

RULES OF THE NORTH CAROLINA SUPREME COURT FOR THE DISPUTE RESOLUTION COMMISSION

I. OFFICERS OF THE COMMISSION.

A. Officers. The Commission shall establish the offices of Chair, Vice-Chair, and Secretary/Treasurer.

B. Appointment; Elections.

1. The Chair shall be appointed for a two year term and shall serve at the pleasure of the Chief Justice of the North Carolina Supreme Court.
2. The Vice-Chair and Secretary/Treasurer shall be elected by vote of the full Commission and shall serve two year terms.

C. Committees.

1. The Chair may appoint such standing and *ad hoc* committees as are needed and designate Commission members to serve as committee chairs.
2. The Chair may, with approval of the full Commission, appoint ex-officio members to serve on either standing or *ad hoc* committees. Ex-officio members may vote upon issues before committees but not upon issues before the Commission.

II. COMMISSION OFFICE; STAFF.

A. Office. The Chair, in consultation with the Director of the Administrative Office of the Courts, is authorized to establish and maintain an office for the conduct of Commission business.

B. Staff. The Chair, in consultation with the Director of the Administrative Office of the Courts, is authorized to appoint an Executive Secretary and to: (1) fix his or her terms of employment, salary, and benefits; (2) determine the scope of his or her authority and duties and (3) delegate to the Executive Secretary the authority to employ necessary secretarial and staff assistants, with the approval of the Director of the Administrative Office of the Courts.

III. COMMISSION MEMBERSHIP.

A. Vacancies. Upon the death, resignation or permanent incapacitation of a member of the Commission, the Chair shall notify the appointing authority and request

that the vacancy created by the death, resignation or permanent incapacitation be filled. The appointment of a successor shall be for the former member's unexpired term.

B. Disqualifications. If, for any reason, a Commission member becomes disqualified to serve, that member's appointing authority shall be notified and requested to take appropriate action. If a member resigns or is removed, the appointment of a successor shall be for the former member's unexpired term.

C. Conflicts of Interest and Recusals. All members and ex-officio members of the Commission must:

1. Disclose any present or prior interest or involvement in any matter pending before the Commission or its committees for decision upon which the member or ex-officio member is entitled to vote.
2. Recuse himself or herself from voting on any such matter if his or her impartiality might reasonably be questioned; and
3. Continue to inform themselves and to make disclosures of subsequent facts and circumstances requiring recusal.

D. Compensation. Pursuant to N. C. Gen. Stat. § 138-5, ex-officio members of the Commission shall receive no compensation for their services but may be reimbursed for their out-of-pocket expenses necessarily incurred on behalf of the Commission and for their mileage, subsistence and other travel expenses at the per diem rate established by statutes and regulations applicable to state boards and commissions

IV. MEETINGS OF THE COMMISSION.

A. Meeting Schedule. The Commission shall meet at least twice each year pursuant to a schedule set by the Commission and in special sessions at the call of the Chair or other officer acting for the Chair.

B. Quorum. A majority of Commission members shall constitute a quorum. Decisions shall be made by a majority of the members present and voting except that decisions to dismiss complaints or impose sanctions ~~discipline or decertify a mediator or mediator training program~~ pursuant to Rule VIII of these Rules or to deny certification or certification renewal or to revoke certification pursuant to Rule IX of these Rules shall require an affirmative vote of 8 members consistent with those Rules.

C. Public Meetings. All meetings of the Commission for the general conduct of business and minutes of such meetings shall be open and available to the public except that meetings, or portions of meetings or hearings involving potentially adverse actions against mediators or mediation training programs may be treated as confidential conducted pursuant to Rules VIII and IX of these Rules may be closed to the public in accordance with those Rules.

D. Matters Requiring Immediate Action. If, in the opinion of the Chair, any matter requires a decision or other action before the next regular meeting of the Commission and does not warrant the call of a special meeting, it may be considered and a vote or other action taken by correspondence, telephone, facsimile, or other practicable method; provided, all formal Commission decisions taken are reported to the Executive Secretary and included in the minutes of Commission proceedings.

V. COMMISSION'S BUDGET.

The Commission, in consultation with the Director of the Administrative Office of the Courts, shall prepare an annual budget. The budget and supporting financial information shall be public records.

VI. POWERS AND DUTIES OF THE COMMISSION.

The Commission shall have the authority to undertake activities to expand public awareness of dispute resolution procedures, to foster growth of dispute resolution services in this State and to ensure the availability of high quality mediation training programs and the competence of mediators. Specifically, the Commission is authorized and directed to do the following:

- A.** Review and approve or disapprove applications of (1) persons seeking to have training programs certified; (2) persons seeking certification as qualified to provide mediation training; (3) attorneys and non-attorneys seeking certification as qualified to conduct mediated settlement conferences and (4) persons or organizations seeking reinstatement following a prior suspension or decertification.
- B.** Review applications as against criteria for certification set forth in the *Rules Implementing Mediated Settlement Conferences (Rules)* and as against such other requirements of the North Carolina Supreme Court Dispute Resolution Commission or the Commission which amplify and clarify those *Rules*. The Commission may adopt application forms and require their completion for approval.
- C.** Compile and maintain lists of certified trainers and training programs along with the names of contact persons, addresses, and telephone numbers and make those lists available upon request.
- D.** Institute periodic review of training programs and trainer qualifications and re-certify trainers and training programs that continue to meet criteria for certification. Trainers and training programs that are not re-certified, shall be removed from the lists of certified trainers and certified training programs.
- E.** Compile and keep current a list of certified mediators, which specifies the judicial districts in which each mediator wishes to practice. Periodically disseminate copies of that list to each judicial district with a mediated settlement conferences program,

and make the list available upon request to any attorney, organization, or member of the public seeking it.

