

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC15-

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

**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 (ADR Committee), by its undersigned Chair, the Honorable William D. Palmer, respectfully files this petition to amend the Florida Rules for Certified and Court-Appointed Mediators.

I. Authority to File Petition

This petition is filed pursuant to In re Committee on Alternative Dispute Resolution Rules and Policy, Fla. Admin. Order No. AOSC14-39 (July 2, 2014). (See Appendix C.) This order and its predecessor orders has, as one of its charges, a directive to the ADR Committee to “Monitor court rules governing alternative dispute resolution procedures and recommend to the Court necessary amendments.”

II. Purpose of Petition

This petition is being filed to recommend a complete revision to Part III Discipline of the Florida Rules for Certified and Court-Appointed Mediators (Rules) and one change to Part II Standards of Professional Conduct rule 10.200 which is necessary to maintain consistency throughout the Rules.

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Since the first adoption of the Rules in 1992, the number of Florida Supreme Court certified mediators has increased to over 6,200. In addition, in excess of 30,000 applications for certification have been received in the years since certification was first initiated. The original disciplinary rules did not contemplate the current number and complexity of rule violation grievances and issues of good moral character for applicants. The growth in the field has presented a challenge to the DRC and the members of the Mediator Qualifications Board (MQB) who must enforce the Rules. The process of applying the Rules to individual complaints and certification applications for twenty-three years has brought to light the areas in which additions and amendments are needed to close gaps, memorialize and clarify currently utilized procedures, strengthen the powers of the MQB and address situations which have occurred for which no direction exists.

III. Jurisdiction

The Florida Supreme Court has authority to adopt rules for practice and procedure in all courts under article V, section 2(a) of the Florida Constitution, which includes authority to amend the Florida Rules for Certified and Court-Appointed Mediators over which it has specific jurisdiction pursuant to section 44.106, Florida Statutes.

IV. History of Part III Discipline

In 1989, pursuant to section 44.106, the Court created the Standing Committee on Mediation and Arbitration Rules, and, among other tasks, directed it to recommend standards of conduct for mediators and arbitrators. See In re Amendment to Fla. Rules of Civil Procedure 1.700-1.780, 563 So. 2d 85 (Fla. 1990). The Committee subsequently submitted a Report on November 1, 1991, proposing a set of rules consisting of two chapters, Chapter One: Florida Standards of Professional Conduct for Certified and Court-Appointed Mediators, and Chapter Two: Rules of Discipline.

The Court approved the recommendations and adopted the rules as the Florida Rules for Certified and Court-Appointed Mediators in Proposed Standards of Professional Conduct for Certified and Court-Appointed Mediators, 604 So. 2d 764 (Fla. 1992).

Since the 1992 adoption, there have been five petitions submitted to the Court for changes to the disciplinary portion of the Rules.

In 1995, the Court approved revisions to the mediator disciplinary procedure in order to accomplish several objectives: improve procedures for the investigative and adjudicative stages of the disciplinary process; add specifics about the composition and jurisdiction of the complaint committees of the disciplinary body, the Mediator Qualifications Board (MQB); and adopt revisions to the confidentiality rule in relation to the records of disciplinary proceedings. See In re Amendments to Fla. Rules for Certified & Court-Appointed Mediators, 661 So. 2d 807 (Fla. 1995).

In 2000, a substantial reorganization of Part II also included a few additions and amendments to Part III, the most notable of which was the creation of the Qualifications Complaint Committee (QCC) as a subcommittee of the MQB. The QCC was established as a three-person committee made up of one member from each of the three divisions of the MQB, each of whom serve for a one-year term. The QCC was tasked with the investigation of all good moral character issues involving new applicants and currently certified mediators. Additionally, the complaint committee and hearing procedures processes were revised to include QCC cases. The definition of “complaint” was revised, and the Mediator Qualifications Advisory Panel (MQAP) was renamed the Mediator Ethics Advisory Committee (MEAC) with revisions to some of the provisions regarding the MEAC. See In re Amendments to Fla. Rules for Certified & Court-Appointed Mediators, 762 So. 2d 441 (Fla. 2000).

Further revisions to the disciplinary rules were adopted in 2006. Part III of the Rules was amended to require certified mediators to notify the Florida Dispute Resolution Center (DRC) of a change in status of any professional license they hold; require service of alleged rule violations on a mediator or applicant by certified mail at their address on file with the DRC; allow a complaint committee to meet with a complainant and mediator or applicant jointly or separately in person, by video or teleconference; allow a hearing panel to accept an admission to charges and impose sanctions upon a mediator prior to a hearing without requiring the panel to meet in person to do so; requiring a panel to decertify a mediator if the panel finds a mediator has a felony conviction; and providing more detail about hearings regarding a mediator’s failure to comply with imposed sanctions. Finally, the review of hearing panel decisions was moved from the full Florida Supreme Court to the chief justice and the review was changed to be in accordance with procedures adopted by administrative order of the chief instead of according to the Florida Rules of Appellate Procedure. See In re Petition of the

Alternative Dispute Resolution Rules & Policy Committee on Amendments to Fla. Rules for Certified & Court-Appointed Mediators, 931 So. 2d 877 (Fla. 2006).

In 2008, the Court once again amended the rule regarding appeals of mediator disciplinary matters. This revision permits the chief justice to name a designee to hear the appeals and reinstates the pre-2006 rule that the Florida Rules of Appellate Procedure apply. Jurisdiction is invoked by submitting a Notice of Review of Mediator Disciplinary Action to the chief justice within 30 days of the panel's decision in the form prescribed by rule 9.900(a), Florida Rules of Appellate Procedure, and the appellant's initial brief, with an appendix, must be served within 30 days of submitting the notice. Furthermore, the chief justice or designee shall use a competent substantial evidence standard when reviewing the findings and conclusions of the panel, and the decisions of the chief justice or designee shall be final. See In re Amendments to Fla. Rules for Certified & Court-Appointed Mediators, 993 So. 2d 505 (Fla. 2008).

The most recent amendment to Part III occurred in 2011. This revision created separate provisions for reinstatement of a mediator after suspension or decertification. See In re Amendments to Fla. Rules for Certified & Court-Appointed Mediators, 64 So. 3d 1200 (Fla. 2011).

Over the years, the changes which were made have become either inadequate to address the numbers and types of complaints being received or the wording or organization of the disciplinary rules has proved confusing or completely lacking in guidance. In particular, the Rules are often unclear whether they pertain to a rules violation complaint committee, a good moral character complaint committee or both, and the Rules do not provide for additional procedures which have been developed and are currently being utilized when a case is sent to a hearing panel once probable cause has been determined. The Rules being recommended attempt to address these inconsistencies, gaps and omissions.

