

IN THE SUPREME COURT OF NORTH CAROLINA


ORDER ADOPTING THE
RULES OF THE DISPUTE RESOLUTION COMMISSION

Pursuant to subsection 7A-38.2(b) of the General Statutes of North Carolina, the Court hereby adopts the Rules of the Dispute Resolution Commission, which appear on the following pages. These rules supersede the Revised Rules of the North Carolina Supreme Court for the Dispute Resolution Commission, published at [367 N.C. 1063–98](#).

The Rules of the Dispute Resolution Commission become effective on 1 March 2020.


This order shall be published in the North Carolina Reports and posted on the rules web page of the Supreme Court of North Carolina.

Ordered by the Court in Conference, this the 23rd day of January, 2020.



For the Court

WITNESS my hand and the seal of the Supreme Court of North Carolina, this the 23rd day of January, 2020.



AMY L. FUNDERBURK
Clerk of the Supreme Court

Rules of the Dispute Resolution Commission

Rule 1. Officers and Committees 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.
- (2) The vice chair shall be elected by majority vote of the full Commission for a two-year term and shall serve in the absence of the chair.
- (3) Both the chair and vice chair shall be members of the Commission.

(c) **Committees.**

- (1) The Commission shall establish a standing Executive Committee. Members of the Executive Committee shall include the chair, vice chair, and the chairs of all standing committees. The chair may also appoint the immediate past chair of the Commission to serve on the Executive Committee, if the immediate past chair remains a member of the Commission. The Executive Committee may act for the Commission and make decisions on matters which (i) require action before the next Commission meeting, and/or (ii) have been delegated to the Executive Committee by the Commission. The Executive Committee may make recommendations to the Commission with respect to matters of policy and operations of the Commission.
- (2) The chair may establish other standing and ad hoc committees as are necessary to conduct the business of the Commission and may appoint Commission members and ex officio members to serve on these committees, subject to subsection (c)(3) of this rule.
- (3) The chair may appoint ex officio members. Ex officio members shall be affiliated with the courts, be involved in supporting court-based dispute resolution programs, or have particular expertise in dispute resolution. Ex officio members may participate in Commission or committee discussions, but shall not vote on any matter before the Commission or a committee and shall not serve as members of the Executive Committee or any committee routinely reviewing information that is deemed

confidential under N.C.G.S. § 7A-38.2(h) or these rules. Ex officio appointments shall be for a two-year term.

(d) **Recusal Policy.** Commission and ex officio members participating in Commission or committee discussions, and Commission members casting votes, shall abide by the Commission's *Recusal of Commission Members and Ex Officio Members Policy*.

Rule 2. Commission Office; Commission Staff

(a) **Commission 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) **Commission Staff.** The chair, in consultation with the director of the NCAOC, is authorized to appoint an executive director and to: (i) fix the executive director's terms of employment, salary, and benefits; (ii) determine the scope of the executive director's authority and duties; and (iii) employ other professional and administrative staff as necessary to conduct the Commission's business.

Rule 3. 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. The successor shall, thereafter, be eligible to serve two consecutive three-year terms.

(b) **Disqualifications.** If, for any reason, a Commission member becomes disqualified to serve on the Commission, the appointing authority shall be notified and requested to take appropriate action. If a member resigns or is removed, then the appointment of a successor shall be for the former member's unexpired term. The successor shall, thereafter, be eligible to serve two consecutive three-year terms.

(c) **Conflicts of Interest and Recusals.** All Commission members must abide by the Commission's *Recusal of Commission Members and Ex Officio Members Policy*.

(d) **Compensation.** Under N.C.G.S. § 138-5, members of the Commission may receive compensation for their services at the rate of fifteen dollars (\$15.00) per diem for each day of service, and reimbursement of subsistence and travel at the rates allowed to State boards and commissions. Ex officio members of the Commission shall receive no compensation for their services. In the chair's discretion, an ex officio member may be reimbursed for his or her out-of-pocket expenses necessarily incurred on behalf of the Commission and for his or her mileage, subsistence, and other travel

expenses at the per diem rate established by statutes and regulations applicable to State boards and commissions.

Rule 4. 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 under Rule 9 and Rule 10 shall be made in accordance with the provisions of those rules.

(c) **Public Meetings.** All meetings of the Commission for the general conduct of business shall be open to the public and minutes of such meetings shall be available to the public, except that meetings, portions of meetings, or hearings conducted under Rule 9 and Rule 10 may be closed to the public in accordance with those rules and N.C.G.S. § 7A-38.2.

(d) **Matters Requiring Prompt Action.** In the discretion of the chair, if any matter requires a decision or other action before the next regular meeting of the Commission, but does not warrant the call of a special meeting, it may be considered by the Commission and a vote or other action may be taken by correspondence, telephone, facsimile, e-mail, or other practicable method, or it may be considered an action taken by the Executive Committee under Rule 1(c)(1); provided, however, that all formal Commission and committee decisions made and actions taken are reported to the executive director and included in the minutes of Commission proceedings.

(e) **Committee Meetings.** Committees shall meet as needed. A majority of the 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 under Rule 9 and Rule 10 shall be made in accordance with those rules.

Rule 5. 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.

Rule 6. 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 the state, and to ensure the availability of high-quality mediator training programs and competent and ethical mediators. Specifically, the Commission is authorized and directed to do the following:

(a) Review and approve or disapprove applications of: (i) persons seeking to have mediator training programs certified, (ii) attorneys and nonattorneys seeking certification as qualified mediators to conduct mediated settlement conferences and mediations in North Carolina's court-ordered mediation programs, and (iii) persons or mediator training programs seeking reinstatement.

(b) Review applications against criteria for certification set forth in rules adopted by the Supreme Court for mediated settlement conferences or mediation programs operating under the Commission's jurisdiction, and against any other requirements of the Commission which amplify and clarify those rules. The Commission may adopt application forms and require applicants to complete the forms for certification.

(c) Compile and maintain lists of certified mediator training programs along with the names of contact persons, addresses, and telephone numbers for each mediator training program, and make those lists available online or upon request.

(d) Institute periodic review of mediator training programs and trainer qualifications, and recertify mediator training programs that continue to meet criteria for certification. Mediator training programs that are not recertified shall be removed from the lists of certified mediator training programs.

(e) Compile, keep current, and make available to the courts and the public online lists of certified mediators which specify the judicial district(s) or counties in which each mediator wishes to practice.

(f) Prepare, keep current, and make available online biographical information submitted to the Commission by certified mediators in order to make such information accessible to court staff, lawyers, and the public.

(g) Make a reasonable effort on a continuing basis to ensure that the judiciary, clerks of court, court staff, attorneys, and to the extent feasible, parties to mediation, are aware of the Commission and its office and the Commission's duty to certify and regulate the conduct of mediators and mediator training programs.

(h) Regulate the conduct of mediators and mediator training programs, including (i) receiving and investigating complaints against mediators, mediator training program personnel, and mediator training programs; and (ii) imposing sanctions, if warranted under Rule 9.

