date of rule], shall not be subject to the point requirements for any category of certification in relation to which continuing certification is maintained.

Provisions relating to past “grandfather” clauses are obsolete. A new “grandfather” clause for all mediators certified prior to the effective date of the new system is added.

Rule 10.110. Good Moral Character

(a) [no change]

(b) [no change]

(c) **Certification.** The following shall apply in relation to determining the good moral character required for initial and continuing mediator certification:

The numerous amendments to this subdivision would extend the good moral character requirement to certified mediators. This would be consistent with the proposed amendments to rule 10.800, which contains the procedural aspects of enforcing the good moral character requirement.

- (1) The applicant's or mediator's good moral character may be subject to inquiry when the applicant's or mediator's conduct is relevant to the qualifications of a mediator.
- (2) An applicant for initial certification who has been convicted of a felony shall not be eligible for certification until such person has received a restoration of civil rights.
- (3) An applicant for initial certification who is serving a sentence of felony probation shall not be eligible for certification until termination of the period of probation.

- (4) In assessing whether the applicant's or mediator's conduct demonstrates a present lack of good moral character the following factors shall be relevant:
- (A) the extent to which the conduct would interfere with a mediator's duties and responsibilities;
 - (B) the area of mediation in which certification is sought or held;
 - (C) the factors underlying the conduct;
 - (D) the applicant's or mediator's age at the time of the conduct;
 - (E) the recency of the conduct;
 - (F) the reliability of the information concerning the conduct;
 - (G) the seriousness of the conduct as it relates to mediator qualifications;
 - (H) the cumulative effect of the conduct or information;
 - (I) any evidence of rehabilitation;
 - (J) the applicant's or mediator's candor ; and
 - (K) denial of application, disbarment, or suspension from any profession.

(d) Decertification. A certified mediator shall be subject to decertification for any knowing and willful incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.

In order to safeguard the sanctity of the application process and further ensure that the information submitted to the Center in mediation applications is accurate and truthful, the Committee recommends that a rule be adopted which would subject a certified mediator to decertification if the application contains knowing and willful incorrect material information. To assist in the enforcement of this requirement, the Committee recommends creating a presumption (rebuttable) of knowing and willful

deception if an application has been completed, signed, and notarized (all current requirements for filed applications).

Rule 10.120 Notice of Change of Address or Name.

- (a) Address Change.** Whenever any certified mediator changes residence or mailing address, that person must within 30 days thereafter notify the center, in writing, of such change.
- (b) Name Change.** Whenever any certified mediator changes legal name, that person must within 30 days thereafter notify the center, in writing, of such change.

To assist the center in maintaining accurate records and to facilitate the disciplinary process, the Committee recommends the adoption of requirements that certified mediators who either change their addresses or name be required to notify the center within 30 days.

Rule 10.130 Notification of Conviction.

- (a) Definition.** “Conviction” means a determination of guilt resulting from a plea of a felony or misdemeanor of the first degree, regardless of whether adjudication was withheld or whether imposition of sentence was suspended. All Florida, federal, out-of-state, military, and foreign convictions as an adult or county ordinances that bring within the municipal or county code the violation of a state statute or statutes shall qualify as convictions.
- (b) Report of Conviction.** A conviction shall be reported in writing to the center within 30 days of such conviction. A report of conviction shall include a copy of the order or orders pursuant to which the conviction was entered.
- (c) Suspension.** Upon receipt of a report of felony conviction, the center shall immediately suspend all certifications and refer the matter to the qualifications complaint committee.
- (d) Referral.** Upon receipt of a report of a misdemeanor conviction, the center shall refer the matter to the qualifications complaint committee for appropriate action. If the center becomes aware of a conviction prior to the required notification, it shall refer the matter to the

The Committee recommends the adoption of a new rule to assist in its enforcement of the good moral character requirement. The rule would define the term “conviction” as the term is used in rule 10.110. This rule would require any conviction for a first degree misdemeanor or felony be reported to the center within 30 days. If the conviction is for a felony, the center would be required to immediately suspend the mediator’s certification and refer the matter to the qualifications complaint committee (QCC) of the mediator qualifications board. If the conviction is a first degree misdemeanor, the matter will be referred to the QCC. Finally, there is a provision that if the center becomes aware of a conviction prior to its being reported (or even if not reported), it should refer the matter to the QCC.

qualifications complaint committee for appropriate
action.

