

In the Supreme Court of North Carolina

Order Adopting Amendments to the Rules of the North Carolina Supreme Court for the Dispute Resolution Commission

WHEREAS, section 7A-38.2 of the North Carolina General Statutes establishes the Dispute Resolution Commission to provide for the certification and qualification of mediators, other neutrals, and mediation and other neutral training programs, the regulation of mediators, other neutrals, trainers, and managers affiliated with certified or qualified programs, and

WHEREAS, N.C.G.S. § 7A-38.2(b) provides for this Court to implement section 7A-38.2 by adopting rules,

NOW, THEREFORE, pursuant to N.C.G.S. § 7A-38.2(b), the Supreme Court's Rules for the Dispute Resolution Commission are hereby amended to read as in the following pages. These amended Rules shall be effective on the 1st day of April, 2014.

Adopted by the Court in conference the 23rd day of January, 2014. The Appellate Division Reporter shall promulgate by publication as soon as practicable the portions of the Supreme Court's Rules for the Dispute Resolution Commission amended through this action in the advance sheets of the Supreme Court and the Court of Appeals.

Hudson, J.,
Recused.

Beale
For the Court

Witness my hand and the seal of the Supreme Court of North Carolina, this the 5th day of February, 2014.

M C R
M. C. Hackney, Assistant Clerk
Christie Speir Cameron Roeder
Clerk of the Supreme Court

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

TABLE OF CONTENTS

- I. Officers of the Commission.
- II. Commission Office; Staff.
- III. Commission Membership.
- IV. Meetings of the Commission.
- V. Commission's Budget.
- VI. Powers and Duties of the Commission.
- VII. Mediator Conduct.
- VIII. Standards and Advisory Opinions Committee.
- IX. Grievance and Disciplinary Committee.
- X. Mediator Certification and Training Committee.
- XI. Other Standing Committees.
- XII. Internal Operating Procedures.

I. OFFICERS OF THE COMMISSION

A. Officers. The North Carolina Dispute Resolution Commission (Commission) shall establish the offices of chair and vice chair.

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 Supreme Court of North Carolina. (Supreme Court).
- (2) The vice chair shall be elected by vote of the full Commission for a two-year term and shall serve in the absence of the chair.

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 appoint ex-officio members to serve on either standing or *ad hoc* committees. Ex-officio members shall have particular expertise in dispute resolution or be representatives of dispute resolution programs or organizations. Ex-officio members may not vote upon issues before committees or before the Commission, but may attend committee and Commission meetings and participate in discussions.

II. COMMISSION OFFICE; STAFF

- A. **Office.** The chair, in consultation with the director of the North Carolina Administrative Office of the Courts (NCAOC), 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 NCAOC, 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 NCAOC.

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 Commission members 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 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.

An ex-officio member who has a conflict of interest with regard to a matter before a committee or the Commission shall disclose his/her conflict before engaging in any discussion related to the matter.

- D. **Compensation.** Pursuant to N.C.G.S. § 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 pursuant to Rule IX of these Rules or to deny certification or certification renewal or to revoke certification pursuant to Rule X of these Rules shall require an affirmative vote 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, portions of meetings, or hearings conducted pursuant to Rules IX and X 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.
- E. **Committee Meetings.** Committees shall meet as needed. A majority of committee members eligible to vote shall constitute a quorum for purposes of standing and *ad hoc* committee meetings. Decisions shall be made by a majority of the members eligible to vote who are present and voting except that decisions to dismiss complaints or impose sanctions pursuant to Rule IX of these Rules or to deny certification or certification renewal or to revoke certification pursuant to Rule X of these Rules shall require an affirmative vote consistent with those Rules.

V. COMMISSION'S BUDGET

The Commission, in consultation with the director of the NCAOC, 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 mediations; and (4) persons or organizations seeking reinstatement following a prior suspension or decertification.

- B. Review applications as against criteria for certification set forth in rules adopted by the Supreme Court for mediated settlement conference/mediation programs operating under the Commission's jurisdiction and as against such other requirements of 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 on-line or 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, keep current, and make available on-line lists of certified mediators which specify the judicial districts in which each mediator wishes to practice.
- F. Prepare, keep current, and make available on-line biographical information submitted to the Commission by certified mediators in order to make such information accessible to court staff, lawyers, and the wider public.
- 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 (Standards) adopted by the 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 Standards. A certified mediator shall inform the Commission of any criminal convictions, disbarments or other revocations or suspensions of a professional license, complaints filed against the mediator or disciplinary actions imposed upon the mediator by any professional organization, judicial sanctions, civil judgments, tax liens or filings for bankruptcy. Failure to do so is a violation of these Rules. Violations of the 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.

VIII. STANDARDS AND ADVISORY OPINIONS COMMITTEE

A. The Standards and Advisory Opinions Committee. The Commission's chair shall appoint a standing committee on Standards and Advisory Opinions to address the matters listed below in Rule VIII.B. Members of the Standards and Advisory Opinions Committee shall recuse themselves from discussing or deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest. Pursuant to Rule I.C(2) only Commission members may vote on matters before the Standards and Advisory Opinions Committee.