Rule 7. Mediator Conduct

The conduct of all mediators certified by the Commission or serving programs under the jurisdiction of the Commission, and personnel affiliated with any certified mediator training program, must conform to the Standards of Professional Conduct

for Mediators adopted by the Supreme Court and enforceable by the Commission and to the standards of any professional organization of which such person is a member that are not in conflict nor inconsistent with the Standards of Professional Conduct for Mediators. A certified mediator shall inform the Commission of any (i) criminal conviction, disbarment, or other revocation or suspension of a professional license; (ii) complaint filed against the mediator or disciplinary action imposed upon the mediator by a professional organization; or (iii) judicial sanction, civil judgment, tax lien, or filing for bankruptcy. Failure to do so is a violation of these rules. Violations of the Standards of Professional Conduct for Mediators or other professional standards, or conduct that reflects 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.

Rule 8. The Standards and Advisory Opinions Committee

(a) **Appointment of 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 in subsection (b) of this rule.

(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) Proposals for amending the Standards of Professional Conduct for Mediators, the Commission's *Advisory Opinion Policy*, or the Commission's *Advertising Policy*.
- (2) Requests from Commission staff for assistance in responding to inquiries from mediators and the public as to the interpretation of statutes, rules, the Standards of Professional Conduct for Mediators, advisory opinions, policies, or guidelines of the Commission.
- (3) Drafts and proposals of advisory opinions for adoption by the Commission under the Commission's *Advisory Opinion Policy*.
- (4) Matters that relate to mediator advertising, including review of advertisements or related materials for consistency with the Commission's *Advertising Policy*.
- (5) Matters that interface with the North Carolina State Bar or other professional regulatory body regarding inconsistencies and/or conflicts between these rules and/or policies and the rules and/or policies of those entities.

(c) **Initial Commission Staff Review.**

- (1) Commission staff may respond in writing to requests for assistance from mediators and the public under subsection (b)(2) of this rule, or may respond orally if time is of the essence. Staff shall consult with the chair of the Standards and Advisory Opinions Committee as necessary to ensure correct and consistent responses. Written requests for formal advisory opinions shall be referred to the chair of the committee in compliance with the procedures established by the committee. The referral procedures shall ensure that the case file number, the names of parties, and other identifying information are redacted so that any decision cannot be influenced by the information.
- (2) All requests for informal advice shall be logged by Commission staff, and the requesting party's confidentiality shall be maintained unless the requesting party indicates otherwise.

(d) **Review by the Standards and Advisory Opinions Committee.**

- (1) If the chair of the Standards and Advisory Opinions Committee determines that a Commission advisory opinion is warranted under subsection (c) of this rule, then the matter shall be considered by the committee. If the committee concurs, then a proposed advisory opinion shall be drafted, approved by the committee, and submitted to the Commission for its consideration.
- (2) If the chair of the Standards and Advisory Opinions Committee determines that a formal Commission advisory opinion is not warranted under subsection (c) of this rule, then the requesting party shall be advised in writing and provided with informal advice, if requested.

Rule 9. The Grievance and Disciplinary Committee

(a) **Appointment of the Grievance and Disciplinary Committee.**

The Commission's chair shall appoint a standing committee entitled the Grievance and Disciplinary Committee to address the matters listed in subsection (b) of this rule.

(b) **Matters to Be Considered by the Grievance and Disciplinary Committee.** The Grievance and Disciplinary Committee shall review and consider, consistent with subsection (d)(2) of this rule, the following:

- (1) Matters that relate to the moral character, conduct, or fitness to practice of those seeking a provisional pre-training approval,

including a request to review a Commission staff determination not to issue a provisional pre-training approval on the basis of a requesting party's moral character, conduct, or fitness to practice.

- (2) Matters that relate to the moral character, conduct, or fitness to practice of an applicant for mediator certification or certification renewal, including a request for review of a Commission staff decision to deny an application for mediator certification or certification renewal on the basis of the applicant's moral character, conduct, or fitness to practice.
- (3) Matters otherwise self-reported by a certified mediator or personnel affiliated with a certified mediator training program, or otherwise coming to the attention of the Commission that relate to the moral character, conduct, or fitness to practice of a mediator under the Commission's jurisdiction or a person affiliated with a certified mediator training program.
- (4) Matters that relate to the moral character, conduct, or fitness to practice of a trainer or other person affiliated with a certified mediator training program or a mediator training program that is an applicant for certification or certification renewal, including a request for review of a Commission staff decision 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 other person affiliated with the program.
- (5) Complaints by a Commission member, Commission staff, a judge, an attorney, court staff, or any member of the public that relate to the moral character, conduct, or fitness to practice of a mediator under the Commission's jurisdiction or a trainer or other person affiliated with a certified mediator training program.

(c) **Initial Commission Staff Review and Determination.**

- (1) **Review of Requests for Provisional Pre-training Approvals.** Commission staff shall review requests for the issuance of provisional pre-training approvals regarding matters that relate to the moral character, conduct, or fitness to practice of a requesting party, and shall seek guidance from the chair of the Grievance and Disciplinary Committee, as necessary. Staff may contact the requesting party, conduct background checks, and contact third parties or entities who may possess relevant information that relates to the moral character, conduct, or fitness to practice of the requesting party. Based on its review, staff shall determine whether to issue or refrain from issuing a

provisional pre-training approval. The requesting party may seek review of the staff decision from the chair of the committee. If, after review, the chair determines that the requesting party does not possess the requisite criteria for certification related to moral character, conduct, or fitness to practice established by program rules and Commission policies and guidelines, then the chair shall instruct staff not to issue a provisional pre-training approval. The staff decision, or that of the chair after review, to deny a request for a provisional pre-training approval shall be final and is not subject to appeal.

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

Staff may contact an applicant to discuss matters reported and may conduct a background check on an applicant. 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. Staff shall seek to verify any such third-party report and may disregard a report that cannot be verified. Staff may contact an agency where a complaint about an applicant has been filed or that has imposed discipline on an applicant and may contact a judge who has imposed discipline on an applicant.

All reported matters or other information gathered by staff that bears on the moral character, conduct, or fitness to practice of an applicant shall be forwarded directly to the Grievance and Disciplinary Committee for its review, except matters expressly exempted from review by the Commission's *Policy for Reviewing Matters Relevant to Good Moral Character, Conduct, and Fitness to Practice*. Matters that are exempted by the policy may be processed by staff, but will not act as a bar to certification or certification renewal.

The committee shall review any matter that relates to an applicant and is referred by staff under this policy, while not a complaint, in accordance with the procedures set forth in subsection (d) of this rule.

(3) **Commission Staff Review of Concerns Raised That Are Not Deemed to Constitute Complaints.** Commission staff shall review information received or concerns raised that relates to a mediator's failure to meet his or her case management duties under applicable program rules, or relates to matters that are not deemed to constitute a complaint under this subsection or subsection (c)(4) of this rule.

