

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE  
FLORIDA RULES FOR CERTIFIED  
AND COURT-APPOINTED MEDIATORS**

**CASE NO. SC10-**

**PETITION OF THE COMMITTEE ON  
ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY  
TO AMEND THE FLORIDA RULES FOR  
CERTIFIED AND COURT-APPOINTED MEDIATORS**

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (Committee), by and through its undersigned Chair, the Honorable William D. Palmer, respectfully files this petition pursuant to Florida Supreme Court Administrative Order AOSC03-32, In Re: Committee on Alternative Dispute Resolution Rules and Policy (July 8, 2003). See Appendix C. Its effect preserved through successive reappointments and selection of new members, the 2003 order charges the Committee with responsibility for monitoring court rules governing alternative dispute resolution procedures and recommending amendments as necessary. See id. at 2.

**BACKGROUND**

The Committee regularly reviews the Florida Rules for Certified and Court-Appointed Mediators, associated procedures of the Florida Dispute Resolution Center (DRC), and routinely inquires whether the rules, as applied, appear to be

achieving their intended ends. Following from recent inquiry, the Committee is concerned there are instances in which approved procedures for handling applications for initial and continuing mediator certification may be ill-fitting in relation to existing rules requiring disclosure of felony and misdemeanor convictions. The Committee is similarly concerned for an unintended and potentially inequitable outcome in relation to recertification of mediators who fail to submit timely applications for renewal, as against applications submitted following decertification. Consequently, the Committee is recommending the court approve two amendments to the Florida Rules for Certified and Court-Appointed Mediators.

The first proposed rule change re-defines “conviction” under rule 10.130(a) in a manner more clearly specifying what must be disclosed when applying for or renewing mediator certification and when otherwise reporting convictions as required under rule 10.130(b). The second clarifies conditions for reinstatement, separately providing requirements in relation to both suspension and decertification under rule 10.830.

Both proposals are set forth in summary below and in full as appendices to this petition. The text of each of the proposed rule amendments appears first in full-page legislative format in Appendix A and in a two-column chart with explanations of new and changed text in Appendix B.

## **RULES FOR CERTIFIED AND COURT-APPOINTED MEDIATORS**

### Proposed Rule 10.130(a) - Definition of Conviction

The Florida Rules for Certified and Court-Appointed Mediators provide all persons certified as mediators must be of good moral character. See Fla. R. Med. 10.100, .110, and .800(a). Consistent with this requirement, and premised upon the definition of “conviction” under rule 10.130(a), applicants for mediator certification and renewal are required to disclose convictions of felonies and first degree misdemeanors. Disclosure is similarly required of applicants who may previously have entered no contest pleas to felony or first degree misdemeanor charges, even if adjudication of guilt has been withheld.

In considering whether the definition of “conviction” under rule 10.130(a) fairly addresses all concerns relating to good moral character, the Committee believes more than a few bad acts not punishable as felonies or first degree misdemeanors may call into question an individual’s character and capacity to serve responsibly as a mediator. Among them, conviction of a second degree misdemeanor involving dishonesty or false statement will understandably raise questions regarding character issues. While not dispositive, these matters should be subject to inquiry to the extent the underlying conduct is relevant to mediator qualifications. See R. 10.110(c)(1). In no event should the definition of “conviction” preclude their consideration.

In order to provide a more thorough review of good moral character issues, the Committee agreed, in March 2007, to propose clarifying revisions in the definition of “conviction” and make corresponding changes in forms for application and renewal of mediator certification. Anticipating the proposed rule amendment would be filed soon thereafter, the forms were soon revised in a manner specifically providing for applicant disclosure of convictions of second degree misdemeanors involving dishonesty or false statement. Submission of the proposed rules change was delayed, however, as it was the Committee’s intention at the time to include language regarding conviction among other proposed rules changes in an omnibus petition.

Plans for an omnibus filing were necessarily changed, however, as intervening circumstances resulted in far more time intensive consideration of several previously included matters. Another of the proposals was submitted separately in response to direction of the court. Concerned for further delay, and already having considered the question of conviction at length, the Committee voted unanimously, on May 21, 2009, to approve proposed text clarifying the definition of “conviction” under rule 10.130(a) of the Florida Rules for Certified and Court-Appointed Mediators.