- F. Prepare and keep current biographical information on certified mediators who wish to appear in the Mediator Information Directory contemplated in the *Rules*. Periodically disseminate updated biographical information to Senior Resident Superior Court Judges, in districts in which mediators wish to serve, and
- G. Make reasonable efforts on a continuing basis to ensure that the judiciary, clerks of court, court administration personnel; attorneys; and to the extent feasible, parties to mediation, are aware of the Commission and its office and the Commission's duty to receive and hear complaints against mediators and mediation trainers and training programs.

VII. MEDIATOR CONDUCT.

The conduct of all mediators, mediation trainers and managers of mediation training programs must conform to the Standards of Professional Conduct for Mediators adopted by the ~~Commission~~ Supreme Court and enforceable by the Commission and the standards of any professional organization of which such person is a member that are not in conflict nor inconsistent with the ~~Commission's~~ Standards. A certified mediator shall inform the Commission of any criminal conviction, any complaint filed against or disciplinary action imposed upon the mediator by any other professional organization, or any judicial sanction. Failure to do so is a violation of these Rules. Violations of the ~~Commission's~~ Standards or other professional standards or any conduct otherwise discovered reflecting a lack of moral character or fitness to conduct mediations or which discredits the Commission, the courts or the mediation process may subject a mediator to disciplinary proceedings by the Commission. ~~The Commission may, through a standing committee, render advisory opinions on questions of ethics submitted by certified mediators.~~

VIII. COMPLAINT AND HEARING PROCEDURES

~~A. Initiation of Complaints.~~

~~1. By the Commission. Any member of the Commission or its Executive Secretary may bring to the attention of the full Commission any matter concerning the character, conduct or fitness to practice as a mediator or any matter concerning a certified mediation training program. The Commission may authorize the Executive Secretary to conduct an inquiry, including gathering information and interviewing persons. The Executive Secretary shall seek to resolve the matter in a manner acceptable to all parties. After reviewing the report of the Executive Secretary, the Commission may authorize a complaint against a mediator, trainer or training program. The Chair of the Commission shall appoint a panel to conduct a hearing if a complaint is filed. Such hearing shall be conducted in accordance with procedures set forth in subsection D.~~

~~2. By a Citizen. Any person, including mediation participants, attorneys for participants, and interested third parties such as insurance company representatives, may~~

file with the Commission a complaint involving the character, conduct or the fitness to practice of a mediator. Any person, including a training program participant, may file a complaint with the Commission against a certified mediation training program or against any individual responsible for conducting, administering or promoting such a training program.

B. Form.

All complaints shall be reduced to writing on a form approved by the Commission.

C. Preliminary Inquiry; Resolution; Action.

1. The Executive Secretary of the Commission shall seek to resolve the issues raised by complaints authorized by subsection A.(2), through contacts with the complaining party, the mediator, trainer, representative of the training program or others. The Executive Secretary may consult with the chair or any member of the Commission for guidance or assistance in the informal resolution of complaints. In the event the Executive Secretary is unable to resolve a complaint in a manner acceptable to all parties, the Executive Secretary shall forward a copy of the complaint and the written results of any investigation to the Chair for further consideration.

2. The Chair or a member of the Commission appointed by the Chair shall determine whether a formal hearing is warranted or what other means or procedures should be followed to resolve the issues raised by the complaint.

D. Hearings.

1. Hearing Panel. If a hearing is to be held, the Chair of the Commission shall appoint a panel of three Commissioners to conduct the hearing. The three Commissioners appointed shall make such disclosures as required by Section III.C. The panel shall elect one of its members to serve as Chair.

2. Notice. The Executive Secretary shall serve a copy of the written complaint on all parties along with notice of a date, time, location of the hearing and the names of panel members appointed to conduct the hearing. The hearing shall be held within sixty (60) days after the date notice is served.

3. Challenges. Any challenge to the membership of the panel shall be addressed to the Chair who shall take appropriate action.

4. Response. Within twenty (20) days after service of the complaint and notice of hearing, the person(s) or organization(s) that are the subject(s) of the complaint (designated as "respondents"), may file a written response, by hand delivery or registered or certified mail, with the Executive Secretary at the office established by the Commission. The Chair of the Commission and the Chair of the panel may grant an extension of time for response for an additional ten (10) days if good cause therefor is

~~shown in a written application filed within the twenty (20) days allowed for response. Failure to file a timely response may be considered by the hearing panel.~~

~~E. Hearing Procedures.~~

~~1. By appointment with the Executive Secretary, parties may examine all relevant documents and evidence in the Commission office prior to the hearing. With the approval of the Executive Secretary, copies of relevant documents and evidence may be mailed to a requesting party or parties.~~

~~2. The specific procedure to be followed in a hearing shall be determined by the panel with the primary objective being a just, fair and prompt resolution of all issues raised in a complaint. The Rules of Evidence shall be relied on as a guide to that end but need not be considered binding. The panel shall be the judge of the relevance and materiality and weight of the evidence offered.~~