B. Matters to Be Considered by the Standards and Advisory Opinions Committee. The Standards and Advisory Opinions Committee shall review and consider the following:

- (1) Matters relating to the Standards, including making recommendations for revisions to the Standards.
- (2) Commission staff requests for assistance in responding to inquiries from mediators and the public regarding matters of ethics and Standards interpretation and the drafting of advisory opinions pursuant to the Commission's Advisory Opinion Policy.
- (3) Matters relating to mediator advertising, including advertising or related materials, asserting that the individual or training program featured in the advertisement is certified or eligible to be certified.
- (4) Matters that interface with the N.C. State Bar or other professional regulatory agencies regarding inconsistencies and/or conflicts between DRC Rules and the rules of those entities.

C. Initial Staff Review.

- (1) Commission staff may respond in writing to requests for advice under VIII.B and may respond orally when time is of the essence. Written requests for formal advisory opinions shall be referred to the Chair of the Standards and Advisory Opinions Committee in compliance with procedures established by the committee. The referral procedure shall ensure that the case file number, names of parties, and other identifying information are deleted so that any decision cannot be influenced by this information.
- (2) All requests for informal advice shall be logged by Commission staff and the requesting party's confidentiality shall be maintained unless otherwise requested by the requesting party.

D. Review by Standards and Advisory Opinions Committee.

- (1) If the Standards and Advisory Opinions Committee Chair determines that a formal Commission advisory opinion is not warranted under Rule VIII.B, the requesting party shall be so advised in writing and provided with informal advice if requested.
- (2) If the Standards and Advisory Opinions Committee Chair determines that a Commission advisory opinion is warranted under Rule VIII.B, the matter shall be considered by the Standards and Advisory Opinions Committee, and if the Standards and Advisory Opinions Committee concurs, a proposed advisory opinion shall be prepared and submitted to the Commission for its consideration. If the Standards and Advisory Opinions Committee determines that a formal Commission advisory opinion is not warranted under Rule VIII.B, the requesting person shall be so advised in writing and provided with informal advice if requested.

IX. GRIEVANCE AND DISCIPLINARY COMMITTEE

A. Grievance and Disciplinary Committee. The Commission's chair shall appoint a standing committee entitled the Grievance and Disciplinary Committee to address the matters listed below in Paragraph B. Members of the Committee shall recuse themselves from discussing or deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest. Pursuant to Rule I.C(2) only Commission members may vote on matters before the Grievance and Disciplinary Committee.

B. Matters to Be Considered by the Grievance and Disciplinary Committee. The Grievance and Disciplinary Committee shall review and consider the following:

- (1) Matters relating to the moral character, conduct, or fitness to practice of an applicant for mediator certification or certification renewal or of a certified mediator and appeals of staff decisions to deny an application for mediator certification or certification renewal on the basis of the applicant's moral character, conduct, or fitness to practice.
- (2) Matters relating to the moral character, conduct, or fitness to practice of any trainer or manager affiliated with a certified mediator training program or a training program that is an applicant for certification or certification renewal and appeals of staff decisions to deny an application for mediator training program certification or certification renewal on the basis of the moral character, conduct, or fitness to practice of any trainer or manager affiliated with the program.
- (3) Complaints by a member of the Commission, its staff, a judge, court staff, or any member of the public regarding the moral character, conduct, or fitness to practice of a mediator under the Commission's jurisdiction or a trainer or manager affiliated with a certified mediator training program.

C. Initial Staff Review and Determination.

- (1) **Review and Referral of Matters Relating to Moral Character, Conduct, or Fitness to Practice.** Commission staff shall review information relating to the moral character, conduct, or fitness to practice of applicants seeking mediator certification or certification renewal, including matters which applicants are required to report under program rules, and information relating to the moral character, conduct, or fitness to practice of trainers and managers affiliated with mediator training programs seeking certification or certification renewal (applicants).

Commission staff may contact applicants to discuss matters reported and may conduct background checks on applicants. Any third party with knowledge of any information relating to the moral character, conduct, or fitness to practice of an applicant may notify the Commission. Commission staff shall seek to verify any such third party reports and may disregard those that cannot be verified. Commission staff may contact any agency where complaints about an applicant have been filed or any agency or judge that has imposed discipline on an applicant.

All such reported matters or any other information gathered by Commission staff and bearing on moral character, conduct, or fitness to practice shall be forwarded directly to the Grievance and Disciplinary Committee for its review, except those matters expressly exempted from review by the Guidelines for Reviewing Pending Grievances/Complaints, Disciplinary Actions Taken, Convictions, Civil Judgments, Tax Liens, Bankruptcies, and Other Matters Relevant to Good Moral Character (Guidelines). Matters that are exempted by the Guidelines may be processed by Commission staff and will not act as a bar to certification or certification renewal.

Commission staff or the Grievance and Disciplinary Committee may elect to take any matter relating to an applicant's moral character, conduct, or fitness to practice, including matters reported by third parties or revealed by background check, and process it as a complaint pursuant to Rule IX.C(3) below. Commission staff may consult with the Grievance and Disciplinary Committee's chair prior to making such election.