V. Background

In October, 2011, the Director of the DRC, Janice M. Fleischer, with the knowledge of the chair of the ADR Committee, Judge William D. Palmer, requested the assistance of three experienced DRC investigator/prosecutors and a long-time member of the MQB to help her re-

draft Part III Discipline of the Rules with the goal of bringing the newly drafted disciplinary rules to the ADR Committee for discussion, revision, and ultimate approval for recommendation to this Court. Over the next three years, in a series of 27 formal meetings (and additional ad hoc meetings), Part III of the Rules was revised to respond to the current conditions concerning rule violations and good moral character issues.

Prior to the November 2014 meeting of the ADR Committee, a copy of the revised Rules was provided to all members for review. At the November 14, 2014, meeting of the ADR Committee, a history and explanation of the need for the revisions was presented and the revised Rules were offered to the members for discussion and suggested revisions. At that meeting, revisions were made and a procedure for additional comments to be sent to the DRC by ADR Committee members was initiated. All comments received by the DRC were incorporated into the revised Rules which were once again presented to the full ADR Committee at their January 26, 2015, meeting. Minor additional changes were suggested by members at the January meeting which were incorporated into the document at the meeting. By motion and second, the ADR Committee voted unanimously to approve the proposed revisions of the Rules.

These Rules have not been previously published nor has input been sought from any Bar committees due to the unique nature of the Rules. These Rules only affect disciplinary matters concerning certified or court-appointed mediators and applicants for which the DRC, through the MQB, has full and final oversight with the exception of appeals to the chief justice. Mediators come from a multitude of background professions, with the legal profession being just one.

VI. Amendments Summary

General Overview

The text of the proposed rule revisions appears in full-page legislative format in Appendix A and in two-column format with explanations in Appendix B.

The title of Part III is changed to Mediation Certification Applications and Discipline to clarify that this section is not only disciplinary but is also

for the oversight of qualifications of applicants if issues arise as to their suitability to become certified.

The proposed rules track the current rules in organization as much as possible. One major change is that the good moral character complaint process has been separated from the rules violation complaint process. This separation was done in order to clarify the duties and powers held by each different type of complaint committee. A complaint committee is the investigatory arm of the process. Once probable cause is found, the case is assigned to a hearing panel for adjudication.

The complaint committee which oversees good moral character issues is a static committee made up of individuals who are appointed for a one-year term. Members may serve more than one term on this committee. This committee, now known as the Qualifications Complaint Committee (QCC), but to be known, if the proposed rules are adopted, as the Qualifications Inquiry Committee (QIC), which more accurately reflects its purpose, reviews all cases in which an applicant or certified mediator either reports an incident or the DRC is made aware of an incident which calls into question the individual's good moral character.

A complaint committee which oversees a case in which a grievance has been filed alleging violations of Part II of the Rules, Standards of Professional Conduct, is a Rules Violation Complaint Committee (RVCC) and oversees only one case and is then disbanded. A new RVCC is appointed by rotation in each grievance case.

The procedures for each type of committee run parallel in some aspects but differ in others. In order to avoid confusion, the procedures are separated.

A new stand-alone rule is created and the processes are expanded for the Contempt Process and the Duty to Inform process which are currently contained in the rules regarding Jurisdiction and Good Moral Character respectively.

A stand-alone rule is created for Burden of Proof and a new rule provides Limitations on Time to Initiate a Complaint.

An additional division is created for the MQB in order to better accommodate the number of cases being processed. All members of this Board are and will remain volunteers. The current southern division members presently are being called on too often due to the number of cases in this densely populated portion of Florida. To alleviate the burden on southern division members, the DRC is currently going out of division to seek complaint committee members. By adding a new division, it is anticipated the need to go out of division to seek complaint committee and panel members will be greatly reduced.

Individual Rules Amendments

Rule 10.200 Scope and Purpose of Part II of the Rules

The only change to Part II Standards of Professional Conduct is to rule 10.200 Scope and Purpose. Added to the rule is a definition of what is meant by “court-appointed,” otherwise the rule remains the same. The rule was changed to make the wording consistent with the revised Part III Discipline, in particular with the new definition of “court-appointed” which is in proposed rule 10.720(b).

Rule 10.700 Scope and Purpose of Part III of the Rules

Rule 10.700 is revised to clarify the functions and purpose of the Rules as well as to change the name of the Mediator Qualifications Board to the Mediator Qualifications and Discipline Review Board (MQDRB) to more accurately reflect its purpose and duties. This rule now clarifies which entities perform the investigatory and adjudicatory functions.

Rule 10.710 Privilege to Mediate

Rule 10.710 is revised to clarify that the Rules pertain not only to Florida Supreme Court certified mediators, but also to individuals mediating pursuant to court order, whether or not certified.

Rule 10.720 Definitions

Rule 10.720 is revised to add several definitions to those already existing and modifies or expands others. Definitions for “applicant,” “court-

appointed,” “file,” “good moral character inquiry,” “panel adviser,” and “prosecutor” are added.

Proposed subdivision (a) “Applicant” is a broad definition which describes all of the types of applicants for certification, including new applicants, renewal applicants, applicants for additional types of certification, and reinstatement applicants. The definition is added to ensure it is clear that all types of applicants are governed by the Rules. The definition of “board” currently in subdivision (a) is moved to subdivision (h) in which the Mediator Qualifications Board is renamed the Mediator Qualifications and Discipline Review Board (MQDRB) to more accurately reflect its purpose and duties.

A definition of “court-appointed” is provided in proposed subdivision (b) in order to clarify that the MQDRB has jurisdiction over mediators who are appointed by the court or selected by the parties as the mediator in a court-ordered mediation. The definition of “center” currently located in subdivision (b) is moved to proposed subdivision (d) and expanded to include “DRC or center.”

The definition of “complaint” in current subdivision (c) is eliminated and “good moral character inquiry” and “rule violation complaint” are substituted in proposed subdivisions (f) and (m) to clarify the purpose for which the inquiry or complaint is brought. Proposed subdivision (c) relocates the definition of “division” which is currently in subdivision (f) and revises the definition to remove the limitation of only three divisions since the number of divisions may change as population and case load increase.

“Complaint Committee” located in current subdivision (d) is renamed the “Rule Violation Complaint Committee,” in proposed subdivision (n), and the “Qualifications Complaint Committee” of current subdivision (j) is renamed the “Qualifications Inquiry Committee” in proposed subdivision (l) to more clearly reflect the subject matter of the cases each type of committee oversees. The new definition of the Qualifications Inquiry Committee more clearly explains the makeup and role of the QIC which not only reviews good moral character complaints but also has the duty to review applications in which issues of good moral character are present.

The definition of “file” in proposed subdivision (e) requires delivery of complaints solely to the DRC. Currently rule 10.810(b) Committee Process allows for a complaint to be filed with the DRC or “in the office of the court administrator in the circuit in which the case originated or, if not case specific, in the circuit where the alleged misconduct occurred.” The proposed rule limitation will create a more efficient, centralized receipt and processing of complaints and will assist in avoiding the confusion trial court administrators may experience upon receiving such a complaint. “Prosecutor” in proposed subdivision (k) replaces the existing definition of “Counsel” in current subdivision (e) and provides more detail than the existing rule regarding the prosecutor’s role.

