

Supreme Court of Florida

No. AOSC07-57

IN RE: PROCEDURES GOVERNING CERTIFICATION OF MEDIATORS

ADMINISTRATIVE ORDER

Chapter 44, Florida Statutes, places in the Supreme Court of Florida the responsibility for certifying all persons who are eligible to receive court referrals for mediation. Pursuant to chapter 44 and article V, section 2(a) of the Florida Constitution, the Court adopted rule 10.100, Florida Rules for Certified and Court-Appointed Mediators, specifying the requirements for such mediators.

Administrative Order AOSC06-9 was issued on May 11, 2006 in conjunction with the opinion in In re Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules for Certified and Court-Appointed Mediators, 931 So. 2d 877 (Fla. 2006), amending the Rules for Certified and Court-Appointed Mediators and approving new point-based mediator certification requirements, subject to the submission of additional rule amendments by the

Alternative Dispute Resolution Rules and Policy Committee. This order is entered after and pursuant to the Court's consideration and adoption of those additional amendments in In re Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules For Certified And Court-Appointed Mediators, No. SC05-998 (Fla. Nov. 15, 2007). The provisions of this order supersede all previous orders on this subject.

I. Initial Certification

A. Application.

The certification application provided by the Dispute Resolution Center (Center) shall be completed by all individuals seeking certification, in accordance with the following procedures:

Upon receiving the list of individuals who have completed training from a certified mediation training provider, the Center shall provide to all individuals on the list an application and information on the certification requirements.

An application shall be complete upon filing. However, if incomplete upon filing, such incomplete application may not remain pending for a period longer than one year. Any application pending more than one year from the date of original filing shall be denied and returned to the applicant. The one-year period shall be tolled during any review by the Center or Mediator

Qualifications Board.

Applications must include two original letters of reference attesting to the applicant's good moral character. These letters must be written by non-family members who are familiar with the experience and qualifications of the applicant.

Any material misrepresentation by the applicant in the application process shall be automatically referred to the Mediator Qualifications Board.

B. Certification Requirements

To obtain certification, an applicant shall meet all certification requirements in rules 10.100 and 10.105, Florida Rules for Certified and Court-Appointed Mediators, and this order.

Point Categories

Mediation Training. Applicants must complete a Florida Supreme Court certified training program for the type of mediation for which they are seeking certification. To qualify as a Florida Supreme Court certified training program, a training program must satisfy all of the requirements of Administrative Order AOSC00-9 or any successor order. Applicants shall have completed the requisite certified mediation training program within two years immediately preceding the date of application.

Education/Mediation Experience. Any applicant relying on an educational degree shall provide evidence of such degree in the form of a formal transcript mailed directly from the educational institution to the Center. Such applicant must also enclose a copy of the diploma evidencing the completion of the course of study and the degree. In the event that such documentation is unavailable, the applicant must submit another form of appropriate documentation, such as a sworn affidavit.

Any applicant relying on years of mediation experience shall include an affidavit attesting to such experience.

Mentorship. Mentorship shall include observing mediations conducted by certified mediators and conducting mediations under the supervision and observation of certified mediators. The mentorship requirements for those seeking certification shall be performed in a manner consistent with the following requirements:

The responsibility of structuring a mentorship rests with each trainee.

The trainee shall not receive any fees for any case which the trainee utilizes to complete the required mentorship.

All duly certified mediators are required to allow, upon request, a minimum of two mediation observations or supervised mediations per year.

The certified mediator shall not charge the trainee any fees to observe a

mediation conducted by the certified mediator, but may charge a reasonable fee for observing and supervising a trainee while the trainee conducts a mediation. In addition, the certified mediator shall be entitled to any compensation paid for the mediation.

The certified mediator shall remain in control of the case.

For an applicant to be awarded mentorship points, the applicant must work with at least two different certified mediators and the mediations involved must be of the type for which certification is sought.

The confidentiality and privileges provided in the Mediation Confidentiality and Privilege Act shall apply when a trainee serves as a mediator, comediator, or observer.

State-funded trial court mediation programs shall assist trainees in completing their mentorship requirements.

Applicants shall provide original signatures of all mentors in relation to all mentorship activity claimed.

Mediation Observations

For each observation required for certification, the trainee must observe an entire session of the type of mediation for which certification is sought, conducted by a certified mediator in the same category for which certification is sought. The observation requirement shall not be satisfied by any

individual who is a party, participant, or representative in the mediation. A trainee may not fulfill the observation requirements before beginning a certified mediation training program, however, the observation requirement may be completed during training and prior to the conclusion of the certified mediation training program. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for observation purposes. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements.