Rule 10.360 Confidentiality.

(a) Scope. A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required by law or is agreed to by all parties or where a mediation communication is willfully used to threaten a crime of violence.

(b) [no change]

(c) [no change]

The Committee recommends the adoption of this additional language to make clear the mediator's obligations in light of the adoption of the Mediation Confidentiality and Privilege Act.

**Rule 10.370. ~~Professional Advice, or Opinions, or~~
Information**

(a) [no change]

(b) [no change]

(c) **Personal or Professional Opinion.** A mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence, decide the dispute, or direct a resolution of any issue. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. A mediator shall not offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

The Committee believes that the title be amended to more accurately reflect the contents of the rule.

The Committee recommends the addition of a fourth prohibition in relation to a mediator's providing a personal or professional opinion, to wit, the act of unduly influencing parties. This addition would make this rule consistent with rule 10.310(b) in which a mediator is prohibited from coercing or improperly influencing any party. Given the difficulty in identifying clearly what constitutes coercion, the Committee believes this addition will help to provide guidance to mediators.

Rule 10.420 Conduct of Mediation

(a) **Orientation Session.** Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:

(1) mediation is a consensual process;

(2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and

(3) communications made during the process are confidential, except where disclosure is required or permitted by law.

(b) [no change]

(c) [no change]

This amendment is necessitated by the recent adoption of the Mediator Confidentiality and Privilege Act, which provides both mandatory and permissive exceptions to confidentiality and privilege.

Rule 10.720. Definitions

- (a) [no change]
- (b) [no change]
- (c) Complaint. Formal submission of an alleged violation of the Rules for Certified and Court-Appointed Mediators, including allegations of a lack of good moral character. A complaint may originate from any person or from the center ~~Center~~.
- (d) – (j) [no change]

This is a technical change to conform with the other provisions in the rules.

Rule 10.740. Jurisdiction

- (a) [no change]
- (b) Qualifications Complaint Committee. The qualifications complaint committee shall have jurisdiction over all matters referred pursuant to rule 10.800. The qualifications complaint committee shall have such jurisdiction and powers as are necessary to conduct the proper and speedy investigation and disposition of any good moral character complaint or other matter referred by the center ~~Center~~. The judge or attorney presiding over the qualifications complaint committee shall have the power to compel the attendance of witnesses, to take or to cause to be taken the depositions of witnesses, and to order the production of records or other documentary evidence, and the power of contempt. The qualifications complaint committee shall perform its investigatory function and have concomitant power to resolve cases prior to panel referral.
- (c) [no change]
- (d) [no change]

This is a technical change to conform with the other provisions in the rules.

Rule 10.800. Good Moral Character; Professional Discipline

(a) Good Moral Character.

- (1) Prior to approving an applicant for certification or renewal as a mediator the center ~~Center~~ shall review the application to determine whether the applicant appears to meet the standards for good moral character. If the center's ~~Center's~~ review of an application for certification or renewal raises any questions regarding the applicant's good moral character, the center ~~Center~~ shall request the applicant to supply additional information as necessary. Upon completing this extended review, the center ~~Center~~ shall forward the application and supporting material as a complaint to the qualifications complaint committee.
- (2) If the center ~~Center~~ becomes aware of any information concerning a certified mediator which could constitute credible evidence of a lack of good moral character, the center ~~Center~~ shall refer such information as a complaint to the qualifications complaint committee.
- (3) The qualifications complaint committee shall review all documentation relating to the good moral character of any applicant or certified mediator in a manner consistent, insofar as applicable, with rule 10.810. In relation to an applicant, the qualifications complaint committee shall either recommend approval or, if it finds there is probable cause to believe that the

These are technical changes to conform with the other provisions in the rules.

applicant lacks good moral character, it shall refer the matter to a hearing panel for further action. In relation to a certified mediator, the qualifications complaint committee shall dismiss or, if there is probable cause to believe that the mediator lacks good moral character, refer the matter to a hearing panel for further action.

- (4) The panel shall take appropriate action on the issue of good moral character by dismissing the charges, denying the application in relation to an applicant, or imposing sanctions against a certified mediator pursuant to rule 10.830.
- (5) All such hearings shall be held in a manner consistent, insofar as applicable, with rule 10.820.