Proposed subdivision (f) “Good Moral Character Inquiry” is a new definition which formally defines the process which is set forth in current rule 10.800. Current subdivision (f) “Division” is relocated to proposed subdivision (c) as explained above.

Current subdivision (g) “Investigator” is revised but the revision does not change the substance of the definition.

The definition of “Mediator” in current subdivision (h) is removed from the Rules because that term is defined in section 44.403(4), Florida Statutes, and the proposed definition of “MQDRB or Board” is relocated to subdivision (h) as explained above.

The definition of “Panel” in current subdivision (i) is amended to include more information about the panel’s role and incorporates the current practice of selecting members by rotation.

As defined in proposed subdivision (j), the “Panel Adviser” provides a service to the panel which is similar to that of counsel to the hearing panel in Florida Judicial Qualifications Commission proceedings according to rule 2(7), Florida Judicial Qualifications Commission Rules. The addition of this definition and proposed rule 10.820(c) provide formal authority for the currently used practice of hiring an attorney to assist a hearing panel.

Rule 10.730 Mediator Qualifications and Discipline Review Board

The proposed amendment to rule 10.730 renames the rule by adding “and Discipline Review,” to the name of the board to more accurately reflect

the role of the board, and adds a new division to the MQDRB. The Southern Division was divided into new Southeast and Southwest Divisions and portions of the Central Division were added thereto. An additional division is added to accommodate the increase in both population and the number of grievances in portions of the state. The current three divisions are taxing the current board members because members in more populated divisions from which a greater number of grievances are received are asked to serve on complaint committees and hearing panels frequently. The proposed divisions are created by averaging the number of cases by county over a three-year period and determining how to best balance the areas of the state into four divisions. The new divisions of the MQDRB in proposed subdivision (a) are:

(1) Northern: First, Second, Third, Fourth, Eighth and Fourteenth judicial circuits.

(2) Central: Fifth, Seventh, Ninth, Tenth, Eighteenth, and Nineteenth judicial circuits.

(3) Southeast: Eleventh, Fifteenth, Sixteenth and Seventeenth judicial circuits.

(4) Southwest: Sixth, Twelfth, Thirteenth and Twentieth judicial circuits.

Titles are added to proposed subdivisions (1) through (7) which appear under proposed subdivision (b) Composition of Divisions in order to make it easier to locate the different types of members required in each division of the MQDRB. Proposed subdivision (b)(5) is amended to add the requirement that at least one of the dependency mediator members in each division shall be a non-lawyer. This amendment is consistent with a similar requirement that already exists for the family mediator members of each division. Now that more mediators have dependency mediation certification, there are a greater number of such mediators from which to choose to fill this member category. A non-lawyer perspective is valuable to the decision-making process in rules violation and good moral character inquiry cases.

Proposed rule 10.730(b)(7), regarding the attorneys who shall serve on the MQDRB, is amended to require that the attorneys have been members

of The Florida Bar for at least three years and have knowledge of and experience with mediation practice, statutes, and rules. Such knowledge and experience is now common among a greater number of attorneys and is valuable to the decision-making processes in rules violation and good moral character inquiry cases.

Term limits are added to the board position in proposed subdivision (c). The MQDRB is currently the only Florida Supreme Court alternative dispute resolution entity without term limits. Due to the large pool of Florida Supreme Court certified mediators to draw from for membership (currently over 6,200), there is no longer a need for unlimited terms. It is important to provide an opportunity for additional qualified individuals to serve on the board while still maintaining a balance of institutional memory and experience.

In proposed subdivisions (d), (e), and (f), the selection process for appointing complaint committee and panel members from the MQB is revised to reflect the current practice of selecting committee and panel members on a rotation basis ensuring more balance in service by board members. Proposed subdivisions (d) and (f) allow RVCCs and panels to be assigned related cases. Proposed subdivision (d) allows for the selection of members outside of the division in which the alleged violation occurred if necessary, for example due to a conflict or having too many grievance cases in one division. Proposed subdivision (e) adds a member to the QIC who will represent the newly proposed fourth division. Proposed subdivision (g) makes it clear that, while unanimity is the preferred decision-making model, majority vote shall rule. The provision regarding the election and role of a panel vice-chair which was formerly located in (g) is moved to proposed subdivision (f)(3).

Rule 10.740 Jurisdiction and Powers

The title of rule 10.740 is amended to add “and Powers.” The powers of the two types of complaint committees (RVCC and QIC), and the panel chair are now detailed and numbered in the form of a list in proposed subdivisions (a), (b), and (d). The amendments to subdivisions (a) and (b) formally establish the power of a RVCC and QIC to resolve a case prior to it being referred to a panel. This power is not clearly delineated in the current rules.

The proposed amendments to rule 10.740(c), while maintaining the general statement of the panel’s adjudicatory powers, moves the statement regarding the panel chair’s powers from the current subdivision(c) Panel to a proposed subdivision (d) Panel Chair. Pursuant to current rule 10.730(f)(1), the panel chair is required to be a judge. The proposed amendment includes three powers in addition to the current powers for the panel chair in proposed subdivisions (d)(5) through (7): implement procedures during the hearing; determine admissibility of evidence; and decide motions prior to or during the hearing. Furthermore, the amendment specifically states that the vice-chair, upon the unavailability of the chair, is limited in authority only to issuing subpoenas or ordering the production of records or other documentary evidence.

A new position, Contempt/Disqualification Judge, is created in proposed subdivision (e) to provide a single judge member in each division who hears and rules on certain motions for contempt and requests to disqualify a complaint committee or panel member based on the facts alleged for disqualification. This change replaces the current rule 10.870(d) which makes any request for disqualification automatic upon a finding by a committee or panel chair that the motion is legally sufficient.

Rule 10.750 Contempt Process

Current rule 10.750 Staff is moved to a new rule number 10.770 and the proposed rule contains the language of current rule 10.740(d) but is made into a stand-alone rule regarding the contempt process.

Rule 10.760 Duty to Inform

Proposed rule 10.760 is a new stand-alone rule created to expand and clarify the provisions previously contained in current rule 10.800(b)(1) and (2) regarding when a mediator must notify the DRC of any disciplinary action against the mediator or the change in status of any professional license held by the mediator. The general language “change in status” has been replaced with more specific language regarding disciplinary matters. The simple phrase “change in status” could be construed to mandate the necessity for a mediator to report a positive event; the purpose of the rule was to have the mediator responsible for notifying the DRC of any matters which could negatively impact their good moral character status.

Rule 10.770 Staff

Proposed rule 10.770 is a renumbering of the current rule 10.750 with the only revision to the substance of the rule being the change of “center” to “DRC, and “board” to the “MQDRB.”