Supervised Mediations

The requirement that the trainee conduct a mediation under the supervision and observation of a certified mediator may be fulfilled by the trainee comediating with a certified mediator only if, in the opinion of the certified mediator, the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. At the conclusion of the mediation, the mentor shall determine if the trainee had a significant impact on the outcome of or made a substantial contribution to the mediation. If so,

the case may qualify as a “supervised” mediation. If not, the case will qualify only as an observation.

For purposes of the requirement to conduct mediations, mediation is defined as a complete case, which may consist of multiple sessions. The entire mediation shall be mediated or observed by a certified mediator of the type for which certification is sought. In the event the trainee is only able to participate in a single session of a multisession mediation, such participation qualifies as an observation regardless of the trainee’s level of participation. An appellate or pre-suit mediation which is or would have been the type of mediation for which certification is sought if it had been filed in a trial court and if conducted by a certified mediator of the type for which certification is sought may be utilized for the requirements to conduct mediations under observation and supervision. A federal court mediation conducted by a certified circuit mediator may be utilized to fulfill a circuit mentorship. Administrative agency mediation conducted under rules and procedures other than those of the state trial courts may not be utilized to fulfill the mentorship requirements.

Miscellaneous Points. Any applicant requesting certification on the basis of licensure in a profession shall provide all applicable information necessary for the Center to verify such licensure.

Any applicant requesting certification on the basis of specific experience shall provide a resume detailing the experience and any other information necessary for the Center to verify such experience.

Fees

The following fees shall be required for the application and certification process:

Application Fee	\$10 (non-refundable)
Certification Fees	
County	\$40
Family	\$100
Circuit	\$100
Dependency	\$50
Family/Circuit	\$175 (filed simultaneously)
Family/Dependency	\$130 (filed simultaneously)
Circuit/Dependency	\$130 (filed simultaneously)
Family/Dependency/Circuit	\$200 (filed simultaneously)

The \$10 application fee is nonrefundable. Certification fees shall be returned to applicants who, upon review of their applications, are deemed ineligible to be certified. Applicants who are denied certification may reapply upon compliance with the qualifications for certification.

Applicants who meet the requirements for mediator certification shall be certified for a two-year period and shall be provided with a certificate from the Supreme Court evidencing such certification.

Review Process

An applicant who disagrees with a finding of ineligibility may object in writing within 35 days of the initial determination of ineligibility as indicated in a certificate of mailing. Any such response shall be reviewed by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, which may appoint a subcommittee to review such matters, and which shall make a recommendation to the chief justice or designee. The decision of the chief justice or designee shall be final.

II. Certification Renewal

A. Application for Renewal

Mediators seeking continued certification shall be required to file an application for renewal and a completed Continuing Mediator Education Reporting Form. Any material misrepresentation by a mediator in the renewal process shall be automatically referred to the Mediator Qualifications Board.

B. Continuing Mediator Education

The purpose of continuing mediator education (CME) shall be to enhance the participant's professional competence as a mediator. The requirement of CME and the reporting thereof shall apply to all certified mediators seeking renewal and shall be fulfilled in accordance with the following procedures:

General Requirement

To qualify as CME, a course or activity shall have significant, current intellectual or practical content and shall constitute an organized program of learning directly related to the practice of mediation. CME shall be conducted by an individual or group qualified by practical or academic experience. All certified mediators (mediators) must complete a minimum of 16 hours of CME, which shall include a minimum four hours of mediator ethics, a minimum of two hours of domestic violence education and a minimum of one hour of diversity/cultural awareness education, in each two year renewal cycle, including the two years following initial certification. In addition, family and dependency mediators must complete an additional two hours of the required 16 hours in domestic violence education per each renewal cycle for a total of four hours. Mediator certification shall not be renewed until all CME requirements are completed.

Mediators who are certified in more than one area must complete 16 hours of CME applicable to each of their areas of certification. Hours completed may be utilized toward more than one area of certification if the subject matter is relevant to the fields of certification. For example, courses on such topics as mediator ethics, domestic violence, and general mediation skills may be credited to any or all of the areas of certification.

At a minimum, 50 percent of the required CME hours must be satisfied by attendance, not as a lecturer or presenter, at a live lecture, live seminar, or an audio/video playback of a seminar attended by a group that discussed the materials presented. Interactive internet presentations may be counted as attendance at a live lecture. Noninteractive internet presentations shall be applied toward the audio-visual category. A maximum of four hours of CME may be earned through mentoring as defined above. Mentoring activities cannot be applied toward the required ethics, diversity/cultural awareness, or domestic violence CME components.

Attending and lecturing or teaching at the same CME presentation will not entitle a mediator to additional credit. The prohibition against repeat attendance shall not apply to annual conferences and yearly updates.

Continuing education completed for another profession's continuing education requirement may be used as CME if the material bears directly on the mediator's mediation practice and complies with the CME guidelines set forth in this order.