~~3. Neither the complainant nor any party shall have any *ex parte* communications with the members of the panel, except with respect to scheduling matters.~~

~~4. The panel may, in special circumstances and for good cause (especially, when there is no objection), permit an attorney to represent a party by telephone or receive evidence by telephone with such limitations and conditions as it may find just and reasonable.~~

~~5. No official transcript of the proceedings need be made. The panel may permit any party to record a hearing in any manner that does not interfere with the proceeding.~~

~~6. If the complainant fails to appear at a hearing or provide evidence in support of the complaint, it may be dismissed for want of prosecution and reinstated only on a showing of good cause for the default.~~

~~7. If a person or organization, the subject of a complaint, fails to appear at a scheduled hearing or to participate in good faith or to otherwise respond, the panel may proceed to a decision on the evidence before it.~~

~~F. Panel Decision.~~

~~1. A panel may dismiss a complaint at any point in the proceedings and file a written report stating the reason for the dismissal.~~

~~2. If after a hearing, a majority of the panel finds there is substantial and competent evidence to support the imposition of sanctions against a mediator or any person or organization, the panel may recommend to the full Commission imposition of one or more appropriate sanctions, including the following:~~

~~a. written admonishment;~~

~~b. additional training to be completed;~~

- ~~e. restriction on types of cases to be mediated in the future;~~
- ~~d. suspension for a specified term;~~
- ~~e. decertification; or~~
- ~~f. imposition of costs of the proceeding.~~

~~3. If there is a finding that the complaint was frivolous or made with the intent to vex or harass the person or training program complained about, the Commission may assess costs of the proceeding against a complaining party.~~

~~4. The Chair of the panel shall promptly forward a written report of the panel's decision and recommendation, if any, to the Executive Secretary who shall, in turn, mail copies to the Chair and to the parties by registered or certified mail.~~

VIII. INVESTIGATION AND REVIEW OF MATTERS OF ETHICAL CONDUCT, CHARACTER, AND FITNESS TO PRACTICE; CONDUCT OF HEARINGS; SANCTIONS

A. Establishment of the Standing Committee on Standards, Discipline, and Advisory Opinions.

- 1. Establishment of Committee.** The Chair of the Commission shall appoint a standing Committee on Standards, Discipline, and Advisory Opinions (Committee) to review the matters set forth in Section 2 below. Members of the Committee shall recuse themselves from deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest.
- 2. Matters to Be Considered by Committee.** The Committee shall review and consider the following matters:
 - a. appeals of staff decisions to deny an application filed by a person seeking certification as a mediator or filed by a person seeking recertification as a mediator based upon the person's conduct, character, or fitness to practice;
 - b. appeals of staff decisions to deny an application filed by a person or entity seeking certification or recertification as a mediator training program based upon the person's conduct, character, or fitness to practice or that of a trainer or program manager of the mediator training program;
 - c. complaints which are filed by a member of the Commission, its staff, or any member of the public about a mediator, an applicant for mediator certification or renewal of certification, a mediation trainer, or a mediator training program manager (affected person) based upon the affected person's conduct, character, or fitness to practice; and

- d. the drafting of advisory opinions pursuant to the Commission's Advisory Opinion Policy.

3. **The Investigation of Violations of the Standards of Conduct.**

a. **Information obtained during the process of certification or renewal.**

Commission staff shall review all pending grievances, disciplinary matters, judicial sanctions, and convictions reported by certified mediators, by applicants for mediator certification or certification renewal and by trainers or managers affiliated with mediator training programs applying for certification or certification renewal. Commission staff may contact those reporting to request additional information and may consider any other information acquired during the investigation process that bears on the applicant, mediator, or training program's eligibility for certification or certification renewal. Staff shall forward all such matters of eligibility to the Committee for review except those matters expressly exempted from review by the *Guidelines for Reviewing Pending Grievances/Complaints, Disciplinary Actions Taken and Convictions* (Guidelines) adopted by the Committee and approved by the Commission.

- b. **Complaints of mediator misconduct filed with the Commission.** The staff of the Commission shall forward written complaints about the conduct of an applicant, mediator, trainer, or training program manager filed by any member of the general public, the Commission, or its staff to the committee for investigation. Copies of such complaints shall be forwarded by certified U.S. mail, return receipt requested, to the affected person.

However, in instances where Commission staff believes a complaint to be wholly without merit, the Executive Director shall refer the matter to the committee's chair rather than to the committee as set forth above. If after giving the complaint due consideration, the chair also believes that the complaint is wholly without merit, the complaint shall be dismissed with notification to the complaining party. The complaining party shall have thirty (30) days from the date of notification to appeal the chair's determination to the full Committee on Standards, Discipline, and Advisory Opinions.

- c. **Investigation by the Standing Committee.** The Committee shall investigate all matters brought before it by staff pursuant to the provisions of subsection a. or b. and may contact the following persons and entities for information concerning such application or complaint: the affected person or applicant, State Bar officials, officials of other professional licensing bodies to whom the affected person is subject, parties or other individuals who brought complaints against the mediator or applicant, court officials, and any other person or entity who may have additional information about the matters reported or facts alleged. The Chair or his/her designee may issue subpoenas for the attendance of witnesses and for the production of books, papers, or other documentary evidence deemed necessary or material to any such investigation.