Rule 10.800 Good Moral Character Inquiry Process

Proposed rule 10.800 Good Moral Character Inquiry Process is a revision of current rule 10.800 Good Moral Character; Professional Discipline and is devoted solely to the good moral character inquiry process. The proposed rule greatly expands current rule 10.800 to include all details of the inquiry process from the complaint stage to the finding of probable cause. Many of the subdivisions in this amended rule [proposed subdivisions (f), (g), (i), (j), and (k)] exist in current rule 10.810 Committee Process [(i), (j), (k), (l), and (n)]. However, there are two distinct types of complaint committees: those for rules violations and those for good moral character inquiries. Current rule 10.810 is often confusing as to which committee it is referring to. Where proposed rule 10.800 is solely devoted to good moral character inquiries, current rule 10.810, as will be explained below, is amended to be solely devoted to rules violation complaints.

Current rule 10.800 contains two subdivisions, (a) and (b). In the proposed amendments to expand and clarify this rule, subdivision (a) is expanded into subdivisions (a) through (m).

Proposed revised (a) clarifies the process to be used for an applicant in contrast to that used for a certified mediator. The proposed language regarding a certified mediator is similar to that in current subdivision 10.800(a)(2). Proposed subdivision (a) adds a reference to current rule 10.110 Good Moral Character which contains the criteria to be considered in determining good moral character. Further, proposed (a) allows for prior disciplinary history to be provided to a complaint committee to assist in their deliberations. Allowing the QIC and RVCC to have information regarding an applicant or mediator’s prior disciplinary history will provide the committees with more information upon which to make an informed decision.

Proposed subdivision (b) amends the rule to add the timing and means by which the QIC shall meet. This proposed subdivision is similar to current rule 10.810(e). Proposed subdivision (c) primarily tracks the current (a)(1) of rule 10.800. The former reference to the “center” is now the “DRC” and, rather than forwarding the supporting material as a “complaint,” it is now forwarded as an “inquiry.” Most QCC matters are dismissed. If all QCC matters had to be filed as complaints, there would be an undue burden on DRC staff in drafting the complaints. As will be seen in the proposed changes below, a complaint is drafted and sent to the applicant/mediator if the QIC or RVCC feels it cannot dismiss the inquiry.

Proposed subdivision (d) clarifies the complaint process provided in current (a)(1) – (3). The proposed subdivision provides more detail regarding QIC review by breaking it into a process that applies to new applications in (1) and renewal applications in (2). The proposed subdivision adds two alternative outcomes which may be utilized by the QIC in (d)(1)(A) and (B) and (d)(2)(A) and (B). Proposed subdivisions (d)(1)(C) and (d)(2)(C) contain provisions from current rule 10.800(a)(1) and (2) as well as rule 10.810(a), (f), and (g). Proposed subdivision (d)(1)(C)(i) and (d)(2)(C)(i) contain the revised provisions of rule 10.800(a)(3).

Proposed subdivision (e) is similar to current rule 10.810(f) and outlines the timeframe and manner of notifying an applicant or mediator that a good moral character inquiry has been initiated.

Proposed subdivision (f) allows for the retention of the services of an investigator as is provided in current rule 10.810(i); and proposed subdivision (g) allows the QIC to meet with the applicant in an effort to resolve the matter as is provided in current rule 10.810(j).

Proposed subdivision (h) discusses the manner and to whom notice and publication of any consensual agreement can be made. This proposed language is included to provide clarity regarding the distribution and publication of all types of agreements in which sanctions are involved. The publication is to provide information to the courts, education for mediators, and protection of the public. The publication provision in the current rules is in rule 10.830(f) and (g).

Similar to subdivisions (k), (l), and (n) of current rule 10.810, proposed subdivision (i) discusses the finding of probable cause; proposed

subdivision (j) gives direction on closing the case if no probable cause is found; and proposed subdivision (k) clarifies the procedure to be utilized if probable cause is found.

Proposed subdivisions (l) and (m) are new. The language of proposed (l) makes it clear that the QIC does not lose jurisdiction if an application is withdrawn. Once submitted, an application is interpreted to mean the individual has submitted to the jurisdiction of the board and cannot avoid prosecution (if necessary) by simply withdrawing. This provision is primarily for public protection. Proposed subdivision (m) clarifies that if the matter is referred to a panel, the case will proceed under rule 10.820.

Current subdivision 10.800(b) is now stand-alone rule 10.760 Duty to Inform as is explained above.

A new Committee Note is added to explain that a lack of good moral character may be determined from the cumulative effects of events in addition to one particularly serious event.

Rule 10.810 Rule Violations Complaint Process

Current rule 10.810 Committee Process sets forth the complaint process for rules violation allegations. This type of complaint differs from a good moral character complaint in that these complaints concern alleged violation(s) of one or more of the rules in Part II Standards of Professional Conduct. Under the current rules, confusion is often encountered as to whether this rule refers to a good moral character complaint committee process or a rules violation complaint committee process. The two have now been separated as explained above. Although many aspects of the processes are identical, the burden of proof differs and the powers and jurisdiction of each type of committee are not the same.

Proposed rule 10.810 clarifies the process and incorporates current procedures which are being utilized but are not currently codified. Proposed subdivision (a) Initiation of Complaint clarifies that a complaint may be filed by an individual or the DRC. When filed by an individual, the complaint shall be submitted on a form promulgated by the DRC. If the DRC is the complainant, the requirements of notarization and being sworn are waived. Proposed subdivision (b) Filing requires the filing of complaints with the DRC and deletes the current provision that complaints may be filed in the

office of the court administrator in the circuit in which the case originated or the alleged misconduct occurred. Proposed subdivision (c) Assignment to a Rules Violation Complaint Committee is amended to delete the provision requiring referral of a complaint filed with a circuit court administrator to the DRC and replaces it with language regarding the assignment of a complaint by the DRC to a rules violation complaint committee. Amended subdivision (c) revises the time allowed for assignment of a case to a RVCC from within 10 days of receipt of the complaint to a reasonable period of time. It is often difficult for the DRC to contact board members to serve on a complaint committee, have them check for conflicts and receive their responses within the existing 10-day time limit. Also added to proposed (c) is the provision that a RVCC may be informed of the mediator's prior disciplinary history, and codifies the current practice of notifying a complainant that their complaint has been received.

Proposed subdivision (d) Facial Sufficiency Determination replaces current (e) retaining much of the language of the current rule but breaking the text into parts (1) and (2) for ease in reading and reference. The sentence in the existing rule regarding a finding by a qualifications complaint committee that a complaint against an applicant is facial insufficiency is deleted because that complaint process is now covered in proposed rule 10.800. In proposed (d), the RVCC is changed to eliminate the option of meeting in person and leaves only the current method of convening by conference call. The current rule allows for both methods of convening; however the need to conserve resources and the success of the current practice of meeting telephonically led to the limitation proposed in this rule.

Current subdivision (f) Service is re-lettered (e) and amended to add that service on the mediator may be made electronically rather than only by certified mail as is currently provided. The amendment clarifies that service by mail is to be addressed to the mediator's physical or email address on file with the DRC. Mediators are required to keep their physical and email addresses (if any) up to date.