- (2) **Commission Staff Review of Oral or Written Complaints.** Commission staff shall review oral and written complaints made to the Commission regarding the moral character, conduct, or fitness to practice of a mediator under the jurisdiction of the Commission or a trainer or manager affiliated with a certified mediator training program (respondents), except that Commission staff shall not act on anonymous complaints unless staff can independently verify the allegations made.
- (a) **Oral complaints.** If after reviewing an oral complaint, Commission staff determine it is necessary to contact any third parties about the matter including any witnesses identified by the complaining party

or other third parties identified by staff during its review of the complaint, or to refer the matter to the Grievance and Disciplinary Committee, the Commission staff shall first make a summary of the complaint and forward it to the complaining party who shall be asked to sign the summary along with a release and to return it to the Commission's office, except that when complaints are initiated by a member of the Commission, the Grievance and Disciplinary Committee, the Standards and Advisory Opinions Committee or by Commission staff, judges, other court officials, or court staff, they need not be in writing and may be filed anonymously.

- (b) **Written complaints.** Commission staff shall acknowledge all written complaints within 30 days of receipt. Written complaints may be made by letter, email, or filed on the Commission's approved complaint form. If a complaint is not made on the approved form, Commission staff shall require the complaining party to sign a release before contacting any third parties in the course of an investigation.
- (c) If a complaining party refuses to sign a complaint summary prepared by Commission staff or to sign a release or otherwise seeks to withdraw a complaint after filing it with the Commission, Commission staff or a Grievance and Disciplinary Committee member may pursue the complaint. In determining whether to pursue a complaint independently, Commission staff or a Grievance and Disciplinary Committee member shall consider why the complaining party is unwilling to pursue the matter further, whether the complaining party is willing to testify if a hearing is necessary, whether the complaining party has specifically asked to withdraw the complaint, the seriousness of the allegations made in the complaint, whether the circumstances complained of may be independently verified without the complaining party's participation, and whether there have been previous complaints filed regarding the respondent's conduct.
- (d) If Commission staff asks a respondent to respond in writing to an oral or written complaint, the respondent shall be provided with a summary of or a copy of the complaint and any supporting evidence provided by the complaining party. The respondent shall have 30 days from the date of the letter transmitting the complaint to respond. Upon request, the respondent may be afforded 10 additional days to respond to the complaint.
- (e) Any complaint made pursuant to Rule IX.C above regarding the conduct of a certified mediator during a mediation, from appointment or selection through conclusion by settlement or impasse, not filed within one (1) year of the conclusion of such mediation shall be deemed untimely and shall be subject to summary dismissal.

(3) Initial Determination on Oral and Written Complaints.

After reviewing a Rule IX.B(3) complaint and any additional information gathered, including information supplied by the respondent and any witnesses or other third parties contacted, Commission staff shall determine whether to:

- (a) Recommend dismissal.** Commission staff shall make a recommendation to dismiss a complaint upon concluding that the complaint does not allege facts sufficient to constitute a violation of a rule, standard, or guideline enforceable under the jurisdiction of the Commission. Such recommendation shall be made to the chair of the Grievance and Disciplinary Committee. If after giving the complaint due consideration, the Grievance and Disciplinary Committee chair disagrees with the recommendation to dismiss, s/he may direct staff to refer the matter for conciliation or to the full Grievance and Disciplinary Committee for review. If the chair agrees with the recommendation, the complaint shall be dismissed with notification to the complaining party, the respondent, and any witnesses or others contacted. The complaining party and respondent shall be notified of the dismissal by certified U.S. mail, return receipt requested and such service shall be deemed sufficient for purposes of these Rules. Commission staff shall note for the file why a determination was made to dismiss the complaint and shall report on such dismissals to the Grievance and Disciplinary Committee. Dismissed complaints shall remain on file with the Commission for at least five years and the Grievance and Disciplinary Committee may take such complaints into consideration if additional complaints are later made against the same respondent.

The complaining party shall have 30 days from the date of the letter notifying him or her of the dismissal to appeal the determination in writing to the full Grievance and Disciplinary Committee.

- (b) Refer to conciliation.** If Commission staff determines that the complaint appears to be largely the result of a misunderstanding between the respondent and complainant or raises a best practices concern(s) or involves technical or relatively minor rule violation(s) resulting in minimal harm to the complainant, the matter may be referred for conciliation if the parties are willing to discuss the basis of the complaint. Once a matter is referred for conciliation, Commission staff may serve as a resource to the parties, but shall not act as their mediator. Prior to or at the time a matter is referred for conciliation, Commission staff shall provide written information to the complainant explaining the conciliation process and advising him/her that the complaint will be deemed to be resolved and the file closed if the complainant does not notify the Commission

within 90 days of the referral that conciliation either failed to occur or did not resolve the matter. If either the complaining party or the respondent refuses conciliation or the complaining party notifies Commission staff that conciliation failed, Commission staff may refer the matter to the Grievance and Disciplinary Committee for review or to the Grievance and Disciplinary Committee chair with a recommendation for dismissal.