All information in Commission files pertaining to the initial certification of a mediator or mediation training program or renewals of such certifications, to requests for informal or formal guidance from the Commission pursuant to the Advisory Opinion Policy, and to pending complaints shall be confidential.

- d. Probable Cause Determination.** The Committee on Standards, Discipline, and Advisory Opinions shall deliberate to determine whether probable cause exists to believe that the conduct of the affected person or applicant:
- i) is inconsistent with good moral character (MSC Rule 8.E., FFS Rule 8.F. and Rule VII above);
 - ii) is a violation of the Supreme Court's Standards of Professional Conduct for Mediators or any other standards of professional conduct that are not in conflict with nor inconsistent with the Supreme Court's Standards and to which the mediator, applicant, trainer, or manager is subject (Rule VII above);
 - iii) is a violation of the rules for the Mediated Settlement Conference, Family Financial Settlement, or Pre-litigation Farm Nuisance Mediation Programs;
 - iv) is a violation of MSC Rule 9 or FFS Rule 9 or guidelines and other policies adopted by the Commission that amplify those rules;
 - v) reflects a lack of fitness to conduct mediations or to serve as a trainer or training program manager (Rule VII above); or
 - vi) discredits the Commission, the courts, or the mediation process (Rule VII above).

If there is a finding of probable cause, that the affected person or applicant shall be sanctioned pursuant to these rules.

4. Authority of Committee to Dismiss Complaints or Propose Sanctions.

- a. If a majority of Committee members reviewing a matter finds no probable cause pursuant to Section A.3.d. above, Commission staff shall certify or recertify the affected person or applicant without conditions or, if the investigation were initiated by the filing of a written complaint, shall dismiss the complaint and notify the complaining party and the affected person by certified U.S. mail, return receipt requested, that no further action will be taken and that the matter is dismissed. There shall be no right of appeal from the Committee's decision to dismiss a complaint or certify an affected person or applicant.
- b. If a majority of Committee members reviewing a matter finds probable cause pursuant to Section A.3.d. above, the Committee shall propose sanctions on the affected person or applicant as set forth in Section B.10. of these rules, except that if the Committee determines that the violation of the Standards or rules is technical or minor in nature, that the complaining party was not significantly harmed and that the Commission, courts or programs were not discredited, the Committee may elect to caution the affected person or applicant rather than imposing sanctions. The Committee's findings, conclusions, and proposed sanctions or any letter of caution shall be in writing

and forwarded to the affected person or applicant by U.S. mail, return receipt requested.

- c. If sanctions are proposed, the affected person or applicant may appeal the findings and/or proposed sanctions to the Commission within thirty (30) days from the date of the letter transmitting the Committee's findings and its proposed sanctions. Notification of appeal must be in writing. If no appeal is filed within thirty (30) days, the affected person or applicant shall be deemed to have accepted the Committee's findings and proposed sanctions and said sanctions shall commence.

5. **Disputes Between Mediators and Complainants.** Commission staff may attempt to resolve any disputes between a complaining party and an affected person in which the conduct of the affected person does not constitute a violation of the grounds set out in Section A.3.d. above.

B. Appeal to the Commission.

1. **The Commission Shall Meet to Consider Appeals.** An appeal of the Committee's determination pursuant to Section A.3.d. above shall be heard by the members of the Commission, except that all members of the Committee who participated in issuing the determination that is on appeal shall be recused and shall not participate in the Commission's deliberations. No matter shall be heard and decided by less than three Commission members. Members of the Commission shall recuse themselves when they cannot act impartially. Any challenges raised by the appealing party or any other party questioning the neutrality of a member shall be decided by the Commission's chair.
2. **Conduct of the Hearing.**
 - a. At least thirty (30) days prior to the hearing before the Commission, Commission staff shall forward to all parties, special counsel to the Commission, and members of the Commission who will hear the matter, copies of all documents considered by the Committee and summaries of witness interviews and/or character recommendations.
 - b. Hearings conducted by the Commission pursuant to this rule shall be a *de novo* review of the Committee's decision.
 - c. Complainants, applicants, and affected persons may appear at the hearing with or without counsel.
 - d. All hearings will be open to the public except that for good cause shown the presiding officer may exclude from the hearing room all persons except the parties, counsel, and those engaged in the hearing. No hearing will be closed to the public over the objection of an applicant or affected person.
 - e. In the event that the complainant, affected person, or applicant fails to appear without good cause, the Commission shall proceed to hear from those parties

and witnesses who are present and make a determination based on the evidence presented at the proceeding.

