

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 in good standing with the Dispute Resolution Center of the State of Florida;

(2) retired judges and justices of the courts of the State of Florida;

(3) persons who were 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, experience, or certification in alternative dispute resolution to be a program mediator.

Members of The Florida Bar must be in good standing with no pending recommendation of minor misconduct or finding of probable cause to be eligible for appointment.

(b) Approval.

The committee may approve 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 approve 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) Training of Mediators.

All newly approved mediators must attend a training course approved by the committee before being assigned any cases. After initial training, all mediators must attend training approved by the committee no less than every 5 years.

(d) Cessation of Referrals and Removal of Approval.

An approved mediator may not receive additional referrals where probable cause has been found against the mediator until the case has been disposed of. The committee may revoke approval of a program mediator for any reason that the

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committee might use to deny initial approval, and for any other reason that the committee believes would render a program mediator unfit.

(e) Reimbursement of Expenses.

Program mediators may 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.

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 is not required, but may be used under appropriate circumstances. When co-mediation is employed, it is preferred that only 1 of the program mediators be a Florida Bar member.

(b) Records.

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

(c) Appearances at Mediation Conferences.

The Florida Bar's policy is that participants should personally attend mediation conferences. Participants may be allowed to attend by telephone or video connection if social circumstances exist and the program mediator agrees.

(d) Site of Mediation Conference.

The mediation conference will be held at the program mediator's office unless the parties and the program mediator(s) agree otherwise.

(e) Right to Counsel.

Each party has the right to be represented by counsel at any mediation conference.

(f) Time for Mediation.

The initial mediation conference will be scheduled within 45 days of referral of the file if the program mediator(s) is(are) able to serve. The parties and the program

mediator(s) may agree to extend the time. Failure to meet this time requirement does not divest the program mediator(s) of the authority to proceed.

(g) Disclosure by mediator.

(1) *Required Disclosures.* Within 10 days from the appointment of the mediator, the mediator must disclose by electronic mail to the program assistant and the parties or their counsel, if represented, the following:

(A) any known direct or indirect financial or personal interest in the outcome of the mediation;

(B) any known existing or past financial, business, professional, or personal relationships which might reasonably affect impartiality in the eyes of any of the parties, including, without limitation, any relationships involving the mediator's families, household members, current employers, partners, and professional or business associates;

(C) the nature and extent of any prior knowledge the mediator may have about the dispute; and

(D) any other matters, relationships, or interests which the mediator feels may be reasonably perceived by the parties to impair the mediator's ability to remain neutral and impartial in this cause.

(2) *Objections to Appointment.* Within 10 days from the date of any disclosure by the mediator, the parties or their counsel must submit any objections to the mediator's appointment by electronic mail to the program assistant and the parties or their counsel. All objections not timely submitted are deemed waived. In the event a timely objection is submitted, the program assistant determines whether there is good cause for the objection to appoint a new mediator. Good cause means that the objecting party reasonably believes the mediator is not able to remain neutral and impartial based on the information contained in the disclosure.

(h) Report to The Florida Bar. At the mediation's conclusion, the program mediator will file a written report with the committee providing only the following information:

(1) the relevant disciplinary file number;

(2) whether the matter settled without 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) a statement that the matter is no longer proper for mediation without elaboration as to why if a disciplinary violation not proper for mediation is divulged or discovered during the process or the program mediator believes a party to the mediation is incompetent to participate.

RULE V. COST OF MEDIATION

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