- a. If the information received or the concern raised does not state a violation of rules or standards promulgated by the Supreme Court or local district rules, then the reporting party will be advised that the Commission will take no action in response to the report.
- b. If it appears that the information received or the concern raised constitutes a violation of a rule, statute, or standard, but either is not serious enough to be treated as a complaint or the complaining party does not wish to file a complaint, Commission staff shall prepare a summary of the concern raised and submit the matter to the chair of the Grievance and Disciplinary Committee and to the chair of the Commission.
- c. Commission staff shall report the concerns to the mediator by letter or other manner of communication as approved by the chair of the Grievance and Disciplinary Committee and chair of the Commission. Any written correspondence shall be copied to the chair of the committee and to the chair of the Commission.

Commission staff shall not disclose the identity of a reporting party who wishes to remain anonymous. If a reporting party wishes to remain anonymous, then staff shall not proceed under this section unless evidence of the mediator's failure to fulfill his or her case management duties has been provided or otherwise exists.

(4) **Commission Staff Review of Oral or Written Complaints.** Commission staff shall review oral and written complaints received by the Commission regarding the moral character, conduct, or fitness to practice of a mediator under the jurisdiction of the Commission or any personnel affiliated with a certified mediator training program (respondents), except that 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 determines it is necessary to contact a

third party about the matter, including a witness identified by the complaining party or other third party identified by Commission staff during its review of the complaint, or to refer the matter to the Grievance and Disciplinary Committee, then 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 and a release and to return both to the Commission's office. A member of the Commission, a committee of the Commission, Commission staff, judges, other court officials, or court staff may initiate an oral, anonymous complaint. Commission staff shall not proceed under this subsection unless corroborative evidence of the allegation relating to the mediator's conduct has been provided to the Commission.

- b. **Written Complaints.** Commission staff shall acknowledge all written complaints within thirty days from receipt. A written complaint may be made by letter, e-mail, or filed on the Commission's approved complaint form. If a written complaint is not made on the approved form, then staff shall require the complaining party to have his or her signature on the complaint notarized and execute a release authorizing staff to contact third parties in the course of staff's review of the complaint.
- c. **Pursuit of Complaint by Commission Staff or by Grievance and Disciplinary Committee Member.** If a complaining party refuses to sign a complaint summary prepared by Commission staff, refuses to sign a release, or otherwise seeks to withdraw a complaint after filing it with the Commission, staff or a Grievance and Disciplinary Committee member may pursue the complaint. In determining whether to pursue a complaint independently, staff or a committee member may consider why the complaining party is unwilling to pursue the matter further, whether the complaining party is willing to testify if a hearing becomes necessary, whether the complaining party has specifically asked to withdraw the complaint, whether the circumstances complained of may be independently verified without the complaining party's participation, whether there have been previous complaints filed regarding the respondent's conduct, and the seriousness of the allegations made in the complaint.

- d. **Response to Complaint.** If Commission staff asks a respondent to respond in writing to an oral or written complaint, then the respondent shall be sent a summary or a copy of the complaint and any supporting evidence provided by the complaining party by Certified Mail, return receipt requested. The respondent shall respond no later than thirty days from the date of the actual delivery to the respondent or the date of the last attempted delivery by the U.S. Postal Service. A copy of the summary or complaint shall also be sent to respondent through the U.S. Postal Service by First-Class Mail directed to the respondent at the last mailing address provided to the Commission by the respondent. Upon written request, the respondent may be afforded ten additional days to respond to the complaint.
- e. **Materials Not Forwarded to Complaining Party.** The respondent's response to the complaint and the summaries of comments of any witnesses or others contacted during the investigation shall not be forwarded to the complaining party, except as may be required by N.C.G.S. § 7A-38.2(h).

(5) **Initial Determination on Oral and Written Complaints.** In reviewing a complaint under subsection (c)(4) of this rule and any additional information gathered, including information supplied by the respondent or a witness or other third party contacted, Commission staff shall consider the conduct complained of by reference to subsection (d)(2) of this rule. Staff shall determine whether to:

- a. **Recommend Dismissal.** After review and upon concluding that the complaint does not allege facts sufficient to constitute a violation of a statute, rule, standard, or policy enforceable under the jurisdiction of the Commission, Commission staff shall make a recommendation to the chair of the Grievance and Disciplinary Committee to dismiss the complaint. If the chair agrees with the recommendation, then the complaint shall be dismissed with notification to the complaining party, the respondent, and any witnesses or others contacted during the review process. The complaining party and the respondent shall be notified of the dismissal by Certified Mail, return receipt requested, and such service shall be deemed sufficient for purposes of these rules. A copy of the notice of dismissal shall also be sent to

the complaining party and the respondent through the U.S. Postal Service by First-Class Mail directed to the respondent and complaining party at the last mailing address provided to the Commission.

Staff shall note for the file why a determination was made to dismiss a complaint and shall report on such dismissals to the committee. Dismissed complaints shall remain on file with the Commission. The committee may take dismissed complaints into consideration if additional complaints are later made against the same respondent.

A complaining party may file a written appeal of the dismissal of the complaint to the committee no later than thirty days from the date of the actual delivery of the notice of dismissal to the complaining party or of the date of the last attempted delivery by the U.S. Postal Service of the notice of dismissal.

- b. **Refer to the Grievance and Disciplinary Committee.** Following an initial Commission staff review of the complaint and any response submitted by the respondent, including contacting the respondent, witnesses, or other third parties as necessary, and upon a determination that the complaint (i) raises a concern about a possible violation of a statute, a program rule, the Standards of Professional Conduct for Mediators, or a Commission policy; or (ii) raises a significant question about a respondent's moral character, conduct, or fitness to practice, or if, after giving the complaint due consideration, the chair of the Grievance and Disciplinary Committee disagrees with staff's recommendation to dismiss the complaint, staff shall refer the matter to the full committee for review.

No matter shall be referred to the committee until the respondent has been forwarded a copy or summary of the complaint and a copy of these rules. The respondent shall respond no later than thirty days from the date of the actual delivery of the letter transmitting the complaint or summary to the respondent or the last attempted delivery to the respondent by the U.S. Postal Service. A copy of the complaint or summary shall also be sent to the respondent through the U.S. Postal Service by First-Class Mail directed to the respondent at the last mailing address provided to the Commission by the respondent. Upon written request, the respondent may be afforded ten additional days to respond to the complaint.

The respondent's response shall be included in the materials forwarded to the committee. If a witness or other person was contacted, any written response or summary of a response shall also be included in the materials forwarded to the committee.

- (6) **Filing Deadlines for Complaints.** A complaint made under subsection (b) of this rule that relates to the conduct of a certified mediator during a mediation, from appointment or selection of the mediator through the conclusion of the mediation by settlement or impasse, shall be filed no later than one year from the conclusion of the mediation by settlement or impasse, except that a complaint that relates to the conduct of a certified district criminal court mediator during a mediation, from the beginning of the mediation through the conclusion of the last session of mediation, shall be filed no later than ninety days from the conclusion of the last mediation session. A complaint made under subsection (b) of this rule that relates to the conduct of a person affiliated with a certified mediator training program during a training program shall be filed no later than one year from the conclusion of the training program.
- (7) **Confidentiality.** Commission staff will create and maintain files for all matters considered under subsection (b) of this rule. All information in the files pertaining to applicants for certification, certification of a mediator training program, or certification renewal shall remain confidential in accordance with N.C.G.S. § 7A-38.2(h). Information pertaining to complaints regarding the moral character, conduct, or fitness to practice of mediators or trainers or personnel affiliated with certified mediator training programs shall remain confidential until such time as the Grievance and Disciplinary Committee completes its preliminary investigation, finds probable cause under subsection (d)(2) of this rule and N.C.G.S. § 7A-38.2(h), and the time within which the respondent may appeal the determination of probable cause has expired, or if the respondent files a timely appeal under subsection (e) of this rule, the information shall remain confidential until a hearing is held and a decision is reached by the Commission.