- (c) **Refer to the Grievance and Disciplinary Committee.** Following initial investigation, including contacting the respondent, any witnesses, or other third parties as necessary, Commission staff shall refer all Rule IX.B(3) matters to the full Grievance and Disciplinary Committee when such matters raise concerns about possible significant program rule or Standards violations or raise a significant question about a respondent's moral character, conduct, or fitness to practice. No matter shall be referred to the Grievance and Disciplinary Committee until the respondent has been forwarded a copy of the complaint or a summary and a copy of these Rules and allowed a 30 day period in which to respond.

The respondent's response to the complaint and the responses of any witnesses or others contacted during the investigation shall not be forwarded to the complainant, except as provided for in N.C.G.S. § 7A-38.2(h) and there shall be no opportunity for rebuttal. The response shall be included in the materials forwarded to the Grievance and Disciplinary Committee. If any witnesses or others were contacted, any written responses or summaries of responses shall also be included in the materials forwarded to the Grievance and Disciplinary Committee.

- (4) **Confidentiality.** Commission staff will create and maintain files for all matters considered pursuant to Rule IX.B. All information in those files pertaining to applicants for certification or certification renewal shall remain confidential in accordance with N.C.G.S. § 7A-38.2(h). Information pertaining to complaints regarding the character, conduct, or fitness to practice of mediators or trainers or managers affiliated with certified training programs shall remain confidential until such time as the Grievance and Disciplinary Committee completes its preliminary investigation and finds probable cause pursuant to Rule IX.D(2) and N.C.G.S. § 7A-38.2(h).

Commission staff shall reveal the names of applicants and respondents to the Grievance and Disciplinary Committee and the Grievance and Disciplinary Committee shall keep the names of applicants and respondents and other identifying information confidential except as provided for in N.C.G.S. § 7A-38.2(h).

D. Grievance and Disciplinary Committee Review and Determination on Matters Referred by Staff.

(1) Grievance and Disciplinary Committee Review of Applicant Moral Character Issues and Complaints.

The Grievance and Disciplinary Committee shall review matters brought before it by Commission staff pursuant to the provisions of Rule IX.B above and may contact any other persons or entities with knowledge of the matter for additional information. The chair may in his/her discretion appoint members of the Grievance and Disciplinary Committee to serve on a subcommittee to investigate a particular matter brought to the Grievance and Disciplinary Committee by Commission staff. The chair of the Grievance and Disciplinary Committee 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 the Grievance and Disciplinary Committee's investigation and review of the matter.

(2) Grievance and Disciplinary Committee Deliberation.

The Grievance and Disciplinary Committee shall deliberate to determine whether probable cause exists to believe that an applicant or respondent's conduct:

- (a)** is a violation of the Standards of Professional Conduct for Mediators or any other standards of professional conduct that are not in conflict with nor inconsistent with the Standards and to which the mediator, trainer, or manager is subject;
- (b)** is a violation of Supreme Court program rules or any other program rules for mediated settlement conference/mediation programs;
- (c)** is inconsistent with good moral character (Mediated Settlement Conference Program Rule 8.E, Family Financial Settlement Conference Rule 8.F, and District Criminal Court Rule 7.E);
- (d)** reflects a lack of fitness to conduct mediated settlement conferences/mediations or to serve as a trainer or training program manager (Rule VII above); and/or
- (e)** serves to discredit the Commission, the courts, or the mediation process (Rule VII above).

(3) Grievance and Disciplinary Committee Determination.

Following deliberation, the Grievance and Disciplinary Committee shall determine whether to dismiss a matter, make a referral, or impose sanctions.

- (a) To dismiss.** If a majority of Grievance and Disciplinary Committee members reviewing an issue of moral character, conduct, or fitness to practice or a complaint and eligible to vote finds no probable cause, the Grievance and Disciplinary Committee shall dismiss the matter and instruct Commission staff to:

 - (i)** certify or recertify the applicant, if an application is pending, or to notify the mediator or training program by certified U.S. mail, return receipt requested, that no further action will be taken in the matter, or
 - (ii)** notify the complaining party and the respondent that no further action will be taken and that the matter is dismissed.

- (b) To refer.** If after reviewing an application for certification or certification renewal or a complaint, a majority of Grievance and Disciplinary Committee members eligible to vote determines that:

 - (i)** any violation of the program rules or Standards that occurred was technical or relatively minor in nature, caused minimal harm to a complainant, and did not discredit the program, courts, or Commission, the Grievance and Disciplinary Committee may:

 - (1)** dismiss the complaint with a letter to the complaining party and respondent notifying them of the dismissal, citing the violation and advising the mediator to avoid such conduct in the future, or
 - (2)** refer the respondent to one or more members of the Grievance and Disciplinary Committee to discuss the matter and explore ways that the respondent may avoid similar complaints in the future.
 - (ii)** respondent's conduct involves no violations, but raises best practices or professionalism concerns, the Grievance and Disciplinary Committee may:

 - (1)** direct staff to dismiss the complaint with a letter to the respondent advising him/her of the Grievance and Disciplinary Committee's concerns and providing guidance;
 - (2)** direct the respondent to meet with one or more members of the Grievance and Disciplinary Committee who will informally discuss the Grievance and Disciplinary Committee's concerns

and provide counsel; or

(3) refer the respondent to the Chief Justice's Commission on Professionalism for counseling and guidance.