Current subdivision (g) Response is re-lettered (f) and amended to add the specifics that the response of the mediator to a complaint must be sworn under oath, notarized and received within a 20-day time frame. Further, in the event no response is received, the allegations shall be considered admitted and the matter may be referred to a panel.

Proposed subdivision (g) Resignation of Certification proposes new language which clarifies that the MQDRB does not lose jurisdiction over a matter if a mediator resigns their certification after a grievance is filed. This amendment reflects the current position taken by the DRC that when an individual is certified they cannot avoid disciplinary actions by simply resigning their certification. The proposed amendment allows the MQDRB to process the complaint to a resolution. If sanctions are imposed, the DRC is better able to serve its function of informing and protecting the courts and the public by being able to notify the circuit and district courts and publishing information regarding the case.

Proposed subdivision (h) Investigation retains some of the current language of the current subdivision (i). The language of current subdivision (h) Preliminary Review provides that upon review of the complaint and the response a complaint committee may find no violation and dismiss the complaint. This portion of the subdivision is deleted because the same type of review is provided for in proposed subdivisions (k) and (l). The portion of the current subdivision (i) authorizing an investigation to include a meeting with the mediator, the complainant or the investigator is retained and the proposed subdivision (h) language concentrates primarily on the investigation of a complaint, the language of which is moved from current subdivision (i). The revision deletes the sentence, “such person [the investigator] shall investigate the complaint and advise the committee when it meets to determine the existence of probable cause” as being unnecessary.

Proposed subdivision (i) RVCC Meeting with the Complainant and Mediator is a re-lettering of current subdivision (j) Committee Meeting with the Mediator or Applicant and remains essentially unchanged.

Proposed subdivision (j) Notice and Publication is new language similar to current rule 10.830(f) and (g) which provides authorization and clarification regarding the manner and method by which the DRC publishes consensual agreements for sanctions with a RVCC.

Current subdivision (k) Review remains unchanged except for the substitution of “RVCC” for “committee.”

Proposed subdivision (l) No Probable Cause is amended to replace “committee” with “RVCC,” provide that a complaint is dismissed with

prejudice upon the finding of no probable cause, and add that a finding of “no probable cause” by the RVCC is final.

Proposed subdivision (m) Probable Cause Found remains essentially the same and retains all the concepts of the current subdivision but organizes the options more clearly and designates a decision not to pursue a case when probable cause has been found as an “Order of Non-Referral.”

Revised subdivision (n) Formal Charges and Counsel more clearly outlines the procedure for the filing of formal charges by the RVCC; clarifies who must sign the formal charges; and authorizes the retention of a member of The Florida Bar to investigate and draft the formal charges for the RVCC.

The first part of subdivision (o) Dismissal remains unchanged, but deleted from the subdivision is the dismissal of the action if the applicant withdraws his/her application. For the reasons explained above, the proposed rules retain the MQDRB’s jurisdiction in all cases regardless of the withdrawal of an application or resignation of a certified mediator.

Rule 10.820 Hearing Panel Procedures

Amended rule 10.820 adds “Panel” to the title of the rule. This rule is greatly expanded to detail the process and individuals involved in the adjudicatory stage of any case.

Proposed subdivision (a) is renamed from Assignment to Panel to Notification of Formal Charges. The proposed revisions change the rule to allow the DRC to send the formal charges to the mediator or applicant without the necessity of assigning a panel simultaneously. Sending the formal charges immediately upon their being finalized is the process which is currently being utilized in order to allow a respondent the maximum time to prepare a defense. Because it can take weeks to assemble a panel, it is a more equitable procedure to notify the respondent of formal charges immediately.

The title and language of current subdivision (b) Hearing are deleted and replaced with the title Prosecutor and language which authorizes the retention of a prosecutor to prosecute the case on behalf of the DRC. Although retaining a prosecutor relates to the adjudicatory stage, the

authorization currently appears in the committee process contained in rule 10.810(n) which is part of the investigative stage.

The title and language of current subdivision (c) Dismissal are deleted and replaced with the title Panel Adviser and language which creates the new position of panel adviser. Panel advisers are currently being retained and utilized with great success, but are not formally authorized in the current rules. The definition and role of the panel adviser is described in proposed amended rule 10.720(j).

The title and language of current subdivision (d) Procedures for Hearing is deleted and replaced with the title Assignment to Panel which was previously the title of current subdivision (a). The language of revised subdivision (d) directs the DRC to send to the complainant, the mediator or applicant a Notice of Assignment of the case to a panel. Subdivision (d) also prohibits a member of the RVCC or QIC that referred the formal charges from serving as a member of the panel, a prohibition that is currently in the last sentence of (a).

Current subdivision (e) Right to Defend is moved to proposed subdivision (i)(6) and the proposed (e) is titled Assignment of Related Cases. This new language provides for the consolidation of related cases but additionally allows a party to make a motion for severance to challenge the consolidation.

Current subdivision (f) Mediator or Applicant Discovery is relocated to proposed subdivision (i)(7) and proposed (f) is titled Time of the Hearing. The time for the hearing is currently set forth in subdivision (b). The revision expands the time within which a hearing must be held from 90 days to 120 days to allow the DRC to coordinate the hearing time with the schedules of the panel members and the mediator or applicant who is the subject of the hearing.

The provisions of current subdivision (g) Panel Discovery are now contained in proposed subdivision (i)(7) and (8) and amended (g) is titled Admission to Charges. The proposed amendment relocates essentially the same language from current subdivision (b) to proposed (g) and states that at any time prior to the hearing the panel has the ability to accept an admission to any charges and an agreement to the imposition of sanctions. The

settlement ability of a panel functions to alleviate the necessity and cost of a hearing when settlement might be possible.

Current subdivision (h) Failure to Appear is moved to proposed subdivision (i)(10) and proposed (h) is titled Dismissal by Stipulation. The proposed subdivision contains language regarding the dismissal of the case currently contained in subdivision (c) but now expanded to include that the stipulation must be signed by the prosecutor as well as the complainant, if any, and the mediator or applicant.

Subdivision (i) Mediator's or Applicant's Absence is relocated to proposed subdivision (i)(10) and the proposed (i) is titled Procedures for Hearing. The proposed amendment in (i)(1) Panel Presence changes the current rule (d)(1) to allow a hearing to proceed in the absence of one of the five panel members under extraordinary circumstances along with the new requirement that no hearing be conducted without the chair being physically present. Proposed subdivision (i)(2) Decorum remains the same as current subdivision (d)(2). Proposed subdivision (i)(3) Oath is newly located to this rule and states that anyone testifying in the hearing shall swear or affirm to tell the truth as is currently stated in rule 10.850(b). Proposed subdivision (i)(4) is the same as current subdivision (i)(3) with the addition of the title Florida Evidence Code which clarifies which evidence code is to be used. The provisions of current subdivision (d)(4) are expanded slightly in proposed subdivision (i)(5) Testimony which details how testimony may be taken through communication equipment and adds a time limit for making a showing of good cause. Proposed (i)(6) Right to Defend contains the language of current (e) with the addition of an applicant having the same rights.

