

GRIEVANCE MEDIATION POLICIES
RULE I. ADOPTION OF POLICIES

Pursuant to the authority of chapter 14 of the Rules Regulating The Florida Bar, the board of governors hereby adopts The Florida Bar Grievance Mediation Policies (hereinafter "policies").

RULE II. PROGRAM MEDIATORS.

(a) Eligibility. Persons eligible to be program mediators are:

- (1) Supreme Court of Florida certified mediators;
- (2) retired judges and justices of the courts of the State of Florida;
- (3) persons who were certified program mediators at or before the merger of the grievance mediation and fee arbitration programs; and
- (4) any other person who, in the opinion of the committee, possesses the requisite education, training, or certification in alternative dispute resolution to be a program mediator.

Members of the bar must be a member in good standing and with no pending recommendation of minor misconduct or finding of probable cause to be eligible for appointment.

(b) Certification.

The committee may certify applicants as program mediators if they meet the eligibility requirements stated above and have agreed to accept at least 2 referrals per calendar year.

The committee may decline to certify applicants who do not meet the eligibility requirements set forth above or have been found guilty of, plead to, or been disciplined for misconduct that, in the opinion of the committee, renders those persons inappropriate for service as program mediators.

(c) Cessation of Referrals and Removal of Certification.

A certified mediator shall not receive additional referrals where probable cause has been found against the mediator, until the case has been disposed of. The committee may revoke certification of a program mediator for any reason that the committee might use to deny initial certification, and for any other reason that the committee believes would render a program mediator unfit.

(d) Reimbursement of Expenses.

Program mediators shall not be compensated for time devoted to and travel incurred in connection with a mediation conducted under the mediation program. Program mediators may be reimbursed for out-of-pocket expenses that include, but are not limited to: telephone calls; photocopying fees (at a maximum of \$.25 per page); and translation services.

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RULE III. GUIDELINES FOR REFERRALS

No referral to mediation may be offered if any aspect of the matter must remain for resolution within the discipline system.

To assist those making referrals these factors should be considered:

- (1) the severity of the alleged misconduct;
- (2) whether dishonesty is involved;
- (3) whether a pattern of possible misconduct is present;
- (4) the nature of the ethical duty involved and whether the duty may yet be fulfilled;
- (5) the public interest and protection thereof; and
- (6) the interest of the complainant, the respondent and any third parties that are involved.

The following types of disciplinary cases are illustrative of disciplinary cases that may be considered for mediation:

- (1) alleged refusal of a lawyer to timely return a clients file or copies thereof;
- (2) alleged refusal of a lawyer to release a lien on a clients recovery in a case in which the lawyer has been succeeded by another counsel;
- (3) alleged refusal of a lawyer to properly withdraw from representation upon discharge by the client;
- (4) alleged failure of a lawyer to conclude legal representation by failure to prepare an essential dispositive document;
- (5) alleged failure of a lawyer to comply with a letter of protection issued on behalf of a client;
- (6) alleged failure of a lawyer to adequately communicate to a client not causing substantial harm to the client;
- (7) alleged neglect by a lawyer which does not cause substantial harm;
- (8) an alleged isolated instance of incompetence by a lawyer that is not part of a pattern of incompetence, when the act is not committed in conjunction with any other rule violation, and the lawyer has not been the subject of prior disciplinary sanction for incompetence; and

(9) any other matter involving the private rights of the complainant and respondent wherein the public interest is satisfied by a resolution that dismisses the disciplinary case without further bar action.

This list of illustrations is not intended to be an exclusive list, but rather is intended as a guide for those making referrals to the mediation program.

RULE IV. PROCEDURES

(a) Co-mediation.

Co-mediation shall not be required, but may be utilized under appropriate circumstances. When co-mediation is employed, it is preferred that only 1 of the program mediators be a member of the bar.

(b) Records.

A record of all referrals and the result of each shall be maintained in accordance with The Florida Bar's record retention policy.

(c) Appearances at Mediation Conferences.

It is the policy of the bar that persons should personally attend mediation conferences. However, if special circumstances exist and the program mediator agrees, parties may be allowed to attend by telephone or video connection.

(d) Site of Mediation Conference.

Unless otherwise agreed upon by the parties and the program mediator(s), the mediation conference shall be held at the office of a program mediator.

(e) Right to Counsel.

Counsel shall be permitted at mediation conferences only if approved by the parties and agreed to by the program mediator(s).

(f) Time for Mediation.

If the program mediator(s) is(are) able to serve, the initial mediation conference shall be scheduled within 45 days of referral of the file. This time may be extended by agreement of the parties and the program mediator(s). Failure to meet this time requirement shall not divest the program mediator(s) of the authority to proceed otherwise.

(g) Report to The Florida Bar. At the conclusion of a mediation the program mediator shall report to the committee, limited to:

(1) reference to the matter by identification of the disciplinary file to which it pertains;

- (2) reference to whether the matter settled without resort to a formal mediation conference;
- (3) whether a formal mediation conference was held and, if so, when;
- (4) the parties who attended and those who did not;
- (5) whether the mediation resulted in complete settlement, partial settlement, or impasse; and
- (6) in instances where disciplinary violations of a sort not proper for mediation are divulged or discovered, or a party to the mediation appears to the program mediator to be incompetent to participate in the mediation, a statement that the matter is no longer proper for mediation, without elaboration as to why.

RULE V. COST OF MEDIATION

There shall be no fee charged to any party to mediation conducted under this program.