- (iii) the applicant or respondent's conduct raises significant concerns about his/her fitness to practice, including concerns about mental instability, mental health, lack of mental acuity or possible dementia, or concerns about possible alcohol or substance abuse, the Grievance and Disciplinary Committee may, in lieu of or in addition to imposing sanctions, refer the applicant or respondent to the North Carolina State Bar's Lawyer Assistance Program (LAP) for evaluation, or if the applicant or respondent is not a lawyer, to a physician, other licensed mental health professional, or to a substance abuse counselor or organization.

A complaining party shall have no right of appeal from a Grievance and Disciplinary Committee determination to dismiss a complaint or to refer a mediator pursuant to subsections (a) or (b) above.

Neither letters regarding conduct nor referrals are to be considered sanctions under Rule IX.E(10) below. Rather, such are intended as opportunities to address concerns and to help applicants and respondents perform more effectively as mediators. There may, however, be instances that are more serious in nature where the Grievance and Disciplinary Committee may both make a referral and impose sanctions under Rule IX.E(10).

In the event that an applicant or respondent is referred to one or more members of the Grievance and Disciplinary Committee for counsel, to LAP, or to some other professional entity and fails to cooperate regarding the referral, refuses to sign releases or to provide any resulting evaluations to the Grievance and Disciplinary Committee, or should any resulting discussions or evaluation(s) suggest that the applicant or respondent is not currently capable of serving as a mediator, trainer, or manager, the Grievance and Disciplinary Committee reserves the right to make further determinations in the matter, including decertification. During a referral under (iii) above, the Grievance and Disciplinary Committee may require respondent to cease practicing as a mediator, trainer, or manager during the referral period and until such time as the Grievance and Disciplinary Committee has authorized his/her return to active practice. The Grievance and Disciplinary Committee may condition a certification or certification renewal on the applicant's successful completion of the referral process.

Any costs associated with a referral, *e.g.*, costs of evaluation or treatment shall be borne entirely by the applicant or respondent.

- (c) **To propose sanctions.** If a majority of Grievance and Disciplinary Committee members eligible to vote find(s) probable cause pursuant to Rule IX.D(2) above, the Grievance and Disciplinary Committee shall propose sanctions on the applicant or respondent pursuant to Rule IX.E(10), except as provided for in Rule IX.D(3)(b)(i).

Within the 30-day period set forth in Rule IX.D(4) below, an applicant or respondent may contact the Grievance and Disciplinary Committee and object to any referral made or sanction imposed on the applicant or respondent, including objecting to any public posting of a sanction, and seek to negotiate some other outcome with the Grievance and Disciplinary Committee. The Grievance and Disciplinary Committee shall have the authority to engage in such negotiations with the applicant or respondent. During the negotiation period, the applicant or respondent may request an extension of the time in which to request an appeal under Rule IX.D(4) below. Commission staff, in consultation with the Grievance and Disciplinary Committee chair, may extend the appeal period up to an additional 30 days in order to allow more time to complete negotiations.

Notification of any dismissal, referral, or sanction imposed pursuant to subsections (a), (b), or (c) above shall be by certified U.S. mail, return receipt requested, and such service shall be deemed sufficient for purposes of these Rules. All witnesses and any others contacted by staff or committee member shall be notified, if feasible, of any dismissal.

- (4) **Right of Appeal.** If a referral is made or sanctions are imposed, the applicant or respondent shall have 30 days from the date of the letter sent by U.S. certified mail, return receipt requested, transmitting the Grievance and Disciplinary Committee's findings and actions to appeal. Notification of appeal must be made to the Commission's office in writing. If no appeal is received within 30 days, the applicant or respondent shall be deemed to have accepted the Grievance and Disciplinary Committee's findings and proposed sanctions. The complainant does not have a right of appeal.

E. Appeal to the Commission.

- (1) **The Commission Shall Meet to Consider Appeals.** An appeal of the Grievance and Disciplinary Committee's determination pursuant to Rule IX.D(4) above shall be heard by the members of the Commission, except that all members of the Grievance and Disciplinary Committee who participated in issuing the determination 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 questioning the neutrality of a member shall be decided by the Commission's chair.

(2) Conduct of the Hearing.

- (a) At least 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 Grievance and Disciplinary Committee and summaries of witness or other third party interviews and/or character recommendations.
- (b) Hearings conducted by the Commission pursuant to this rule shall be *de novo*.
- (c) Applicants, complainants, respondents, and any witnesses or others identified as having relevant information about the matter 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 respondent.
- (e) In the event that the applicant, complainant, or respondent fails to appear without good cause, the Commission shall proceed to hear from those parties and witnesses who are present and to 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 applicant or respondent may present evidence in the form of sworn testimony and/or written documents. The Commission, through its counsel, and the applicant or respondent 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 Grievance and Disciplinary Committee shall be heard by the Commission within 180 days of the date the notice of appeal is filed with the Commission.
- (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 60 days prior to the hearing and such service shall be deemed sufficient for purposes of these Rules.
- (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 applicants, complainants, and respondents, 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 20 days prior to the proceeding. At least five 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 and to all other parties at least 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, 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:
 - (a) find that there is not clear and convincing evidence to support the referral or imposition of sanctions and, therefore, dismiss the complaint or direct Commission staff to certify or recertify the mediator or mediator training program, or

