

IN THE SUPREME COURT OF FLORIDA

**IN RE: AMENDMENTS TO FLORIDA
RULES FOR CERTIFIED AND COURT-
APPOINTED MEDIATORS;
DISCIPLINARY REVIEW PROCESS,**

CASE NO.

**IN RE: AMENDMENTS TO ADMINISTRATIVE
ORDER; ADMINISTRATIVE
REVIEWS**

**RESPONSE TO THE SUPREME COURT’S REQUEST FOR
PROPOSALS SUBMITTED BY THE COMMITTEE ON
ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY**

1. The Court, In re Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules for Certified and Court-Appointed Mediators, 969 So.2d 1003 (Fla. 2007), adopted various rule changes dealing with mediator certification. The Court, in footnote 2, expressed concern about the review process for disciplinary and administrative decisions, which presently resides with the Chief Justice. See rule 10.880, Florida Rules for Certified and Court-Appointed Mediators, and In re: Procedures Governing Certification of Mediators, Administrative Order SC07-57. The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (hereinafter the “Committee”) was directed to consider alternatives to the Chief Justice’s direct participation and was

referred by the Court to procedures adopted the same day for the regulation of paralegals. Paralegal disciplinary procedures are all contained within the framework of The Florida Bar.

2. The Committee met and preliminarily discussed its assignment, which included a February 15, 2008, deadline, at its November 29-30, 2007 meeting. After considering and rejecting other proposals, the Committee directed staff to prepare outlines of various models for such review, including ones involving the Committee, a senior appellate judge, an active appellate judge, and a panel of district court of appeal judges. See excerpts from Committee meeting minutes (Appendix A).

3. The Committee, when it next met on January 11, 2008, discussed the proposed options and found all to be inadequate. See draft minutes of that meeting (Appendix B). The Committee finally settled on two alternatives, approving one approach for disciplinary appeals and another for certification applications and continuing education appeals. The Committee, in relation to disciplinary appeals, determined that the best approach would be to create a panel of active judges with appellate backgrounds to hear such appeals. The Committee decided that administrative appeals, which traditionally have

been within the Committee's jurisdiction, should remain with the Committee. The Committee's decision would be final.

4. The Committee recommends that disciplinary appeals from decisions of the Mediator Qualifications Board would be controlled by the rewritten version of rule 10.880, Florida Rules for Certified and Court-Appointed Mediators (Mediator Appellate Panel). This rule proposal, which is contained in Appendix C and Appendix D (two column), would assign a three-judge appellate panel the authority to hear disciplinary appeals. This panel would be selected at random from a group of six active or senior appellate judges or circuit judges with appellate experience or senior justices who are appointed pursuant to administrative order of the Chief Justice. This would reduce the role of the Chief Justice from a direct to an indirect role, consistent with the Court's apparent intent in Footnote 2 of the Court's Opinion. Any judges chosen to serve on a panel shall be subject to the disqualification provisions of rule 10.870, Florida Rules for Certified and Court-Appointed Mediators, which would now apply to both hearing panels and appellate panels. Finally, the Committee proposes that any reference in the rules to "panel" should specify whether it is a "hearing panel" or the

“appellate panel,” which terms are added to the definitions in rule 10.720, Florida Rules for Certified and Court-Appointed Mediators.

5. The Committee proposes that the rules of procedure presently applicable to such appeals be moved from the Administrative Order SC07-57 to rule 10.880(c), Florida Rules for Certified and Court-Appointed Mediators, so that all provisions applicable to the disciplinary appeal process are in one location. These provisions have been deleted from the Proposed Administrative Order (Appendix E). The proposed standard of review, contained in subdivision (d), is derived from Administrative Order SC07-50, which involved a recent appeal of a mediator disciplinary matter. There is also a statement in the rule that the decision of the panel is final.

6. The Committee takes this opportunity to address an ambiguity in rule 10.850(a), Florida Rules for Certified and Court-Appointed Mediators, in relation to the effect of the appellate process on confidentiality. Presently, the rule is unclear whether confidentiality, which ends with the imposition of sanctions by a hearing panel, is reinstated if such sanctions are vacated upon appeal. The Committee believes that the mediator should have maximum protection throughout the appellate process. Specifically, the Committee

recommends that in situations involving imposition of a sanction, confidentiality should continue until the time for an appeal has expired or until mandate issues pursuant to rule 9.340, Florida Rules of Appellate Procedure, in a decision which upholds imposition of at least one sanction.

7. The Committee, in the interest of judicial economy, also submits proposals relating to the general area of mediator discipline. The Committee recommends that the phrase “as a complaint” be deleted from rule 10.800(a)(1) and (2), Florida Rules for Certified and Court-Appointed Mediators, since good moral character issues are more in the nature of administrative referrals rather than formal sworn complaints. The Committee also proposes an amendment to 10.820(m), Florida Rules for Certified and Court-Appointed Mediators, to incorporate the procedure articulated in Administrative Order AOSC07-50 regarding the imposition of costs by a hearing panel. Specifically, the amendment would require that cost statements be detailed, itemized, outlined and presented to the mediator prior to any final determination of costs. The mediator would then have an opportunity to be heard on the issues of the appropriateness and reasonableness of any claimed costs prior to any award.

8. The Committee, in relation to the administrative appeals, has prepared proposed amendments to Administrative Order SC07-57. These amendments are contained in Appendix E. They would replace the Chief Justice with the full Committee as the final arbiter of all administrative appeals. The process would start, as it does presently, with an initial review and decision by the Dispute Resolution Center in relation to any deficiency in an application or continuing education requirements. If the applicant/mediator makes a request, the staff decision would then be reviewed by a three-person subcommittee of the full Committee (Qualifications Subcommittee) appointed for that purpose. The subcommittee would then make a recommendation to the full Committee, whose decision would be final. See amendments under I.B. and II.B. The final change in the administrative order related to disciplinary review is the deletion of section IV, which establishes the procedural rules for grievance appeals, in deference to its transfer to rule 10.880, Florida Rules for Certified and Court-Appointed Mediators.

9. The Committee, again in the interest of judicial economy, also submits two minor administrative proposals. First, the Committee proposes an amendment to the section dealing with “Mediator Observations” in I.B.

The amendment would clarify that the observations required for certification by an applicant may occur subsequent to the applicant's commencement of a certified mediation training program but prior to its completion, provided that it is not part of the certified training program. Second, the Committee recommends that the manner in which continuing mediation education hours may be earned be expanded to include the successful completion of a self-directed program that is qualified for continuing education credit by a governmental licensing board. Any such continuing education program must also meet the definition of continuing mediation education, which requires it to have "a significant, current intellectual or practical content and shall constitute an organized program of learning that is relevant to the practice of mediation."

10. The Committee's proposal, described herein, will provide a meaningful review process for both disciplinary and administrative reviews. Disciplinary reviews would be afforded to due process protections commensurate to the gravity of the situation, while administrative reviews would benefit from the expertise of the full Committee.

11. The Committee, while not requesting oral argument, is prepared to explain these recommendations at an oral argument if the Court has unanswered questions or concerns about the suggested review processes.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on _____, a copy of the foregoing was furnished by a member of The Dispute Resolution Center staff via United States mail to: :

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