- f. Proceedings before the Commission shall be conducted informally but with decorum.
 - g. The Commission, through its counsel, and the applicant or affected person may present evidence in the form of sworn testimony and/or written documents. The Commission, through its counsel, and the applicant or affected person may cross-examine any witness called to testify by the other. Commission members may question any witness called to testify at the hearing. The Rules of Evidence shall not apply, except as to privilege, but shall be considered as a guide toward full and fair development of the facts. The Commission shall consider all evidence presented and give it appropriate weight and effect.
 - h. The Commission's chair or designee shall serve as the presiding officer. The presiding officer shall have such jurisdiction and powers as are necessary to conduct a proper and speedy investigation and disposition of the matter on appeal. The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, or other documentary evidence.
- 3. Date of Hearing.** An appeal of any sanction proposed by the Committee shall be heard by the Commission within ninety (90) days of the date the sanction is imposed.
 - 4. Notice of Hearing.** The Commission's office shall serve on all parties by certified U.S. mail, return receipt requested, notice of the date, time, and place of the hearing no later than sixty (60) days prior to the hearing.
 - 5. Ex Parte Communications.** No person shall have any *ex parte* communication with members of the Commission concerning the subject matter of the appeal. Communications regarding scheduling matters shall be directed to Commission staff.
 - 6. Attendance.** All parties, including complaining parties, applicants and parties against whom sanctions are proposed, shall attend in person. The presiding officer may, in his or her discretion, permit an attorney to represent a party by telephone or through video conference or to allow witnesses to testify by telephone or through video conference with such limitations and conditions as are just and reasonable. If an attorney or witness appears by telephone or video conference, the Commission's staff must be notified at least twenty (20) days prior to the proceeding. At least five (5) days prior to the proceeding, the Commission's staff must be provided with contact information for those who will participate by telephone or video conference.
 - 7. Witnesses.** The presiding officer shall exercise discretion with respect to the attendance and number of witnesses who appear, voluntarily or involuntarily, for

the purpose of ensuring the orderly conduct of the proceeding. Each party shall forward to the Commission's office at least ten (10) days prior to the hearing the names of all witnesses who will be called to testify.

8. **Transcript.** The Commission shall retain a court reporter to keep a record of the proceeding. Any party who wishes to obtain a transcript of the record may do so at his/her own expense by contacting the court reporter directly. The only official record of the proceeding shall be the one made by the court reporter retained by the Commission. Copies of tapes alone, non-certified transcripts therefrom, or a record made by a court reporter retained by a party are not part of the official record.
9. **Commission Decision.** After the hearing, a majority of the Commission members hearing the appeal may: (i) find that there is not clear and convincing evidence to support the imposition of sanctions and, therefore, dismiss the complaint or direct the Commission staff to certify or recertify the mediator or mediator training program, or (ii) find that there is clear and convincing evidence that grounds exist to impose sanctions and impose sanctions. The Commission shall set forth its findings, conclusions, and sanctions, or other action, in writing and serve its decision on the parties within sixty (60) days of the date of the hearing.
10. **Sanctions.** The sanctions that may be proposed by the Committee or imposed by the Commission include, but are not limited to, the following:
 - a. Private, written admonishment;
 - b. Public, written admonishment;
 - c. Completion of additional training;
 - d. Restriction on types of cases to be mediated in the future;
 - e. Reimbursement of fees paid to the mediator or training program;
 - f. Suspension for a specified term;
 - g. Probation for a specified term;
 - h. Certification or renewal of certification upon conditions;
 - i. Denial of certification or certification renewal;
 - j. Decertification; and/or
 - k. Prohibition on participation as a trainer or manager of a certified mediator training program either indefinitely or for a period of time.
11. **Publication of Committee/Commission Decisions.**
 - a. Names of mediators who are reprimanded privately or applicants who have never been certified and have been denied certification shall not be published in the Commission's newsletter and on its web site.
 - b. Names of mediators who are sanctioned under any other provision of Section B.10. above and who have been denied reinstatement under Section B.13. below shall be published in the Commission's newsletter and on its web site along with a short summary of the facts involved and the discipline imposed. For good cause shown, the Commission may waive this requirement.

- c. Chief District Court Judges and/or Senior Resident Superior Court Judges in districts which the mediator serves, the NC State Bar and any other professional licensing/certification bodies to which the mediator is subject, and other trial forums or agencies having mandatory programs and using mediators certified by the Commission shall be notified of any sanction imposed upon a mediator except those named in Subsection a. above.
 - d. If the Commission imposes sanctions as a result of a complaint filed by a third party, the Commission's office shall, on request, release copies of the complaint, response, counter response, and Commission/Committee decision.
- 12. Appeal.** The General Court of Justice, Superior Court Division in Wake County shall have jurisdiction over appeals of Commission decisions imposing sanctions or denying applications for mediator or mediator training program certification. An order imposing sanctions or denying applications for mediator or mediator training program certification shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence. Notice of appeal shall be filed within thirty (30) days of the date of the Commission's decision.
- 13. Reinstatement.** A mediator, trainer, or manager who has been sanctioned under this rule may be reinstated as a certified mediator or as an active trainer or manager pursuant to Section B.13.g. below. Except as otherwise provided by the Standing Committee or Commission, no application for reinstatement may be tendered within two years of the date of the sanction or denial.
- a. A petition for reinstatement shall be made in writing, verified by the petitioner, and filed with the Commission's office.
 - b. The petition for reinstatement shall contain:
 - i) the name and address of the petitioner;
 - ii) the offense or misconduct upon which the suspension or decertification or the bar to training or program management was based; and
 - iii) a concise statement of facts claimed to justify reinstatement as a certified mediator or a trainer or program manager.
 - c. The petition for reinstatement may also contain a request for a hearing on the matter to consider any additional evidence which the petitioner wishes to put forth, including any third party testimony regarding his or her character, competency, or fitness to practice as a mediator, trainer, or manager.
 - d. The Commission's staff shall refer the petition to the Commission for review.
 - e. If the petitioner does not request a hearing, the Commission shall review the petition and shall make a decision within sixty (60) days of the filing of the petition. That decision shall be final. If the petitioner requests a hearing, it

shall be held within ninety (90) days of the filing of the petition. The Commission shall conduct the hearing consistent with Section B above. At the hearing, the petitioner may:

- i) appear personally and be heard;
 - ii) be represented by counsel;
 - iii) call and examine witnesses;
 - iv) offer exhibits; and
 - v) cross-examine witnesses.
- f. At the hearing, the Commission may call witnesses, offer exhibits, and examine the petitioner and witnesses.
- g. The burden of proof shall be upon the petitioner to establish by clear and convincing evidence:
 - i) that the petitioner has rehabilitated his/her character, addressed and resolved any conditions which led to his/her suspension or decertification, completed additional training in mediation theory and practice to ensure his/her competency as a mediator, trainer, or manager, and/or taken steps to address and resolve any other matter(s) which led to the petitioner's suspension, decertification, or prohibition from serving as a trainer or manager; and
 - ii) the petitioner's certification will not be detrimental to the Mediated Settlement Conference and/or Family Financial Settlement Programs, the Commission, the courts, or the public interest; and
 - iii) that the petitioner has completed any paperwork required for reinstatement and paid any required reinstatement and/or certification fees.
- h. If the petitioner is found to have rehabilitated him or herself and is fit to serve as a mediator, trainer, or manager, the Commission shall reinstate the petitioner as a certified mediator or as an active trainer or manager. However, if the suspension or decertification or the bar to training or management has continued for more than two years, the reinstatement may be conditioned upon the completion of additional training and observations as needed to refresh skills and awareness of program rules and requirements.
- i. The Commission shall set forth its decision to reinstate a petitioner or to deny reinstatement in writing, making findings of fact and conclusions of law, and serve the decision on the petitioner by U.S. mail, return receipt requested, within thirty (30) days of the date of the hearing.
- j. If a petition for reinstatement is denied, the petitioner may not apply again pursuant to this section until two years have lapsed from the date the denial was issued.

- k. The General Court of Justice, Superior Court Division in Wake County shall have jurisdiction over appeals of Commission decisions to deny reinstatement. An order denying reinstatement shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence. Notice of appeal shall be filed within thirty (30) days of the date of the Commission's decision.

IX. COMMISSION DECISION.

~~A. Final action on any panel recommendation for discipline or adverse personnel action is reserved for Commission decision.~~

~~B. If a decision is made or an agreement reached limiting a mediator's service to specified types of cases or to suspend or decertify a mediator, trainer or training program, the Executive Secretary shall notify, appropriate judicial districts in writing of the sanction. If a training program's certification is suspended or revoked, the Executive Secretary shall remove that program from the list of certified training programs.~~

~~C. All decisions of the Commission are public records.~~

RULE IX. INVESTIGATION AND REVIEW OF APPLICATIONS FOR CERTIFICATION DENIED OR REVOKED FOR REASONS OTHER THAN THOSE PERTAINING TO ETHICS AND CONDUCT.

A. Establishment of the Standing Committee on Certification of Mediators and Mediator Training Programs.

1. **Establishment of Committee.** The Chair of the Commission shall appoint a standing Committee on Certification of Mediators and Mediator Training Programs (Committee) to review the matters set forth in Section 2 below. Members of the Committee shall recuse themselves from deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest.
2. **Matters to Be Considered by Committee.** The Committee shall review and consider the following matters:
 - a. Appeals of staff decisions to deny an application filed by a person seeking mediator certification or recertification or by a mediator training program seeking certification or recertification, because of deficiencies that do not relate to conduct or ethics. The latter deficiencies shall be considered pursuant to Rule 8.
 - b. Complaints which are filed by a member of the Commission, its staff, or any member of the public about a certified mediator or certified mediator training program or an applicant for certification or certification renewal; except that, complaints relating to applicant, mediator, trainer or manager conduct or ethics shall be considered only pursuant to Rule 8.

3. The Investigation of Qualifications.

a. Information obtained during the process of certification or renewal.

Commission staff shall review all pending applications for certification and recertification to determine whether the applicant meets the non-ethics related qualifications set out in the MSC Rules 8 and 9 and FFS Rules 8 and 9 and any guidelines or other policies adopted by the Commission amplifying those rules. Commission staff may contact those reporting to request additional information and may consider any other information acquired during the investigation process that bears on the applicant's eligibility for certification or certification renewal.

b. Complaints about mediator or mediator training program qualifications filed with the Commission.

The staff of the Commission shall forward written complaints about the qualifications of a certified mediator or certified mediator training program or any trainer or manager affiliated with such program (affected person/program) that do not pertain to ethics or conduct filed by any member of the general public, the Commission, or its staff to the Committee for investigation. Copies of such complaints shall be forwarded by certified U.S. mail, return receipt requested, to the affected person.

However, in instances where Commission staff believes a complaint to be wholly without merit, the Executive Director shall refer the matter to the Committee's chair rather than to the Committee as set forth above. If after giving the complaint due consideration, the chair also believes that the complaint is wholly without merit, the complaint shall be dismissed with notification to the complaining party. The complaining party shall have thirty (30) days from the date of notification to appeal the chair's determination to the full Committee on Certification of Mediators and Mediator Training Programs. The appeal shall be in writing and directed to the Commission's office.

c. Investigation by the Standing Committee.