Proposed subdivision (i)(7) Mediator or Applicant Discovery is essentially the same language as current subdivision (f) and proposed (i)(8) Prosecutor Discovery is essentially the same language as current subdivision (g). Both proposed subdivisions (i)(7) and (8) add copies of any exhibits which are expected to be offered at the hearing to the list of items which must be furnished upon receipt of a written demand for discovery.

Proposed subdivision (i)(9) Complainant's Failure to Appear replaces current subdivision (h) and deletes the phrase "for want of prosecution" from the sentence allowing the panel to dismiss the case if the complainant fails to appear at hearing.

Proposed subdivision (i)(10) Mediator's or Applicant's Failure to Appear replaces current subdivision (i) and states in more thorough detail the consequences which can result if the respondent fails to appear at the hearing. The consequences differ depending on whether or not the mediator or applicant has responded to the underlying complaint. The failure to respond, as has been explained above, constitutes an admission.

Proposed subdivision (i)(11) Reporting of Proceedings is the exact language of current subdivision (k) moved to a new location.

The substance of current subdivision (j) Rehearing is moved to proposed subdivision (i)(10)(B); however, under the revised language, when a mediator or applicant fails to appear at a hearing, they are now entitled to petition for rehearing by showing good cause if they have previously submitted a response to the underlying complaint. A mediator or applicant who fails to respond to the underlying complaint and fails to appear at hearing cannot petition for rehearing.

Proposed subdivision (j) is titled Decision of Panel. The revised subdivision contains language regarding panel notification of a dismissal, imposition of sanctions, and the denial of an application currently contained in subdivision (l) and rule 10.830(e) respectively.

The language of current subdivision (k) Recording is moved to proposed subdivision (i)(11) and proposed subdivision (k) is titled Notice to Circuits and Districts. Proposed subdivision (k) contains expanded language from the current rule 10.830(f) and outlines the notice to the circuits and districts following a decision of a panel to impose sanctions. The existing notification pertains only to a mediator who has been decertified or suspended. Under the proposed language, the notification also applies to cases involving an applicant and to any sanction imposed by agreement or decision. The subdivision provides that the agreement or decision shall be sent by the DRC to all circuits and districts through the chief judges, all trial and appellate court administrators, the ADR directors, and mediation coordinators. The amendment serves to provide the persons and entities notified with information which can be used to make informed decisions when assigning or appointing a mediator to a case.

The substance of current subdivision (l) Dismissal is moved to proposed subdivision (j) as explained above. Proposed subdivision (l)

Publication is an expanded revision of current rule 10.830(g) in order to include the publication of all sanctions regardless of whether by agreement or imposition. This amendment is added in order to provide more information and protection to the courts and the public.

Current subdivisions (m) and (n) are relocated to a stand-alone rule regarding the burden of proof for a rules violation case and a good moral character case.

Rule 10.830 Burden of Proof

Current rule 10.830 Sanctions is moved and renumbered as proposed rule 10.840. Proposed rule 10.830 details the two classes of burden of proof. Proposed rule 10.830(a) Rule Violation indicates a burden of clear and convincing evidence which applies to cases involving violations of Part II of the Rules. This burden is currently stated in rule 10.820(m). Proposed rule 10.830(b) Good Moral Character indicates preponderance of the evidence is the burden of proof for any case brought regarding good moral character. The burden of proof in subdivision (b) is currently contained in rule 10.820(n). These provisions have been placed in a rule with separate subdivisions for clarity.

Rule 10.840 Sanctions

Rule 10.840 Subpoenas is renumbered and moved to proposed rule 10.860. Proposed rule 10.840 details and expands the current rule 10.830 regarding sanctions. Notably, as set forth in proposed subdivision (a), where the current rule pertains only to sanctions which are imposed by a panel, the proposed revisions include all sanctions whether by agreement with a RVCC or QIC or by agreement or imposition by a panel.

Revised subdivision (b) Types of Sanctions is a nonexclusive, expanded list of sanctions which is located in current rule 10.830(a). Sanctions (b)(2) through (5) remain the same as those in the current rule. Proposed sanction (b)(1) is added so that the list includes sanctions appropriate to applicants as well as certified mediators. Proposed sanction (b)(7) is proposed in order to remove the current limitation on the term of suspension and give discretion regarding the length of the term to the RVCC, QIC or panel. Proposed sanction (b)(8) regarding a bar from service revises the current language from “service as a mediator under Florida Rules

of Civil Procedure” to service “under any rule of court or statute pertaining to certified or court-appointed mediators.” The broader language of the proposed sanction would cover more mediators, including those who may be uncertified. The more expansive language is proposed in order to further protect the courts and the public.

Proposed sanction (b)(9) is a revision of current rule 10.830(a)(1) and sets forth a nonexclusive list of costs which may be imposed by a hearing panel. The list is based upon In re Amendments to Uniform Guidelines for Taxation of Costs, 915 So. 2d 612 (Fla. 2005), and rule 3-7.6(q), Rules Regulating The Florida Bar. The DRC has had several cases in which costs were imposed and collected. The authority for additional costs will be helpful for the imposition and collection of costs in future cases. Proposed sanction (b)(10), “any other sanctions as deemed appropriate by the panel” expands current rule 10.830(a)(8) which only allowed “such other sanctions as are agreed to by the mediator and the panel.”

Proposed subdivision (c) Failure to Comply with Sanctions reorganizes the current subdivision (c) and states in more detail the procedure the DRC is to follow to enforce sanctions. Listing the steps of the procedure puts the parties on notice of what will occur and provides the DRC with direction and authority for a procedure which is absent from the current rule. The current rule only speaks of the hearing before a panel.

Under proposed subdivision (c)(1), in the event a mediator or applicant fails to comply with sanctions, the DRC may file a motion for contempt with the Contempt/Disqualification Judge and serve the mediator or applicant with a copy of the motion. The mediator or applicant is required to file a response within 20 days of receipt of the motion and if no response is filed, the allegations are admitted according to proposed subdivisions (c)(2) and (3). Proposed subdivision (c)(4) provides a new process to enforce sanctions. Under the current rules, the committee or panel from which the sanctions emanated would have to be reconvened. Under the proposed rule, the DRC may set a hearing with the Contempt/Disqualification Judge.

Proposed subdivision (c)(5) revises the wording of the current rule so that any sanction, not only a suspension, in effect at the time the DRC has reasonable belief that a violation of the sanction has occurred, shall continue in effect until a decision is reached by the Contempt/Disqualification Judge. Proposed subdivision (c)(6) adds detail to the consequences which may be

experienced for failure to substantially comply with any imposed or agreed-to sanction. If failure to comply is proven, the result is the automatic decertification of the mediator for no less than two years, after which the mediator shall be required to apply as a new applicant.