- (b) find that there is clear and convincing evidence that grounds exist to refer or to impose sanctions. The Commission may impose the same or different sanctions than imposed by the Grievance and Disciplinary Committee or make the same or a different referral. The Commission shall set forth its findings, conclusions, referral and/or sanctions, or other action, in writing and serve its decision on the parties within 60 days of the date of the hearing. Notification of the decision shall be sent by certified U.S. mail, return receipt requested, and such service shall be deemed sufficient for purposes of these Rules.
- (10) **Sanctions.** The sanctions that may be proposed by the Grievance and Disciplinary 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;
 - (k) Prohibition on participation as a trainer or manager of a certified mediator training program either indefinitely or for a period of time; and
 - (l) Any other sanction deemed appropriate by the Grievance and Disciplinary Committee/Commission.
- (11) **Publication of Grievance and Disciplinary Committee/Commission Decisions.**
- (a) Names of respondents who have been reprimanded privately or applicants who have never been certified and have been denied certification shall not be published in the Commission's newsletter nor on its web site.
 - (b) Names of respondents or applicants who are sanctioned under any other provision of Rule IX.E(10) above and who have been denied reinstatement under Rule IX.E(13) below shall be published in the Commission's newsletter and on its website 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 judicial districts in which a mediator serves, the NC State Bar and any other professional licensing/certification bodies to which a

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 Rule IX.E(11)(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, and Commission/Grievance and Disciplinary 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 or certification renewal. An order imposing sanctions or denying applications for mediator or mediator training program certification or certification renewal shall be reviewable upon appeal and the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence. Notice of appeal shall be filed in the Superior Court in Wake County within 30 days of the date of the Commission's decision.

(13) **Reinstatement.** An applicant, mediator, trainer, or manager who has been sanctioned under this rule may be certified or reinstated as a certified mediator or training program or as an active trainer or manager pursuant to Rule IX.E(13)(h) below. Except as otherwise provided by the Grievance and Disciplinary 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 reasons why certification was denied or the moral character, conduct, or fitness concerns upon which the suspension or decertification or the bar to serving as a trainer or training program manager was based; and

(iii) a concise statement of facts claimed to justify certification or reinstatement as a certified mediator, certified training program or a trainer or program manager affiliated with a certified training program.

(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 60 days of the filing of the petition. That decision shall be final. If the petitioner requests a hearing, it shall be held within 180 days of the filing of the petition. The Commission shall conduct the hearing consistent with Rule IX.E(2) 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 denial of certification or 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 denial, suspension, decertification, or prohibition from serving as a trainer or manager;
 - (ii) the petitioner's certification will not be detrimental to the Mediated Settlement Conference, Family Financial Settlement, Clerk Mediation, District Criminal Court Mediation Program, or other program rules, or to the Commission, courts, or public; and
 - (iii) that the petitioner has completed any paperwork required for certification or 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 certify or reinstate the petitioner as a certified mediator or training program or as an active trainer or manager. Certification or 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 certify or reinstate a petitioner or to deny certification or reinstatement in writing, making findings of fact and conclusions of law. Notification of the decision shall be sent by certified U.S. mail, return receipt requested, within 30 days of the date of the hearing, and such service shall be deemed sufficient for purposes of these Rules.
- (j) If a petition seeking certification or reinstatement is denied, the petitioner may not apply again pursuant to this section until two years have elapsed 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 certification or reinstatement. An order denying reinstatement shall be reviewable upon appeal, and the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence. Notice of appeal shall be filed in the Superior Court in Wake County within 30 days of the date of the Commission's decision.

RULE X. MEDIATOR CERTIFICATION AND TRAINING COMMITTEE

- A. Mediator Certification and Training Committee.** The chair of the Commission shall appoint a standing committee entitled the Mediator Certification and Training Committee to review the matters set forth in Rule X.B below. Members of the Certification Committee shall recuse themselves from discussing and deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest. Pursuant to Rule I.C(2) only Commission members may vote on matters before the Committee.
- B. Matters to Be Considered by the Mediator Certification and Training Committee.** The Mediator Certification and Training Committee shall review and consider the following matters:
 - (1) Appeals of staff decisions to deny an application filed by a person or mediator training program seeking certification or certification renewal based on deficiencies in the applicant's qualifications unrelated to moral character, conduct, or fitness to practice. Deficiencies relating to moral character, conduct, or fitness to practice shall be considered pursuant to Rule IX above.
 - (2) Complaints filed by a member of the Commission, its staff, court personnel, or any member of the public regarding the qualifications of an applicant for certification or certification renewal, or the qualifications of a mediator or mediator training program, its managers,

or trainers, except that, complaints relating to the moral character, conduct, or fitness to practice of an applicant, mediator, trainer, or manager shall be considered pursuant to Rule IX above.

C. Staff Investigation of Qualifications.

(1) Information obtained during the certification or renewal process.