(b) **Professional Discipline Licenses and Certifications.**

- (1) A certified mediator shall inform the center, in writing, of the change in status of any professional license held by the mediator within 30 days of such change.
- (2) Upon becoming aware that a certified mediator has been disciplined by a professional organization of which that mediator is a member, the center ~~Center~~ shall refer the matter to the qualifications complaint committee.

The title of this subdivision is amended to reflect the changes below.

This amendment will assist the center in monitoring adverse actions taken against a mediator by professional organizations and prevent mediation from becoming a haven for individuals who have been found to be unworthy of holding another license or certification.

Rule 10.810. Committee Process

(a) – (e) [no change]

(f) **Service.** The center shall ~~send~~ serve a copy of the list of alleged rule violations prepared by the committee, a copy of the complaint, and a copy of these rules to the mediator or applicant in question. Service on the mediator or applicant shall be made by ~~registered or~~ certified mail addressed to the mediator or applicant at the mediator's or applicant's place of business or residence on file with the Center. Mailing to such an address shall constitute service.

(g) – (i) [no change]

(j) **Committee Meeting with the Mediator or Applicant.** Notwithstanding any other provision in this rule, at any time while the committee has jurisdiction, it may meet with the complainant and the mediator or applicant, jointly or separately, in an effort to resolve the matter. This resolution may include sanctions if agreed to by the mediator or applicant. If sanctions are accepted, all relevant documentation shall be forwarded to the center. Such conferences shall be in person, by video-conference or teleconference at the discretion of the committee.

The addition of the word “alleged” places emphasis on the fact that accusations raised in the complaint are mere allegations and only assumed to be true for the purpose of obtaining a response from the mediator or applicant. In relation to the mailing, it was the recommendation of Center staff that registered mail was not the type of mail best suited for this purpose. Rather, the Center has always used certified mail return receipt requested, to verify that a mediator or applicant has received the complaint. Finally, subdivision (f) would be amended to include a statement that mailing to the mediator's address of record constitutes service for the purpose of providing procedural integrity.

Presently the rule is silent on the issue of whether the committee may meet separately with the complainant and the mediator or whether both must be present for the meeting. Based on feedback from the Mediator Qualifications Board, the Committee believes that while a joint meeting will generally be preferable, there are situations where separate meetings could be conducive to or necessary for the facilitation of a resolution of the complaint. The addition of the final sentence would also clarify what has become the occasional practice, that is, to take advantage of advances in technology by meeting with persons

at different physical locations, whether by teleconference or videoconference.

(k) [no change]

(l) [no change]

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

(n) [no change]

(o) [no change]

Grammatical change.

Rule 10.820. Hearing Procedures

(a) [no change]

(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. At any time prior to the hearing, the panel may accept an admission to any or all charges and impose sanctions upon the mediator. The panel shall not be required to physically meet in person to accept such admission.

(c) [no change]

(d) **Procedures for Hearing.** The procedures for hearing shall be as follows:

- (1) No hearing shall be conducted without 5 panel members physically 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.
- (4) Upon a showing of good cause to the panel, testimony of any party or witness may be presented over the telephone.

The Committee believes that hearing panels should be given the opportunity to accept an admission from a mediator. In such a case, there would be no need for a panel to convene in person, but rather the panel could consider the matter and impose sanctions during a teleconference or videoconference, thereby saving both time and state resources.

This would clarify the accepted practice of all five panel members being physically present at hearings.

(e) – (n) [no change]

Rule 10.830. Sanctions

(a) [no change]

(b) Conviction of Felony. If the panel finds that a certified mediator has a felony conviction, it shall decertify the mediator for a period of not less than two years or until restoration of civil rights, which ever comes later. In order to become reinstated, such decertified mediator, must comply with the requirements of subdivision (h).

~~(b)~~(c) Failure to Comply. If there is reason to believe that the mediator 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. The hearing shall also include any additional alleged failures to comply of which the center becomes aware prior to the date of the hearing. The holding of a hearing shall not preclude a subsequent hearing on an alleged failure occurring after the first alleged failure. Any suspension in effect at the time of the discovery of the violation by the center shall continue in effect until a decision is reached at the hearing. A finding of the panel that there was a willful failure to substantially comply with any imposed sanction shall result in the decertification of the mediator.