Rule 10.850 Suspension, Decertification, Denial of Application, and Removal

Current rule 10.850 Confidentiality is relocated and renumbered as rule 10.870. Proposed rule 10.850 titled Suspension, Decertification, Denial of Application, and Removal is a new rule which takes subdivisions from current rule 10.830 Sanctions and moves them to this rule. In addition, it adds new subdivisions to the rule. For clarity and to further expand on the procedures and policies to be utilized after suspension, decertification, denial or removal, it was decided a stand-alone rule was more appropriate.

Proposed subdivision (a) Suspension requires a mediator to continue to comply with all requirements for certification during any period of suspension. The addition of this section serves to provide clear notification to a suspended mediator.

Proposed subdivision (b) Reinstatement After Suspension has the title of and is similar to current rule 10.830(h) regarding general reinstatement matters.

Proposed subdivision (c) Automatic Decertification or Automatic Denial of Application includes revised provisions similar to current rule 10.830(b) which calls for automatic decertification in the event of a felony conviction. The proposed rule adds denial of an application in the case of an applicant and additionally adds other extreme circumstances (disbarment, loss of professional license) to the list of issues which would result in automatic denial or decertification and eliminates the need for a complaint committee or hearing panel to be formed. The proposed subdivisions regarding professional licenses are similar to and expand current rule 10.800(b)(2). Currently, conviction of a felony requires decertification [current rule 10.830(b)] and an applicant who has been convicted of a felony and has not had their civil rights restored is not eligible for certification pursuant to current rule 10.110(c)(2). However, under the current rules a hearing panel must be convened in order to enforce the requirement even though the panel has no discretion. This requirement is seen as an

unnecessary burden on the DRC as well as a waste of human and financial resources in connection with the members of the MQDRB from which the panels must be selected. The notification and publication provisions of proposed subdivision (c)(5) follow the notification and publication procedures for all other imposed sanctions in the rules which are similar to current rules 10.830(e) and (f).

In the events listed above, reapplication cannot occur for a period of at least two years which is the time period in the current rule for reinstatement after decertification, 10.830(i).

Proposed subdivision (d) Decertified Mediators is similar to current rule 10.830(d), but expands the existing rule to include applicants as well as certified mediators and prohibits any applicant denied or any decertified mediator from being appointed by the court or designated by the parties. The expansion was done with the purpose of protecting both the courts and parties from utilizing unqualified individuals as mediators.

Proposed subdivision (e) Removal from Supreme Court Committees is new and provides for the automatic removal from any Supreme Court Committee related to alternative dispute resolution of any member who has been disciplined or sanctioned in any of the manners listed in the sections proceeding.

Proposed subdivision (f) Reinstatement after Decertification outlines in greater detail the procedure for reinstatement after decertification currently contained in rule 10.830(i). It changes the review from a panel to the QIC. The QIC is a committee of the MQDRB which stays in existence and reviews cases regularly. The change would enable the review process to be conducted sooner and with less use of DRC and MQDRB member resources in putting together a panel solely for the purpose of reviewing a petition for reinstatement.

Proposed subdivision (f)(2) decreases the current time for submitting an application for reinstatement from two years to one year after the date of decertification unless a greater time period is imposed by a panel or rule. The current practice of complaint committees entering into consensual agreements or panels imposing sanctions is to include the period of suspension or decertification. The proposed rule suggests a shorter period as

a default to give more discretion to the disciplinary body in deciding the appropriate term of denial, suspension or decertification.

Proposed subdivision (f)(3)(A) is a revision and update of current rule 10.830(i)(1) on reinstatements after decertification. The proposed rule no longer requires the filing of six copies of the petition. Proposed subdivision (f)(3)(B) contains both new and currently required items for the petition. The new items clarify the information needed to enable the QIC to make an informed decision regarding the petition for reinstatement. The petition must now include a new and current application for mediator certification along with the required fees and a copy of the sanction document decertifying the mediator [proposed subdivisions (f)(3)(B)(i) and (iii)], proposed subdivisions (ii), (iv), are contained in current rule 10.830(i)(2)(B) and (C), respectively covering a statement of the underlying offense and a statement to justify reinstatement; proposed subdivision (f)(3)(B)(v) is new and requires any petitioner whose decertification is for two years or more to complete mediation training again. This requirement is consistent with the general qualification requirements for new applicants who must apply within a two-year period of training or retake the training. Proposed subdivision (f)(3)(C) is the current rule 10.830(i)(3) but changes the review to the QIC rather than a hearing panel as is explained above. Proposed subdivision (f)(3)(D) is a revision of current rule 10.830 (i)(4).

Rule 10.860 Subpoenas

Current rule 10.860 Interested Party is moved and renumbered as rule 10.880(a). Proposed rule 10.860 has the title Subpoenas and is comprised of revised provisions of current rule 10.840 Subpoenas. The amendments expand who may issue subpoenas, currently located in rule 10.840(a) and now in proposed rule 0.860(a) and (b). Service of subpoenas has its own subdivision (c) in the proposed rule, but otherwise remains the same as the current rule. Proposed subdivision (d) replaces the language in current (b) “without adequate excuse” to “without good cause shown” under the sanctions for failure to obey a subpoena.

Rule 10.870 Confidentiality

Current rule 10.870 Disqualification of Members of a Panel or Committee is moved, renamed and renumbered rule 10.880. Proposed rule 10.870 Confidentiality revises current rule 10.850 to accurately reflect when

and which records are open to the public. Confidentiality of records is tied to the finding of probable cause, not the imposition of sanctions as is stated in the current version of the rule. One of the predecessor rules to the current confidentiality rule was rule 10.260 which was adopted by the Court in May of 1992, prior to the adoption of article I, section 24 of the Florida Constitution (Access to Public Records and Meetings). Rule 10.260 made all complaint records permanently confidential, and provided that only formal charges and records generated subsequent to charges would become public upon the filing of such charges. Because that rule was adopted by the Court prior to the voters' approval of the constitutional public records provision, and not repealed, the confidentiality afforded by the original rule 10.260 language remains in effect. Article I, section 24(c), Florida Constitution, provides that only the legislature may create new exemptions from access to public records after November 1992. The 1995 amendment to rule 10.260 extended the time period for confidentiality of charge and post-charge records from the filing of charges to the imposition of sanctions. The expansion does not appear to comport with the article I, section 24(c) requirement that only the legislature may adopt new exemptions from access to public records after November 1992; therefore, the ADR Committee proposes the revision to bring the rule into compliance with the constitution and codify for mediators and the DRC the point at which records are no longer confidential.

The provision of current subdivision 10.850(b) pertaining to how witnesses are sworn in is now contained in proposed rule 10.820(i)(3); however the new rule deletes the existing provisions which state that a witness in proceedings under the rules shall swear not to disclose the existence of the proceeding, the subject matter thereof, or the identity of the mediator until the proceeding is no longer confidential under these disciplinary rules and that a violation of such an oath shall be considered an act of contempt of the complaint committee or panel. Those provisions are no longer appropriate because proceedings and testimony which occur after the finding of probable cause are open to the public as explained in the previous paragraph. Proceedings and testimony given before a finding of probable cause are confidential under section 44.405(4)(a), Florida Statutes, with the exceptions to confidentiality listed in 44.405(4)(a)(1) through (6).