The Committee shall investigate all matters brought before it by staff pursuant to the provisions of Sections a. or b. The Chair or designee may issue subpoenas for the attendance of witnesses and for the production of books, papers, or other documentary evidence deemed necessary or material to any such investigation. The Chair or designee may contact the following persons and entities for information concerning such application or complaint:

- i) all references, employers, colleges, and other individuals and entities cited in applications for mediator certification, including any and all other professional licensing or certification bodies to which the applicant is subject.**
- ii) all proposed trainers cited in training program applications and in the case of applications for certification renewal, participants who have completed the training program.**

- iii) all parties bringing complaints about a mediator or a mediator training program's qualifications for certification or certification renewal and any other person or entity with information about the subject of the complaint.

All information in Commission files pertaining to the initial certification of a mediator or mediation training program or to renewals of such certifications shall be confidential.

- d. **Probable Cause Determination.** The Committee on Certification of Mediators and Mediator Training Programs shall deliberate to determine whether probable cause exists to believe that the affected person/program or the applicant:
 - i) does not meet the qualifications for mediator certification set out in MSC Rule 8 and/or FFS Rule 8 or guidelines and other policies adopted by the Commission that amplify those rules; or
 - ii) does not meet the qualifications for mediator training program certification as set out in MSC rule 9 and/or FFS Rule 9 or guidelines and other policies adopted by the Commission that amplify those rules.

If probable cause is found, that the application for certification or re-certification should be denied or the affected person/program's certification should be revoked.

4. Authority of Committee to Deny Certification or Certification Renewal or to Revoke Certification.

- a. If a majority of Committee members reviewing a matter finds no probable cause pursuant to Section A.3.d. above, Commission staff shall certify or recertify the affected person/program or applicant. If the investigation were initiated by the filing of a written complaint, the Committee shall dismiss the complaint and notify the complaining party and the affected person/program or applicant in writing by certified U.S. mail, return receipt requested, that the complaint has been dismissed and that the affected person/program or applicant will be certified or re-certified. There shall be no right of appeal from the Committee's decision to dismiss a complaint or to certify or re-certify an affected person/program or applicant.
- b. If a majority of Committee members reviewing a matter finds probable cause pursuant to Section A.3.d. above, the Committee shall deny certification or re-certification or revoke certification. The Committee's findings, conclusions, and denial shall be in writing and forwarded to the affected person/program or applicant by U.S. mail, return receipt requested.
- c. If the Committee denies certification or re-certification or revokes certification, the affected person/program or applicant may appeal the denial

or revocation to the Commission within thirty (30) days from the date of the letter transmitting the Committee's findings, conclusions, and denial. Notification of appeal must be in writing and directed to the Commission's office. If no appeal is filed within thirty (30) days, the affected person/program or applicant shall be deemed to have accepted the committee's findings and denial or revocation.

B. Appeal of the Denial to the Commission.

1. **The Commission Shall Meet.** An appeal of a denial or revocation by the Committee pursuant to Section A.3.d. above shall be heard by the members of the Commission, except that all members of the Committee who participated in issuing the determination that is on appeal shall recuse themselves from participating. No matter shall be heard and decided by less than three Commission members. Members of the Commission shall recuse themselves when they cannot act impartially. Any challenges raised by the appealing party or any other party questioning the neutrality of a member shall be decided by the Commission's chair.
2. **Conduct of the Hearing.**
 - a. At least thirty (30) days prior to the hearing before the Commission, Commission staff shall forward to all parties; special counsel to the Commission, if appointed; and members of the Commission who will hear the matter, copies of all documents considered by the Committee and summaries of witness interviews and/or character recommendations.
 - b. Hearings conducted by the Commission will be a *de novo* review of the Committee's decision.
 - c. The Commission's chair or his/her designee shall serve as the presiding officer. The presiding officer shall have such jurisdiction and powers as are necessary to conduct a proper and speedy investigation and disposition of the matter on appeal. The presiding officer may administer oaths and may issue subpoenas for the attendance of witnesses and the production of books, papers, or other documentary evidence.
 - d. Special counsel supplied either by the Attorney General at the request of the Commission or employed by the Commission may present the evidence in support of the denial or revocation of certification. Commission members may question any witnesses called to testify at the hearing.
 - e. The Commission, through its counsel, and the applicant or affected person/program may present evidence in the form of sworn testimony and/or written documents. The Commission, through its counsel, and the applicant or affected person/program, may cross-examine any witness called to testify at the hearing. The Rules of Evidence shall not apply, except as to privilege, but shall be considered as a guide toward full and fair development of the facts. The Commission shall consider all evidence presented and give it appropriate weight and effect.