Definition

A CME hour is defined as 50 minutes. CME may be completed during the mediator's renewal cycle in any of the following formats:

- (1) attending a live lecture or seminar;
- (2) listening to or viewing an audio or video presentation of a lecture or

seminar with a group, and participating in a discussion of the materials presented;

- (3) listening or viewing audio or video presentations;
- (4) co-mediating or supervising trainees as part of the trainees' mentorship requirements;
- (5) participating in internet presentations;
- (6) lecturing or teaching in CME courses; and
- (7) authoring or editing written materials submitted for publication and that have significant intellectual or practical content directly related to the practice of mediation.

Reporting Requirements

Mediators must maintain proof of attendance of CME or other appropriate documentation and must report their CME at the end of each two-year renewal cycle on the Center's renewal form. The mediator shall be responsible to keep all records relating to CME, which records shall be subject to audit. In addition, the mediator must certify that he or she has read the current Florida mediation rules, statutes, and procedures.

Any CME hours completed may be utilized for only one renewal cycle.

Hours in excess of the requirement shall not be carried forward to the next renewal cycle.

If all other qualifications for renewal are satisfied, but a mediator is deficient

in CME credits, the mediator shall be notified in writing and certification shall be continued for 90 days from the notice of noncompliance. During those 90 days, the mediator shall complete all remaining CME requirements to be eligible for renewal.

Review Process

A mediator who disagrees with a finding of deficiency may object in writing within 35 days of the initial determination of deficiency as indicated in a certificate of mailing. Any such response shall be reviewed by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy, which may appoint a subcommittee to review such matters, and which shall make a recommendation to the chief justice or designee. The decision of the chief justice or designee shall be final.

C. Fees

Renewal fees shall be at the same levels as for initial certification. All mediators seeking renewal shall be responsible for these fees. However, for renewals which are filed timely, the \$40 county mediator renewal fee will be waived upon written confirmation from the ADR Program Director (or designee) that the mediator served as a volunteer in the county court mediation program during the prior certification period.

Mediators whose certification has lapsed may renew certification up to 180

days from the lapse date upon payment of an additional late fee in an amount equal to the mediator's renewal fee. Mediators who apply for renewal within 365 days after the lapse date will be required to pay a late fee equal to five times the mediator's renewal fee, up to a maximum of \$500. Mediators who apply for certification after day 365 will be required to meet the initial requirements for certification, including satisfactory completion of a certified mediation training program and fulfillment of the mentorship requirements. For purposes of this paragraph, the lapse date reverts back to the initial renewal date, notwithstanding any CME extensions.

A mediator may request an extension of the renewal requirements and a waiver of any penalties for an extraordinary hardship. If such request is denied, a request for review may be taken to the Alternative Dispute Resolution Rules and Policy Committee, which may appoint a subcommittee to review such matters, and which shall make a recommendation to the chief justice or designee. The chief justice's or designee's decision shall be final.

III. Administrative Responsibility

Administrative responsibility for implementation of the provisions of Chapter 44, Florida Statutes; rules 10.100 and 10.105, Florida Rules for Certified and Court-Appointed Mediators; and this administrative order shall be with the Dispute Resolution Center of the Office of the State Courts Administrator.

All certification, application, renewal, and late fees shall be deposited in the Supreme Court's Mediation and Arbitration Trust Fund to be used to provide support for implementing the applicable statutes, rules, and this administrative order.

IV. Disciplinary Review

The Florida Rules of Appellate Procedure shall be applicable to a review by the chief justice pursuant to rule 10.880, Florida Rules for Certified and Court-Appointed Mediators. Such review shall be commenced by submitting a Notice of Review of Mediator Disciplinary Action and shall be conducted according to the following procedures:

The jurisdiction to seek review of disciplinary action shall be invoked by submitting an original and one copy of a notice of review to the office of the chief justice within 30 days of the panel's decision. A copy shall also be provided to the Center.

The notice of review shall be substantially in the form prescribed by rule 9.900(a), Florida Rules of Appellate Procedure. A copy of the panel decision shall be attached to the notice.

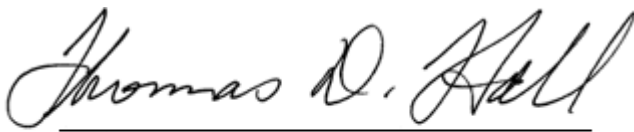
Appellant's initial brief, accompanied by an appendix as prescribed by rule 9.220, Florida Rules of Appellate Procedure, shall be served within 30 days of submitting the notice of review. Additional briefs shall be served as

prescribed by rule 9.210. A transcript shall not be submitted to the office of the chief justice unless ordered by the chief justice.

DONE AND ORDERED at Tallahassee, Florida, on November 15, 2007.


Chief Justice R. Fred Lewis

ATTEST:


Thomas D. Hall
Clerk, Supreme Court