Staff shall reveal the names of applicants and respondents to the committee and the 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) and subsection (d)(3) of this rule.

Notwithstanding the above, staff shall notify the executive director of the Mediation Network of North Carolina, and the executive director of the community mediation center that is sponsoring the application of an applicant seeking certification as a district criminal court mediator, of any matter regarding the moral character, conduct, or fitness to practice of the applicant.

Staff shall notify any mediation program or agency populating a list of mediators certified by the Commission, including, but not limited to, the Mediation Network of North Carolina, community mediation centers, the North Carolina Industrial Commission, and the federal trial courts in North Carolina, of any finding of probable cause under this subsection against a mediator arising out of a mediated settlement conference conducted under the auspices of such agency or program. When practicable, staff shall notify the agency or program of any public sanction imposed by the Commission under these rules against a certified mediator who also serves as a mediator for that agency or program.

Staff and members of the Grievance and Disciplinary Committee may share information with other committee chairs or committees if needed and relevant to a review of any matter before such other committee.

The Commission may publish names, contact information, and biographical information for mediators, neutrals, and mediator training programs that have been certified or qualified.

(d) Grievance and Disciplinary Committee Review and Determination on Matters Referred by Commission Staff.

(1) **Grievance and Disciplinary Committee Review of Moral Character Issues and Complaints.** The Grievance and Disciplinary Committee shall review matters brought before it by Commission staff under the provisions of subsection (c) of this rule and may contact any other persons or entities with knowledge of the matter for additional information. The chair may, in his or her discretion, appoint members of the committee to serve on a subcommittee to investigate a particular matter brought to the committee by staff. The chair of the committee, or his or her designee, may issue subpoenas for the attendance of witnesses and for the production of books, papers, materials, or other documentary evidence deemed necessary to the 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 enabling legislation for a mediated settlement conference program under the jurisdiction of the Commission or a violation of N.C.G.S. § 7A-38.2;
- b. is a violation of the Standards of Professional Conduct for Mediators or any other standards of professional conduct that are not inconsistent with the Standards of Professional Conduct for Mediators and to which the respondent is subject;
- c. is a violation of Supreme Court rules or any other rules for mediated settlement conferences or mediation programs;
- d. is inconsistent with good moral character (*See* Rule 8(a)(4) of the Rules for Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions, Rule 8(a)(7) of the Rules for Settlement Procedures in District Court Family Financial Cases, Rule 7(a)(4) of the Rules of Mediation for Matters in District Criminal Court, and Rule 7 of these rules);
- e. reflects a lack of fitness to conduct mediated settlement conferences or mediations, or to serve in affiliation with a certified mediator training program (*See* Rule 7);
- f. serves to discredit the Commission, the courts, or the mediation process (*See* Rule 7); or
- g. is a violation of a Commission policy.

(3) **Grievance and Disciplinary Committee Determination.** Following deliberation, the Grievance and Disciplinary Committee shall determine whether to dismiss the matter, make a referral, or impose sanctions, as follows:

- a. **To Dismiss.** If a majority of the Grievance and Disciplinary Committee members review an issue of, or a complaint about, moral character, conduct, or fitness to practice and find no probable cause to believe that the applicant or respondent's conduct is a violation of subsection (d)(2) of this rule, then the committee shall dismiss the matter and instruct Commission staff to:
 1. certify or recertify the applicant, if an application is pending, or notify the respondent by Certified Mail, return receipt requested, with a copy sent by

First-Class Mail through the U.S. Postal Service, that no further action will be taken in the matter; or

2. notify the complaining party and the respondent by Certified Mail, return receipt requested, that no further action will be taken and that the matter is dismissed. A copy of the notice of dismissal shall also be sent to the respondent and the complaining party through the U.S. Postal Service by First-Class Mail.

b. **To Refer.** If, after reviewing an application for certification or certification renewal or a complaint, a majority of the Grievance and Disciplinary Committee members eligible to vote determine that:

1. any violation of a statute, a program rule, the Standards of Professional Conduct for Mediators, or a Commission policy was technical or relatively minor in nature, caused minimal harm to the complaining party, and did not discredit the program, courts, or Commission, then the committee may:
 - i. dismiss the complaint with a letter to the complaining party and respondent by Certified Mail, return receipt requested, and a copy of the letter through the U.S. Postal Service by First-Class Mail directed to the complaining party and the respondent at the last mailing address provided to the Commission by the complaining party and the respondent, notifying them of the dismissal, citing the violation, and advising the respondent to avoid such conduct in the future; or
 - ii. refer the respondent to one or more members of the committee to discuss the matter and explore ways that the respondent may avoid similar complaints in the future.
2. the respondent's conduct involves no violation, but raises best practices or professionalism concerns, then the committee may:
 - i. direct Commission staff to dismiss the complaint with a letter sent by Certified

Mail, return receipt requested, and a copy through the U.S. Postal Service by First-Class Mail to the complaining party and the respondent directed to the complaining party or respondent at the last mailing address provided to the Commission by the complaining party or the respondent advising him or her of the committee's concerns and providing guidance;

- ii. direct the respondent to meet with one or more members of the committee, who will informally discuss the committee's concerns and provide counsel; or
 - iii. refer the respondent to the Chief Justice's Commission on Professionalism for counseling and guidance.
3. the applicant or respondent's conduct raises significant concerns about his or her fitness to practice, including concerns about mental instability, mental health, lack of mental acuity, possible dementia, or possible alcohol or substance abuse, then the committee may, in lieu of or in addition to imposing sanctions, refer the applicant or respondent to the North Carolina Lawyer Assistance Program for evaluation or, if the applicant or respondent is not an attorney, to a physician, other licensed mental health professional, or substance abuse counselor or organization.

In the event that an applicant or respondent is referred to one or more members of the committee for counsel, to the Lawyer Assistance Program, or to some other professional entity, and fails to cooperate regarding the referral or refuses to sign releases or provide any resulting evaluations to the committee, or should any resulting discussion or evaluation suggest that the applicant or respondent is not currently capable of serving as a mediator, trainer, or manager, the committee may make further determinations in the matter. Pending further review, the committee may also recommend summary suspension under subsection (d)(4) of this rule until such time as the committee has authorized

the applicant or respondent to return to active mediation practice. The committee may condition a certification or certification renewal on the applicant or respondent'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 Impose Sanctions.** Except as provided for in subsection (d)(3)(b)(1) of this rule, if a majority of the Grievance and Disciplinary Committee members find probable cause under subsection (d)(2) of this rule, then the committee shall impose sanctions on the applicant or respondent under subsection (e)(13) of this rule.