- f. All hearings shall be conducted in private, unless the applicant or affected person/program requests a public hearing.
 - g. In the event that the complainant, affected person/program, or applicant fails to appear without good cause, the Commission shall proceed to hear from those parties and witnesses who are present and make a determination based on the evidence presented at the proceeding.
 - h. Proceedings before the Commission shall be conducted informally but with decorum.
3. **Date of Hearing.** An appeal of any denial by the Committee shall be heard by the Commission within ninety (90) days of the date of the letter transmitting the Committee's findings, conclusions, and denial or revocation.
 4. **Notice of Hearing.** The Commission's office shall serve on all parties by certified U.S. mail, return receipt requested, notice of the date, time, and place of the hearing no later than sixty (60) days prior to the hearing.
 5. **Ex Parte Communications.** No person shall have any *ex parte* communication with members of the Commission concerning the subject matter of the appeal. Communications regarding scheduling matters shall be directed to Commission staff.
 6. **Attendance.** All parties, including complaining parties and applicants, or their representatives in the case of a training program, shall attend in person. The presiding officer may, in his or her discretion, permit an attorney to represent a party by telephone or through video conference or to allow witnesses to testify by telephone or through video conference with such limitations and conditions as are just and reasonable. If an attorney or witness appears by telephone or video conference, the Commission's staff must be notified at least twenty (20) days prior to the proceeding. At least five (5) days prior to the proceeding, the Commission's staff must be provided with contact information for those who will participate by telephone or video conference.
 7. **Witnesses.** The presiding officer shall exercise his/her discretion with respect to the attendance and number of witnesses who appear, voluntarily or involuntarily, for the purpose of ensuring the orderly conduct of the proceeding. Each party shall forward to the Commission's office at least ten (10) days prior to the hearing the names of all witness who will testify for them.
 8. **Transcript.** The Commission shall retain a court reporter to keep a record of the proceeding. Any party who wishes to obtain a transcript of the record may do so at his or her own expense by contacting the court reporter directly. The only official record of the proceeding shall be the one made by the court reporter retained by the Commission. Copies of tapes alone, non-certified transcripts therefrom, or a record made by a court reporter retained by a party are not part of the official record.

9. **Commission Decision.** After the hearing, a majority of the Commission members hearing the appeal may: (i) find that there is not clear and convincing evidence to support the denial or revocation and, therefore dismiss the complaint or direct the Commission staff to certify or recertify the mediator or mediator training program; or (ii) find that there is clear and convincing evidence to affirm the committee's findings and denial or revocation. The Commission shall set forth its findings, conclusions, and denial in writing and serve it on the parties within sixty (60) days of the date of the hearing.
10. **Publication of Committee/Commission Decisions.**
- a. Names of applicants for mediator certification or names of mediator training programs that are denied certification or recertification or who have had their certification revoked pursuant to this rule shall not be published in the Commission's newsletter or on its web site and the fact of that denial or revocation shall not be generally publicized.
 - b. Chief District Court Judges and/or Senior Resident Superior Court Judges in districts which the mediator serves, the NC State Bar and any other professional licensing/certification bodies to which the mediator is subject, and other trial forums or agencies having mandatory programs and using mediators certified by the Commission shall be notified of any denial or revocation of certification.
11. **Appeals.** The General Court of Justice, Superior Court Division in Wake County shall have jurisdiction over appeals of Commission decisions denying an application or revoking a certification. An order denying or revoking certification pursuant to this rule shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence. Notice of appeal shall be filed within thirty (30) days of the date of the Commission's decision.
12. **Reinstatement of Certification.** A mediator or training program whose certification renewal has been denied or whose certification has been revoked under this rule may be re-certified or reinstated as a certified mediator or mediation training program pursuant to Section B.12.g. below. An application for reinstatement may be tendered at any time the applicant believes that he/she/it is qualified to be reinstated.
- a. A petition for reinstatement shall be made in writing, verified by the petitioner, and filed with the Commission's office.
 - b. The petition for reinstatement shall contain:
 - i) the name and address of the petitioner;
 - ii) the qualification upon which the denial or revocation was based; and
 - iii) a concise statement of facts claimed to justify certification or recertification as a certified mediator or mediator training program.

- c. The petition for reinstatement or certification may also contain a request for a hearing on the matter to consider any additional evidence that the petitioner wishes to put forth.
- d. The Commission's staff shall refer the petition to the Commission for review.
- e. If the petitioner does not request a hearing, the Commission shall review the petition and shall make a decision within sixty (60) days of the filing of the petition. That decision shall be final. If the petitioner requests a hearing, it shall be held within ninety (90) days of the filing of the petition. The Commission shall conduct the hearing consistent with Section B above. At the hearing, the petitioner may:
 - i) appear personally and be heard;
 - ii) be represented by counsel;
 - iii) call and examine witnesses;
 - iv) offer exhibits; and
 - v) cross-examine witnesses.
- f. At the hearing, the Commission may call witnesses, offer exhibits, and examine the petitioner and witnesses.
- g. The burden of proof shall be upon the petitioner to establish by clear and convincing evidence:
 - i) that the petitioner has satisfied the qualifications that led to the denial or revocation; and
 - ii) that the petitioner has completed any paperwork required for reinstatement and paid any required reinstatement and/or certification fees.
- h. If the petitioner is found to have met the qualifications and is entitled to be certified as a mediator or mediator training program, the Commission shall so certify.
- i. If a petition for reinstatement is denied, the petitioner may apply again pursuant to this section at any time after the qualifications are met.
- j. The Commission shall set forth its decision to certify a mediator or mediator training program or to deny certification in writing, making findings of fact and conclusions of law, and serve the decision on the petitioner by U.S. mail, return receipt requested, within thirty (30) days of the date of the hearing.
- k. The General Court of Justice, Superior Court Division in Wake County shall have jurisdiction over appeals of Commission decisions to deny reinstatement. An order denying reinstatement shall be reviewable upon appeal where the entire record as submitted shall be reviewed to determine whether the order is

supported by substantial evidence. Notice of review shall be filed with the Superior Court in Wake County within thirty (30) days of the date of the Commission's decision.

X. INTERNAL OPERATING PROCEDURES.

- A.** The Commission may adopt and publish internal operating procedures and policies for the conduct of Commission business.
- B.** The Commission's procedures and policies may be changed as needed on the basis of experience.