The proposed text encompasses determinations of guilt as a result of a trial or entry of a plea of guilty or no contest, not only with respect to any felony or

misdemeanor of the first degree, but also in regard to misdemeanors of the second degree involving dishonesty or false statement. Given the present inconsistency between the definition of “conviction” and already revised forms, the proposed rule change will not only aid in addressing issues of good moral character, but should also reduce potential complications when considering evidentiary matters in relation to a denial for nondisclosure.

The Committee’s proposal also substantially restructures the rule in a manner more clearly identifying the broad scope of determinations qualifying as convictions and general application of same in various jurisdictions. In particular, the proposed changes make clear a conviction includes a determination of guilt resulting from a plea of no contest. The proposed rule revision is also specific as to matters with respect to which an adjudication of guilt or imposition of sentence is suspended, deferred, or withheld.

On October 5, 2009, the Committee prominently posted the proposed text on the DRC’s homepage with an accompanying request for comments. At that time, DRC’s online publications were directed to approximately 5,500 certified mediators and more than 1,500 additional persons trained but not yet fulfilling requirements for certification, as well as numerous colleges, universities, professional associations, businesses, and governmental entities committed to the improvement of mediation and other alternative dispute resolution processes. Site

statistics indicate the posting was visited approximately 1,100 times in the course of a 28-day comment period.

The sole written comment received October 14, 2009, is representative of the Committee's concern. The comment states, "Too often people are placed into positions requiring heightened security that have pled no contest to something that seriously calls into question their moral character. The proposed rule will prevent the intentional failure to disclose something that at least needs to be reviewed by the appropriate committee."

#### Proposed Rule 10.830(h) and (i) - Reinstatement

Rule 10.830 relating to sanctions (formerly rule 10.240) remains today in substantially the same form as originally adopted in 1992. See Proposed Standards of Professional Conduct for Certified and Court-Appointed Mediators, 604 So. 2d 764 (Fla. 1992). Except as otherwise ordered by a hearing panel, rule 10.830(h) prohibits application for reinstatement as a mediator within two years of decertification. If a petitioner has been decertified for less than three years and a hearing panel finds he or she is fit to mediate, the current rule requires reinstatement. See Fla. R. Med. 10.830(h)(4). If, however, decertification continues for more than three years, the rule provides reinstatement may be conditioned upon completion of a certified training course. Id.

Since original adoption of the process, the court has approved, by administrative order, a requirement any mediator seeking reinstatement following a *lapse* of more than 365 days must complete a new training program. See AOSC08-23, In Re: Procedures Governing Certification of Mediators at 14-15 (June 30, 2008). Consequently, absent revision of the current rule, an individual who has been decertified for fewer than three years will have a lower burden to qualify for reinstatement than someone whose certification has merely lapsed.

On March 14, 2008, the Committee voted unanimously to permit reinstatement after decertification only upon completion of a new supreme court-certified mediation training program. The Committee posted draft language to this effect in the May 2008 online edition of *The Resolution Report*. Revised text, with a request for comment, appeared in the *Report's* May 2009 online edition.

Absent disapproving comment, the Committee unanimously recommends revision of rule 10.830(h) in a manner separately providing requirements for reinstatement following suspension and decertification. Specifically, the Committee proposes requiring reinstatement after suspension as a matter of course upon expiration of the imposed or accepted period of suspension and satisfaction of any additional renewal obligations. Reinstatement following decertification would be contingent in every instance upon completion of a new supreme court-certified mediation training program.

WHEREFORE, the Committee on Alternative Dispute Resolution Rules and Policy respectfully requests this court consider and adopt the proposed amendments to the Florida Rules for Certified and Court-Appointed Mediators relating to conviction and reinstatement.

Respectfully submitted this \_\_\_\_ day of May 2010.

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**CERTIFICATE OF TYPEFACE COMPLIANCE**

I further certify this petition has been prepared in MS Word using Times New Roman 14-point font, which complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210(a)(2).

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Judge William D. Palmer  
Florida Bar No. 220361