Notification of any dismissal, referral, or sanction imposed under subsection (d)(3) of this rule shall be sent to respondent by Certified Mail, return receipt requested, and a copy sent through the U.S. Postal Service by First-Class Mail directed to the last mailing address provided to the Commission by the respondent, and such service shall be deemed sufficient for the purposes of these rules. All witnesses and any others contacted by Commission staff or a committee member shall be notified, if feasible, of a dismissal of the complaint.

A complaining party shall have no right of appeal from a committee determination to dismiss a complaint under subsection (d)(3)(a) of this rule or from a committee determination to refer a mediator under subsection (d)(3)(b) of this rule.

A letter issued under subsection (d)(3)(a) or subsection (d)(3)(b) of this rule regarding conduct or referral shall not be considered sanctions under subsection (e)(13) of this rule. Rather, the letters are intended to be opportunities to address concerns and to help applicants and respondents perform more effectively as mediators. However, there may be instances that are more serious in nature where the committee may both make a referral under subsection (d)(3)(b) of this rule and impose sanctions under subsection (e)(13) of this rule.

- (4) **Summary Suspension.** If, after initiation of a complaint against a respondent certified by the Commission and during review by the Grievance and Disciplinary Committee, the committee determines and the chair of the Commission concurs that the conduct of the respondent raises a serious issue regarding the health, safety, or welfare of the mediator or the public, or may adversely affect the integrity of the courts, and that

there is a necessity for prompt action, then the Commission, through its chair, may petition the court to restrain or enjoin the respondent's conduct, including suspending the mediator from active service as a mediator in North Carolina. The petition for injunctive relief shall be filed in the Superior Court, Wake County.

- (5) **Right to Object and Negotiate.** Within the thirty-day period set forth in subsection (d)(6) of this rule, 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 committee. The committee shall have the authority and discretion to engage or decline to engage in 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 in writing under this subsection and subsection (d)(6) of this rule. Commission staff, in consultation with the committee chair, may extend the appeal period up to an additional thirty days in order to allow more time to complete negotiations.
- (6) **Right of Appeal.** If a referral is made or sanctions are imposed, then the applicant or respondent may file an appeal with the Commission in writing no later than thirty days from the date of the actual delivery of the notice to the applicant or respondent, or within thirty days from the last attempted delivery by the U.S. Postal Service. Subject to the provisions of subsection (d)(5) of this rule, if no appeal is received within thirty days as set out herein, then the applicant or respondent shall be deemed to have accepted the Grievance and Disciplinary Committee's findings and the imposition of sanctions. The complaining party does not have a right to appeal from a decision of the committee to dismiss the complaining party's complaint against the respondent.
- (7) **Notification.** At such time as the matter becomes public under subsection (c)(7) of this rule and N.C.G.S. § 7A-38.2(h), Commission staff shall, if feasible, notify the complaining party and any witnesses or others contacted during the investigation of the complaint by staff or the Grievance and Disciplinary Committee of the sanctions imposed and the fact of the respondent's appeal, if filed.

(e) **Appeal to the Commission.**

- (1) **Stay Pending Appeal.** The imposition of a private or public sanction by the Grievance and Disciplinary Committee shall be stayed, pending the final disposition of an appeal properly filed by the respondent with the Commission.
- (2) **The Commission Shall Meet to Consider Appeals.** In the discretion of the Commission's chair, an appeal by the respondent to the Commission of the Grievance and Disciplinary Committee's determination under subsection (d)(6) of this rule shall be heard either by (i) a five-member panel of Commission members chosen by the chair or the chair's designee, or (ii) the members of the full Commission. Any members of the committee who participated in issuing the committee's determination shall be recused and shall not participate in the hearing. Under Rule 3(c), members of the Commission shall recuse themselves from hearing the matter when they cannot act impartially. No matter shall be heard and decided by less than three Commission members.
- (3) **Conduct of the Hearing.**
 - a. At least thirty days prior to the hearing before the Commission or panel, Commission staff shall forward to all parties, special counsel to the Commission, and members of the Commission or panel who will hear the matter, a copy of all documents considered by the Grievance and Disciplinary Committee and the names of the members of the Commission or panel who will hear the matter. Any written challenge questioning the neutrality of a member of the Commission or panel shall be directed to and decided by the Commission's chair or the chair's designee. A written challenge shall be filed with the Commission no later than seven days from the date the person filing the challenge received notice of the members who will hear the appeal.
 - b. Hearings conducted by the Commission or a panel under 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. An appeal from a denial of an initial application for certification or qualification of a mediator, neutral, or mediator training program that relates to moral character, conduct, or fitness to practice shall be held in private

unless the applicant requests a public hearing. An appeal from a denial of an application for certification renewal or reinstatement that relate to ethics or conduct shall 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.

- e. In the event that the applicant, complaining party, or respondent fails to appear without good cause, the Commission or panel shall proceed to hear from the parties and witnesses who are present and make a determination based on the evidence presented at the proceeding.
- f. Proceedings before the Commission or panel shall be conducted informally, but with decorum.
- g. The Commission or panel, through its counsel, and the applicant or respondent, may present evidence in the form of sworn testimony and/or written documents and may cross-examine any witness called to testify by the other. Commission or panel 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 a full and fair development of the facts. The Commission or panel shall consider all evidence presented and give the evidence appropriate weight and effect.
- h. If, in the discretion of the Commission's chair, a panel is empaneled to hear the appeal, then the Commission's chair or designee shall appoint one of the members of the panel to serve as the presiding officer at the hearing before the panel. The Commission's chair or designee shall serve as the presiding officer at a hearing before the full Commission. The presiding officer shall have such jurisdiction and powers as are necessary to conduct a proper and efficient hearing 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.
- i. Nothing herein shall restrict the chair of the Commission from serving on a panel or serving as its presiding officer at any hearing held under the provisions of subsection (e) of this rule.

- (4) **Date of the Hearing.** An appeal of any sanction imposed by the Grievance and Disciplinary Committee shall be heard by the Commission no later than 180 days from the date the notice of appeal is filed with the Commission, unless waived in writing by the respondent.
- (5) **Notice of the Hearing.** The Commission's office shall serve on all parties by Certified Mail, return receipt requested, notice of the date, time, and place of the hearing no later than sixty days prior to the hearing, and such service shall be deemed sufficient for the purposes of these rules. A copy of the hearing notice shall also be sent through the U.S. Postal Service by First-Class Mail directed to the respondent at the last mailing address provided to the Commission by the respondent.
- (6) **Ex Parte Communications.** With the exception of Commission staff, no person shall have any ex parte communication with a member of the Commission concerning the subject matter of the appeal. Communications regarding scheduling matters shall be directed to staff.
- (7) **Attendance.** The presiding officer may, in his or her discretion, permit an attorney to represent a party by telephone or through video conference or 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 wishes to appear by telephone or video conference, then the requesting party shall notify Commission staff at least twenty days prior to the proceeding. At least five days prior to the proceeding, staff must be provided with the contact information of those who will participate by telephone or video conference.
- (8) **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 ten days prior to the hearing the names of all witnesses who will be called to testify.
- (9) **Rights of the Applicant or Respondent at the Hearing.** At the hearing, the applicant or respondent may:
 - a. appear personally and be heard;
 - b. be represented by counsel;
 - c. call and examine witnesses;
 - d. offer exhibits; and