Commission staff shall review all pending applications for certification and certification renewal to determine whether the applicant meets qualifications unrelated to moral character, conduct, or fitness to practice set out in program rules adopted by the Supreme Court for mediated settlement conference/mediation programs under the jurisdiction of the Commission and any guidelines or other policies adopted by the Commission for the purpose of implementing those rules. Commission staff may contact those reporting to request additional information and may consider any other information acquired during the review process that bears on the applicant's eligibility for certification or certification renewal.

(2) Complaints about mediator or mediator training program qualifications filed with the Commission.

Commission staff shall forward written complaints about the qualifications of an applicant, certified mediator, certified mediator training program, or any trainer or manager affiliated with such program, that do not pertain to moral character, conduct, or fitness to practice filed by any member of the general public, the Commission, or its staff, to the Mediator Certification and Training Committee for investigation. Copies of such complaints shall be served on the subject of the complaint by certified U.S. mail, return receipt requested, and such service shall be deemed sufficient for purposes of these Rules.

However, in instances where Commission staff cannot verify the allegations in the complaint or has otherwise verified that the applicant, mediator, or mediator training program meet qualifications for certification or certification renewal set forth in program rules and Commission policies intended to implement those rules, the Commission staff may refer the matter to the Mediator Certification and Training Committee's chair rather than to the Mediator Certification and Training Committee as set forth above. If after giving the complaint due consideration, the chair agrees with the staff's assessment of the matter, the chair may dismiss the complaint with notification to the complaining party. Such notification shall be by certified U.S. mail, return receipt requested, and such service shall be deemed sufficient for purposes of these Rules. The complaining party shall have 30 days from the date of the notification to appeal the chair's determination to the full Mediator Certification and Training Committee. The appeal shall be in writing and directed to the Commission's office. If the chair disagrees with the staff's assessment, staff shall refer the matter to the Mediator Certification and Training Committee.

D. Investigation by the Mediator Certification and Training Committee.

- (1) The Mediator Certification and Training Committee shall investigate all matters brought before it by staff pursuant to the provisions of Rule X.C above. The chair may in his/her discretion appoint members of the Mediator Certification and Training Committee to serve on a subcommittee to investigate a particular matter brought to the committee by Commission staff. The chair or his or 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. The chair or designee may contact the following persons and entities for information concerning such application or complaint:
- (a) 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 and any additional persons or entities identified by Commission staff during the course of its review as having relevant information about the applicant's qualifications;
 - (b) personnel affiliated with an applicant for mediator training program certification or certification renewal or personnel affiliated with a certified mediator training program and participants who attended or completed the training program; and
 - (c) all parties bringing complaints about the qualifications of an applicant for certification or certification renewal, a mediator, or a mediator training program (respondent) unrelated to moral character, conduct, or fitness to practice and any other person or entity with information about the respondent and identified by Commission staff or the Mediator Certification and Training Committee during the course of its review of the complaint.

All information in Commission files pertaining to the initial certification of a mediator or mediator training program or to renewals of such certifications shall be confidential, except as provided in N.C.G.S. § 7A-38.2(h) or these Rules.

- (2) **Probable Cause Determination.** Those members of the Mediator Certification and Training Committee reviewing the matter and eligible to vote shall deliberate to determine whether probable cause exists to believe that the applicant or respondent:
- (a) does not meet qualifications for mediator certification or certification renewal unrelated to moral character, conduct, or fitness to practice as set forth in program rules adopted by the Supreme Court for mediated settlement conference/mediation programs under the jurisdiction of the Commission or guidelines and other policies adopted by the Commission

for the purpose of implementing those rules, or

- (b) does not meet the qualifications for mediator training program certification or certification renewal as set forth in program rules adopted by the Supreme Court for mediated settlement conference/mediation programs under the jurisdiction of the Commission or guidelines and other policies adopted by the Commission for the purpose of implementing those rules.

If probable cause is found, the application for certification or certification renewal shall be denied or the respondent's certification shall be revoked.

(3) Authority of Mediator Certification and Training Committee to Deny Certification or Certification Renewal or to Revoke Certification.

- (a) If a majority of Mediator Certification and Training Committee members reviewing a matter and eligible to vote finds no probable cause pursuant to Rule X.D(2) above, Commission staff shall certify or re-certify the applicant. If the investigation was initiated by the filing of a written complaint, the Mediator Certification and Training Committee shall dismiss the complaint and notify the complaining party and the respondent in writing that the complaint has been dismissed. Notification of dismissal shall be sent by certified U.S. mail, return receipt requested, and such service shall be deemed sufficient for purposes of these Rules. A complaining party shall have no right of appeal from the Mediator Certification and Training Committee's decision to dismiss a complaint or to certify or re-certify an applicant.
- (b) If a majority of Mediator Certification and Training Committee members reviewing a matter and eligible to vote finds probable cause pursuant to Rule X.D(2) above, the Mediator Certification and Training Committee shall deny certification or certification renewal or revoke certification. The Mediator Certification and Training Committee's findings, conclusions, and denial or revocation shall be in writing and forwarded to applicant or respondent. Notification of the determination shall be sent by certified U.S. mail, return receipt requested, and such service shall be deemed sufficient for purposes of these Rules.
- (c) If the Mediator Certification and Training Committee denies Certification or certification renewal or revokes certification, the applicant or respondent may appeal the denial or revocation to the Commission within 30 days from the date of the letter transmitting the Mediator Certification and Training Committee's findings and determination. Notification of appeal must be in writing and directed to the Commission's office. If no appeal is filed within 30 days, the applicant or respondent shall be deemed to have accepted the Mediator Certification and Training Committee's findings and determination.