~~(e)~~(d) Decertified Mediators. If a mediator has been decertified or barred from service pursuant to these rules, the mediator shall not thereafter be certified or assigned to mediate

This provision is the counterpart to rule 10.110(c)(2) which mandates that an applicant with a felony conviction shall not be eligible for certification until restoration of civil rights. The proposed two year period is consistent with subdivision (h) relating to reinstatement.

Subdivision (c) would be amended to include the rare situation where additional alleged failures to comply with imposed sanctions arise during the 60 day period prior to the hearing. The amendment is designed to handle the situation in the most efficient, yet equitable manner.

a case pursuant to court rule or be designated as mediator pursuant to court rule unless reinstated.

~~(d)~~(e) 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.

~~(e)~~(f) Notice to Circuits. The center shall notify all circuits of any mediator who has been decertified or suspended unless otherwise ordered by the Supreme Court of Florida.

~~(f)~~(g) Publication. Upon the imposition of sanctions, the center shall publish the name of the mediator, a short summary of the rule or rules which were violated, the circumstances surrounding the violation, and any sanctions imposed.

~~(g)~~(h) Reinstatement. Except if inconsistent with rule 10.110, a mediator who has been suspended or decertified may be reinstated as a certified mediator. Except as otherwise provided in the decision of the panel, no application for reinstatement may be tendered within 2 years after the date of decertification. The reinstatement procedures shall be as follows:

- (1) A petition for reinstatement, together with ~~3~~ 6 copies, shall be made in writing, verified by the petitioner, and filed with the center.

This technical amendment reflects the actual number of copies needed.

- (2) The petition for reinstatement shall contain:
 - (A) the name, age, residence, and address of the petitioner;
 - (B) the offense or misconduct upon which the suspension or decertification was based, together with the date of such suspension or decertification; and
 - (C) a concise statement of facts claimed to justify reinstatement as a certified mediator.
- (3) The center shall refer the petition for reinstatement to a hearing panel in the appropriate division for review.
- (4) The panel shall review the petition and, if the petitioner is found to be unfit to mediate, the petition shall be dismissed. If the petitioner is found fit to mediate, the panel shall notify the center and the center shall reinstate the petitioner as a certified mediator; provided, however, if the decertification has continued for more than 3 years, the reinstatement may be conditioned upon the completion of a certified training course as provided for in these rules. Successive petitions for reinstatement based upon the same grounds may be reviewed without a hearing.

Rule 10.880. Supreme Court Chief Justice Review

(a) Right of Review. Any mediator or applicant found to have committed a violation of these rules or is otherwise sanctioned by a hearing panel shall have a right of review of the action taken by the panel. Review of this type shall be by ~~under the jurisdiction of the~~ Chief Justice of the Supreme Court of Florida. Notice of review shall be filed with the clerk of the Supreme Court of Florida. A mediator shall have no right of review of any solution reached pursuant to rule 10.810(j)

(b) Rules of Procedure. The Florida Rules of Appellate Procedure shall be applicable to review by the Florida Supreme Court. Review shall be commenced by filing a Notice of Review of Mediator Disciplinary Action and shall be conducted pursuant to the following procedures:

(1) The jurisdiction to seek review of disciplinary action shall be invoked by filing 2 copies of a notice of review filed with the clerk of the Supreme Court within 30 days of the panel's decision. A copy shall also be provided to the center.

(2) The notice of review shall be substantially in the form prescribed by rule 9.900(a), Florida Rules of Appellate Procedure. A conformed copy of the panel decision shall be attached to the notice.

(3) Appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, Florida Rules of

It has come to the Committee's attention that there may be jurisdictional problems with these "reviews" going to the Supreme Court since the Florida Constitution provides no specific jurisdictional authorization. Therefore, it was considered advisable to recommend that any review be sent to the Chief Justice who already handles reviews from the ADR Rules and Policy Committee relating to mediator qualifications.

While the Committee would defer to those with more expertise on the subject of appellate matters, it has attempted to construct procedures, based on appellate rules, which allow for procedural due process while efficiently processing the review.

Appellate Procedure, shall be served within 30 days of filing the notice of review. Additional briefs shall be served as prescribed by rule 9.210. A transcript shall not be filed with the clerk unless ordered by the Chief Justice.