- e. cross-examine witnesses.
- (10) **Transcript.** The Commission shall retain a court reporter to keep a record of the proceeding. Any respondent 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 a tape, noncertified transcript, or record made by a court reporter retained by a respondent are not part of the official record.
- (11) **Commission Deliberation.** The members of the Commission or panel shall deliberate to determine whether clear, cogent, and convincing evidence exists to believe that an applicant or respondent's conduct is a violation of any of the provisions set out in subsection (d)(2) of this rule.
- (12) **Commission Decision.** After the hearing, a majority of the Commission members hearing the appeal or the panel may find that:
 - a. there is not clear, cogent, and convincing evidence to support a referral or the imposition of sanctions and, therefore, dismiss the complaint or direct Commission staff to certify the applicant or recertify the mediator or mediator training program; or
 - b. there is clear and convincing evidence that grounds exist to refer or to impose sanctions. The Commission or panel may impose the same or different sanctions than those imposed by the Grievance and Disciplinary Committee or make the same or a different referral.

The Commission or panel shall set forth its findings of fact, conclusions of law, order of referral and/or imposition of sanctions, or other action in writing and serve its decision on the respondent within sixty days from the date the hearing is concluded. A copy of the decision shall be sent by Certified Mail, return receipt requested, and such service shall be deemed sufficient for purposes of these rules. A copy of the decision shall also be sent through the U.S. Postal Service by First-Class Mail directed to the respondent at the last mailing address provided to the Commission by the respondent.

A decision of the Commission or panel shall be, subject to subsection (e)(15) of this rule, the final decision of the Commission.

(13) **Private and Public Sanctions.**

a. **Private Sanctions.** The Grievance and Disciplinary Committee, or the Commission members or panel who heard the respondent's appeal, may impose private sanctions against an applicant or respondent, which include the following:

1. Letter of warning (a written communication to the respondent stating that the respondent's conduct, while not a basis for public sanctions, was an unintentional, minor, or technical violation of a statute, rule, policy, or the Standards of Professional Conduct for Mediators, or was unprofessional or not in accord with accepted professional practice, and if continued, may be a basis for public sanctions).
2. Reprimand (a written communication to the respondent stating that the respondent's conduct, although a violation of a statute, rule, policy, or the Standards of Professional Conduct for Mediators, was minor and, if continued, may result in public sanctions).
3. Denial of certification of an initial application.
4. Approval of certification or certification renewal upon enumerated condition(s).
5. Any other private sanction deemed appropriate by the Commission members who heard the appeal or the panel, including referrals as authorized by subsection (d)(3)(b) of this rule.

b. **Public Sanctions.** The Grievance and Disciplinary Committee, the Commission members who heard the appeal, or the panel may impose public sanctions against the respondent which include, but are not limited to, the following:

1. Censure (a written communication to the respondent stating that the violation of a statute, rule, Commission policy, or the Standards of Professional Conduct for Mediators is serious, has caused or could cause significant or potential harm, and if continued, may result in the imposition of more serious sanctions).
2. Reinstatement upon condition(s).

3. Suspension of certification for a specified term, with or without condition(s).
 4. Denial of certification renewal.
 5. Denial of reinstatement.
 6. Decertification.
 7. Any other sanction deemed appropriate by the Commission members who heard the appeal or the panel.
- c. **Imposition of Conditions.** The Grievance and Disciplinary Committee or the panel may impose any sanction set forth in subsections (e)(13)(a) and (e)(13)(b) of this rule subject to reasonable conditions, which may include, but are not limited to, the following:
1. Completion of additional training.
 2. Restriction on the types of cases to be mediated in the future.
 3. Reimbursement of the fees paid to the mediator or mediator training program.
 4. Prohibition on participation as a trainer or person associated with a certified mediator training program, either indefinitely or for a specific period of time.
 5. Completion of additional observations.
 6. Any other condition deemed appropriate by the Commission members who heard the appeal or the panel.
- d. **Factors that May Be Considered in Imposing Sanctions and/or Conditions.**
1. The intent of the respondent to commit acts resulting in harm or the circumstances under which the potential of causing harm was foreseeable.
 2. The circumstances reflecting the respondent's lack of honesty, trustworthiness, or integrity.
 3. A dishonest or selfish motive, or the absence thereof.
 4. Any negative impact of the respondent's conduct on third parties, the public's perception of the mediation process, or the administration of justice.

5. A conviction of a felony.
6. Any prior disciplinary offenses, or the absence thereof.
7. The remoteness of prior disciplinary offenses.
8. Any timely good faith efforts to rectify the consequences of misconduct.
9. A pattern of misconduct.
10. The effect of any physical or mental disability or impairment, or personal or emotional problems, on the conduct in question.
11. A full disclosure and cooperative attitude toward the disciplinary process.
12. Any bad faith obstruction of the disciplinary process by intentionally failing to comply with rules or orders of the Commission or by submitting false evidence or making false statements to the Commission.
13. The respondent's failure to acknowledge the wrongful nature of his or her conduct or to express remorse.
14. An expression of remorse and acknowledgement of the wrongful nature of the respondent's conduct.
15. The character or reputation of the respondent.
16. The respondent's mediation experience and the number of years that the respondent has been certified.
17. Any other factor found to be pertinent to the consideration of the sanctions to be imposed.

(14) **Publication of Grievance and Disciplinary Committee or Commission Decisions.**

- a. The names of respondents who have been issued a private sanction as set forth in subsection (e)(13)(a) of this rule or applicants who have never been certified but have been denied certification shall not be published by the Commission.
- b. The names of respondents or applicants for certification renewal who are sanctioned under any provision of subsection (e)(13)(b) of this rule or who have been denied

reinstatement under this rule shall be published by the Commission, along with a short summary of the facts involved and the discipline imposed. For good cause shown, the Grievance and Disciplinary Committee or the Commission may waive this requirement.

c. Chief district court judges, senior resident superior court judges, and clerks in judicial districts and counties in which a respondent is available to serve, the North Carolina State Bar and any other professional licensing or certification bodies to which a respondent is subject, and other trial forums or agencies having mandatory programs and using mediators certified by the Commission shall be notified of any public sanction and/or condition imposed upon a respondent.

- (15) **Appeal.** The Superior Court, Wake County, shall have jurisdiction over appeals of Commission or panel decisions imposing sanctions or denying applications for mediator or mediator training program certification or certification renewal. An order imposing sanctions or denying an application 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 by a respondent shall be filed in the Superior Court, Wake County, no later than thirty days from the date of the actual delivery of the order imposing sanctions or denying certification or certification renewal to the applicant or respondent, or no later than thirty days from the date of the last attempted delivery to the applicant or respondent by the U.S. Postal Service. A copy of the notice of appeal shall also be sent to the applicant or respondent through the U.S. Postal Service by First-Class Mail directed to respondent or applicant at the last mailing address provided to the Commission by the applicant or respondent.
- (16) **Effective Date of Sanction Imposed.** A sanction imposed against a respondent becomes effective either upon the expiration of the period within which an applicant or respondent may appeal the determination of the Grievance and Disciplinary Committee, or upon a final decision by the Commission or a panel after hearing a timely appeal of the committee's imposition of sanctions.
- (17) **Petition for Reinstatement or New Application Following a Denial of Initial or Subsequent Application.** An applicant whose application for certification has been denied under the

provisions of subsection (e)(13)(a) of this rule may be certified, or a respondent who has been decertified may be reinstated, under subsection (e)(17)(h) of this rule. Except as otherwise provided by the Grievance and Disciplinary Committee, the Commission, or a panel of the Commission, no petition for reinstatement or new application for certification following a denial may be tendered within two years of the date of the order of decertification or the date of denial of the application for certification.