The requirement in current rule 10.850(c) that all notices, papers, and pleadings mailed prior to formal charges being filed shall be enclosed in a cover marked "confidential" has been removed as being more appropriate

for an internal procedure rather than a rule. Marking all documents and files prior to a finding of probable cause as confidential is currently done as a routine procedure by the DRC.

Current subdivision 10.850(d) is amended in proposed 10.870(b) to include making a member of the MQDRB subject to discipline for the violation of confidentiality.

Rule 10.880 Disqualification and Removal of Members of a Committee, Panel or the Board

Rule 10.880 Supreme Court Chief Justice Review is moved and renumbered 10.900. Proposed rule 10.880 relocates current rule 10.870 and gives it the revised title Disqualification and Removal of Members of a Committee, Panel or the Board. The proposed rule amends current rule 10.870 to include the terms “removal” and “Board” in the title in order to be more accurate in describing the result of disqualification of a committee, panel or board member, and to include that the rule’s provisions apply to board members. Proposed subdivision (a) Disqualification of Member adds the automatic disqualification of any member of the MQDRB from serving on a complaint committee involving that member’s own discipline which is similar to the prohibition in current rule 10.860 Interested Party.

Proposed subdivision (b) Party Request for Disqualification of a MQDRB Member states the conflicts of interests, in list format, now contained in current rule 10.870(a), which may be the basis for a motion to disqualify.

Proposed subdivision (c) Facts to be Alleged is the same as current rule 10.870(b), but adds that any motion to disqualify must be in writing and under oath rather than “verified.”

Proposed subdivision (d) Time for Motion specifies the time for the filing of a motion “not later than 10 days after the movant discovered or reasonably should have discovered the facts which would constitute grounds for disqualification” changing the current language allowing a motion to be filed “within a reasonable time” as in current rule 10.870(c). The addition of the time limit for filing will aid in the speedy movement and resolution of cases.

Proposed subdivision (e) Action by Contempt/Disqualification Judge would replace current rule 10.870(d) and changes the review of any motion for disqualification from the “chair of the appropriate committee or panel” to the newly created Contempt/Disqualification Judge. Under the proposed revision, the Contempt/Disqualification Judge has the power to rule on the truth of the facts alleged in any motions for disqualification, whereas under the current rules, the chair only determines the legal sufficiency of the motion without determining the truth of the facts alleged.

Proposed subdivision (f) Board Member Initiative is similar to and would replace current rule 10.870(e) which currently uses the word “recusal” instead of the proposed “disqualify,” and clarifies member self-disqualification.

Proposed subdivision (g) Replacement makes replacement of a disqualified member discretionary rather than mandatory as required by current rule 10.870(f). While most motions are made very early in the process, at times a motion for disqualification may be made late in the process. Since a majority vote is required for decisions, not unanimity, in the event of a late motion, it is best to see if a majority vote is obtained rather than appoint someone new who would need to become familiar with the case that may have been initiated months earlier.

Proposed subdivision (h) Qualifications for New Member replaces current rule 10.870(g) and allows for a replacement member to be chosen from another division. Often grievances will come disproportionately in one division, taxing the volunteer board members of that division. It is in the interest of fairness to both the members and the aggrieved party that a replacement be chosen who can properly attend to their responsibilities.

Rule 10.890 Limitation on Time to Initiate a Complaint

Rule 10.890 Limitation on Time to Initiate a Complaint is a new rule which establishes a time limitation for the filing of grievances. The rules have never had a time limitation regarding the filing of a grievance; however, the ADR Committee believes that a time limit is appropriate in order to resolve complaints in a fashion that is fair to the complainant and mediator as well as provide for the efficient administration of justice. The proposed time limitation is modeled after section 44.406(2), Florida Statutes, regarding civil remedies for the disclosure of confidential mediation

communications. The two exceptions for which there is no time limitation for the filing of a grievance are when felony convictions or issues of good moral character are involved.

Rule 10.900 Supreme Court Chief Justice Review

Rule 10.900 Mediator Ethics Advisory Committee is moved and renumbered 10.910. Proposed rule 10.900 is current rule 10.880 Supreme Court Chief Justice Review, and is only revised to include correct citations in proposed subdivision (a) to proposed rules 10.800(g) and 10.810(i) which provide that a QIC or RVCC, while they have jurisdiction, may meet with an applicant or mediator to attempt to resolve a matter.

Rule 10.910 Mediator Ethics Advisory Committee

Proposed rule 10.910 is a new rule number which contains the unchanged language of current rule 10.900 Mediator Ethics Advisory Committee.

VI. Effective Date Request

The ADR Committee requests that all amendments sought in this filing become effective immediately from the date of this Court's order. It is additionally requested that the proposed rules shall apply to all MQB cases pending at the time of the Court's order, including both rules violation and good moral character cases, as well as future cases regardless of when the alleged violation or good moral character issue occurred.

VII. Conclusion

In filing this petition, the ADR Committee would like to extend special thanks to the individuals who volunteered and devoted hundreds of hours of their valuable time in order to make this project a reality. The initial three members of this workgroup were Yale Freeman, Esq., Irv J. Lamel, Esq., and The Honorable Angelica Zayas, who was a prosecutor at that time. All three had served as investigators, prosecutors and panel advisers in mediation grievance cases, had extensive experience as trial lawyers in criminal defense and prosecution, and were familiar with the current disciplinary rules and the problems encountered due not only to an increase in grievance cases but also to an increase in mediators and

applicants retaining counsel in the very early stages of a grievance, which led to attorneys and attorney-mediators challenging the DRC's jurisdiction and procedures under the current rules.

Judge Zayas was appointed to the bench during the first year and her schedule precluded her continued involvement. Michael Kamen, Esq., joined the workgroup in approximately 2012. Mr. Kamen is a longtime member of the Mediator Qualifications Board (MQB), has served as chair of numerous complaint committees, and served as a member of several MQB hearing panels.

These individuals have devoted hundreds of volunteer hours to teleconferences, in-person meetings and video conferences in order to assist the DRC in drafting rules which reflect not only a careful consideration of due process for the respondents, but additionally the needs of the DRC in working closely with investigators, prosecutors and panel advisers as each grievance progresses through the investigatory and adjudicatory stages.

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.

Respectfully submitted this 7th day of May, 2015.

/s/ William D. Palmer, District Judge
palmerw@flcourts.org
Florida Bar No. 220361
Chair of the Committee on
Alternative Dispute Resolution Rules
and Policy
Fifth District Court of Appeal
300 South Beach Street
Daytona Beach, Florida 32114
Telephone: 386-947-1502

CERTIFICATE OF TYPEFACE COMPLIANCE

I 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 9.100(1).

/s/ Susan C. Marvin, Esq.
marvins@flcourts.org
Florida Bar Number 0718319
Senior Attorney I
Dispute Resolution Center
Florida Supreme Court Building
500 South Duval Street
Tallahassee, Florida 32399
(850) 921-2910