E. Appeal of the Denial to the Commission.

- (1) **The Commission Shall Meet.** An appeal of a denial or revocation by the Mediator Certification and Training Committee pursuant to Rule X.D(2) above shall be heard by the members of the Commission, except that all members of the Mediator Certification and Training 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 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 Mediator Certification and Training Committee and summaries of witness interviews and/or character recommendations.
 - (b) Hearings conducted by the Commission will be a *de novo* review of the Mediator Certification and Training 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 North Carolina 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 respondent or his/her/its representative may present evidence in the form of sworn testimony and/or written documents. The Commission, through its counsel, and the applicant or respondent, 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 respondent requests a public hearing.
 - (g) In the event that the complainant, respondent, 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 or revocation by the Mediator Certification and Training Committee shall be heard by the Commission within 180 days of the date of the letter transmitting the Mediator Certification and Training Committee's findings and determination.
- (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 60 days prior to the hearing and such service shall be deemed sufficient for purposes of these Rules.
- (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, respondents, 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 20 days prior to the proceeding. At least five 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 10 days prior to the hearing the names of all witnesses 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, 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:
- (a) find that there is not clear and convincing evidence to support the denial or revocation and, therefore dismiss the complaint or direct commission staff to certify or recertify the applicant, or
 - (b) 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 determination in writing and serve it on the parties within 60 days of the date of the hearing by certified U.S. mail, return receipt requested. Such service shall be deemed adequate for purposes of these Rules.
- (10) **Publication of Mediator Certification and Training Committee/Commission Decisions.**
- (a) Names of applicants for mediator certification or names of mediator training programs that are denied certification or certification renewal 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 determination shall not be generally publicized.
 - (b) Chief district court judges, senior resident superior court judges, or Clerks in districts which the mediator serves, and other trial forums or agencies having mandatory programs and using mediators certified by the Commission shall be notified of any revocation of certification or denial of a renewal.
- (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 in the Superior Court in Wake County within 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 reinstated as a certified mediator or mediation training program pursuant to Rule X.E(12)(g) below. An application for reinstatement may be tendered at any time the applicant believes that he/she/it has become 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) a concise statement of the reasons upon which the denial of certification renewal or revocation was based; and
 - (iii) a concise statement of facts claimed to justify certification renewal or reinstatement as a certified mediator or mediator training program.
- (c) The petition seeking reinstatement 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 90 days of the filing of the petition. That decision shall be final. If the petitioner requests a hearing, it shall be held within 180 days of the filing of the petition. The Commission shall conduct the hearing consistent with Rule X.E(2) 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 that:
 - (i) the petitioner has satisfied the qualifications that led to the denial or revocation, and
 - (ii) 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 have his/her/its certification reinstated, 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 certified U.S. mail, return receipt requested, within 60 days of the date of the hearing. Such service shall be deemed sufficient for purposes of these Rules.
- (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, and the entire record as submitted shall be reviewed to determine whether the order is supported by substantial evidence. Notice of review shall be filed in the Superior Court in Wake County within 30 days of the date of the Commission's decision.

XI. OTHER STANDING COMMITTEES

- A. Superior Court Oversight Committee.** The Commission's chair shall appoint a standing committee on Superior Court Oversight, including the Mediated Settlement Conference (MSC), Clerk Mediation, and Farm Nuisance Mediation programs. The Superior Court Oversight Committee shall support and monitor these programs to insure that each operates effectively pursuant to the rules for each program. The Superior Court Oversight Committee shall consider and make recommendations to the Commission regarding statutory or program rule changes. Members of the Superior Court Oversight Committee shall recuse themselves from discussing or deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest. Pursuant to Rule 1.C(2) only Commission members may vote on matters before the Superior Court Oversight Committee.
- B. District Court Oversight Committee.** The Commission's chair shall appoint a standing committee on District Court Oversight, including the Equitable Distribution and Other Family Financial Cases (FFS), and District Criminal Court (DCC) programs. The District Court Oversight Committee shall support and monitor these programs to insure that each operates effectively pursuant to the rules for each program. The District Court Oversight Committee shall consider and make recommendations to the Commission regarding statutory or program rule changes. Members of the District Court Oversight Committee shall recuse themselves from discussing or deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest. Pursuant to Rule 1.C(2) only Commission members may vote on matters before the District Court Oversight Committee.

- C. **Executive Committee.** The Commission's chair shall appoint an Executive Committee of the Commission. The Executive Committee shall consider matters related to legislation, finances and budget, personnel, and emergent matters when necessary. Members of the Executive Committee shall recuse themselves from discussing or deliberating on any matter in which they cannot act impartially or about which they have a conflict of interest. Pursuant to Rule 1.C(2) only Commission members may vote on matters before the Executive Committee.

XII. 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.