- a. A petition for reinstatement or a new application for certification after a denial shall be made in writing, verified by the applicant or petitioner, and filed with the Commission's office.
- b. The petition for reinstatement or the new application for certification following a denial shall contain:
 1. the name and address of the applicant or petitioner;
 2. the reasons why certification was denied or the moral character, conduct, or fitness concerns upon which the suspension, decertification, or bar to serving as a trainer or training program manager was based;
 3. a concise statement of facts alleged to meet the applicant or petitioner's burden of proof as set forth in subsection (e)(17)(g) of this rule and alleged to justify certification or reinstatement as a certified mediator or certified mediator training program; and
 4. a statement consenting to a criminal background check, signed by the applicant or petitioner; or, if the applicant or petitioner is a mediator training program, by the trainers or instructors affiliated with the program.
- c. The petition for reinstatement or the application for certification following a previous denial may also contain a request for a hearing on the matter to consider any additional evidence which the applicant or petitioner wishes to submit, including any third-party testimony regarding his or her moral character, competency, or fitness to practice as a mediator. A petition or application for certification from a mediator training program may contain a request for a hearing on the matter to consider any additional evidence regarding the effectiveness of the program and/or the qualifications of its trainer(s).

- d. Commission staff shall refer the petition for reinstatement or the application for certification following a denial to the Commission for review. In the discretion of the Commission's chair, the chair or designee may (i) appoint a five-member panel of Commission members to review the matter, or (ii) put the matter before the Commission for review. The panel shall not include any members of the Commission who were involved in any prior determination involving the applicant or petitioner. Members of the Commission shall recuse themselves from reviewing any matter if they cannot act impartially. Any challenges questioning the neutrality of a member reviewing the matter shall be decided by the Commission's chair or designee. No matter shall be heard and decided by less than three Commission members.
- e. If the applicant or petitioner does not request a hearing under subsection (e)(17)(c) of this rule, then the Commission or panel members shall review the application or petition and shall decide whether to grant or deny the applicant's application for certification or the petitioner's petition for reinstatement after denial within sixty days from the filing of the application or petition. That decision shall be final.

If the applicant or petitioner requests a hearing, it shall be held within 180 days from the filing of the application or petition, unless the time limit is waived by the applicant or petitioner in writing. In the discretion of the chair of the Commission, the hearing shall be conducted before the Commission or a panel appointed by the chair. At the hearing, the applicant or petitioner may:

 - 1. appear personally and be heard;
 - 2. be represented by counsel;
 - 3. call and examine witnesses;
 - 4. offer exhibits; and
 - 5. cross-examine witnesses.
- f. At the hearing, the Commission may call witnesses, offer exhibits, and examine the applicant or petitioner and witnesses.
- g. The burden of proof shall be upon the applicant or petitioner to establish by clear, cogent, and convincing evidence that:

1. the applicant or petitioner has (i) rehabilitated his or her character; (ii) addressed and resolved any conditions that led to his or her denial of certification or decertification; (iii) completed additional training in mediation theory and practice, studied program rules, the Standards of Professional Conduct for Mediators, and ethics to ensure his or her competency as a mediator; and/or (iv) taken steps to address and resolve any other matter which led to the applicant or petitioner's denial of certification or decertification;
 2. the applicant or petitioner, if a mediator training program, has corrected any deficiencies as required by enabling legislation, program rules, or Commission policies, and has addressed and resolved any issues related to the qualifications or character issues of any persons affiliated with the program;
 3. the petitioner's reinstatement or applicant's certification will not be detrimental to the Mediated Settlement Conference, Family Financial Settlement, Clerk Mediation, District Criminal Court Mediation programs, or to other programs, the Commission, the courts, or the public; and
 4. the applicant or petitioner has completed any paperwork required for certification or reinstatement, including, but not limited to, the completion of a new application and execution of a release to conduct a background check, and has paid any required reinstatement and/or certification fees.
- h. If the applicant or petitioner has established that the conditions set forth in subsection (e)(17)(g) of this rule have been met by clear, cogent, and convincing evidence, then the Commission shall certify or reinstate the applicant or petitioner as a certified mediator or mediator training program. Certification or reinstatement may be conditioned upon the completion of any reasonable condition set forth in subsection (e)(13)(c) of this rule.
- i. The Commission or panel shall set forth its decision to certify or reinstate an applicant or petitioner or to deny certification or reinstatement in writing, making findings of fact and conclusions of law. A copy of the decision shall

be sent by Certified Mail, return receipt requested, within sixty days from the date of the hearing, and such service shall be deemed sufficient for purposes of these rules. A copy of the decision shall also be sent to the applicant or petitioner through the U.S. Postal Service by First-Class Mail.

- j. If a new application for certification or petition seeking reinstatement is denied, then the applicant or petitioner may not apply again under subsection (e)(17) of this rule until two years have elapsed from the date of the decision denying certification or reinstatement.
- k. The Superior Court, Wake County, shall have jurisdiction over appeals of Commission decisions to deny certification or reinstatement under subsection (e)(17) of this rule. A decision denying certification or reinstatement under this section shall be reviewable upon appeal, and the entire record, as submitted, shall be reviewed to determine whether the decision is supported by substantial evidence. Notice of appeal shall be filed in the Superior Court, Wake County, no later than thirty days from the date of the actual delivery to the applicant or petitioner of the decision, or no later than thirty days from the last attempted delivery by the U.S. Postal Service.

Rule 10. The Mediator Certification and Training Committee

(a) **Appointment of the Mediator Certification and Training Committee.** The Commission's chair shall appoint a standing committee entitled the Mediator Certification and Training Committee to review the matters set forth in subsection (b) of this rule.

(b) **Matters to Be Considered by the Mediator Certification and Training Committee.** The Mediator Certification and Training Committee shall review and consider matters arising under this subsection.

- (1) Commission staff may raise with the Mediator Certification and Training Committee's chair matters relating to the issuance of provisional pre-training approvals and that pertain to an applicant's education, work experience, training, or any other requirement for mediator certification unrelated to moral character, conduct, or fitness to practice, including a request that the chair review a staff determination not to issue a provisional pre-training approval.

- (2) Commission staff may raise with the Mediator Certification and Training Committee's chair or the full committee matters that relate to the education, work experience, training, or other qualifications of an applicant for mediator certification unrelated to moral character, conduct, or fitness to practice. Appeals of staff determinations to deny an application based on a deficiency in the applicant's education, work experience, and/or training, or his or her failure to meet other requirements for certification unrelated to moral character, conduct, or fitness to practice, shall be brought before the full committee.
 - (3) Commission staff may raise with the Mediator Certification and Training Committee's chair or the full committee matters that pertain to applications for mediator training program certification or certification renewal that are unrelated to the moral character, conduct, or fitness to practice of training program personnel. Appeals of staff decisions to deny an application for mediator training program certification or certification renewal shall be brought before the full committee.
- (c) **Commission Staff Review of Qualifications.**
- (1) **Review of Provisional Pre-training Approvals.** Commission staff shall review requests for the issuance of provisional pre-training approvals, seeking guidance from the Mediator Certification and Training Committee chair, as necessary, and shall issue approvals in instances where the person seeking the approval appears to meet all education, work experience, and other requirements established for mediator certification by program rules and Commission policies, except that any matters relating to the moral character, conduct, or fitness to practice of the person requesting the approval shall be put before the Grievance and Disciplinary Committee or its chair under Rule 9. Staff may contact those requesting approvals, any third party or entity with relevant information about the requesting person, and may consider any other information acquired during the review process that bears on the requesting person's qualifications. If, after review, the chair determines that the person requesting the provisional pre-training approval does not meet the requisite criteria for certification established by program rules and Commission policies, then the chair shall instruct staff not to issue the pre-training approval. That determination shall be final and is not subject to appeal by the person requesting the provisional pre-training approval.

- (2) **Review of Information Obtained During the Mediator Certification Process.** Commission staff shall review all applications for mediator certification to determine whether the applicant meets the qualifications for certification unrelated to moral character, conduct, or fitness to practice set forth in program rules adopted by the Supreme Court for mediated settlement conferences or mediation programs under the jurisdiction of the Commission and any policies adopted by the Commission for the purpose of implementing those rules. Staff may contact an applicant to request additional information, may contact third parties or entities with relevant information about the applicant, and may consider any other information acquired during the review process that bears on the applicant's eligibility for certification.
 - (3) **Review of Mediator Training Program Certification Applications and Certification Renewal Applications.** Commission staff shall review all mediator training program applications for certification and certification renewal, including reviewing mediator training program agendas, handouts, role plays, and trainer qualifications, to ensure compliance with program rules and Commission policies relating to mediator training programs, except that any matters relating to the moral character, conduct, or fitness to practice of training program personnel shall be put before the Grievance and Disciplinary Committee or its chair under Rule 9. Staff may seek clarification and additional information from training program personnel and training program registrants and attendees, as necessary.
- (d) **Mediator Certification and Training Committee Review.**
- (1) **Duty to Review.** The Mediator Certification and Training Committee shall review all matters brought before it by Commission staff under the provisions of subsections (b)(2) and (b)(3) of this rule. The chair may, in his or her discretion, appoint members of the committee to serve on a subcommittee to review a particular matter brought to the committee by staff. The chair or his or her designee may issue subpoenas for the attendance of witnesses and for the production of books, papers, materials, or other documentary evidence deemed necessary to any such review. The chair or designee may contact the following persons and entities for information concerning an applicant for mediator certification, mediator training program certification, or mediator training program certification renewal:
 - a. All references, employers, colleges, professional licensing or certification bodies, and other individuals or entities

cited in applications and any additional persons or entities identified by Commission staff during the course of its review as having relevant information about the qualifications of an applicant for mediator certification, mediator training program certification, or mediator training program certification renewal.

- b. Personnel affiliated with an applicant for mediator training program certification or mediator training program certification renewal, and those who registered for or have completed the training program.

All information in Commission files pertaining to requests for provisional pre-training approvals, initial certification applications of a mediator or mediator training program, or 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.** The members of the Mediator Certification and Training Committee who are eligible to vote shall deliberate to determine whether probable cause exists to believe that an applicant for mediator certification, mediator training program certification, or mediator training program certification renewal:

- a. does not meet the qualifications for mediator certification unrelated to moral character, conduct, or fitness to practice as set forth in program rules adopted by the Supreme Court for mediated settlement conferences or mediation programs under the jurisdiction of the Commission or the policies adopted by the Commission for the purpose of implementing those rules; or
- b. does not meet the requirements for mediator training program certification or mediator training program 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 conferences or mediation programs under the jurisdiction of the Commission or the policies adopted by the Commission for the purpose of implementing those rules.

If probable cause is found, then the application shall be denied.

(3) **Authority of Mediator Certification and Training Committee to Deny an Application for Certification or Mediator Training Program Certification Renewal.**

- a. If a majority of the Mediator Certification and Training Committee members who are reviewing a matter and eligible to vote find no probable cause under subsection (d)(2) of this rule, then Commission staff shall be instructed to certify the applicant for mediator certification or to certify or recertify the mediator training program.
- b. If a majority of the Mediator Certification and Training Committee members reviewing a matter and eligible to vote finds probable cause under subsection (d)(2) of this rule, then the committee shall deny the application for mediator certification or mediator training program certification or mediator training program certification renewal. The committee's determination to deny the application shall be in writing, shall set forth the deficiencies the committee found in the application, and shall be forwarded to the applicant. Notification of the determination shall be by Certified Mail, return receipt requested, and such service shall be deemed sufficient for purposes of these rules. A copy of the notice shall also be sent to the applicant through the U.S. Postal Service by First-Class Mail.
- c. If the Mediator Certification and Training Committee denies an application for mediator certification, mediator training program certification, or mediator training program certification renewal, then the applicant may appeal the denial to the Commission within thirty days from the date of the actual delivery of the notice of denial to the applicant or within thirty days from the date of the last attempted delivery by the U.S. Postal Service. Notification of an appeal must be in writing and directed to the Commission's office. If no appeal is filed within thirty days as set out herein, then the applicant shall be deemed to have accepted the committee's findings and determination.

(e) **Appeal of the Denial of Application for Mediator Certification, Mediator Training Program Certification, or Mediator Training Program Certification Renewal to the Commission.**

- (1) **The Commission Shall Meet to Consider Appeals.** In the discretion of the Commission's chair, an appeal by an applicant to

the Commission of a Mediator Certification and Training Committee determination under subsection (d)(2) of this rule shall be heard either by (i) a five-member panel of Commission members chosen by the chair or his or her designee, or (ii) the members of the full Commission. Any members of the committee who participated in issuing the committee's determination shall be recused and shall not participate in the hearing. Under Rule 3(c), members of the Commission shall recuse themselves from hearing the matter when they cannot act impartially. No matter shall be heard and decided by less than three Commission members.

(2) **Conduct of the Hearing.**

- a. At least thirty days prior to the hearing before the Commission or panel, Commission staff shall forward to the appealing party, special counsel to the Commission, if appointed, and members of the Commission or panel who will hear the matter, a copy of all documents considered by the Mediator Certification and Training Committee and the names of the members of the Commission or panel who will hear the matter. Any written challenge questioning the neutrality of a member of the Commission or panel shall be directed to and decided by the Commission's chair or designee. A written challenge shall be filed with the Commission no later than seven days from the date the person filing the challenge received notice of the members who will hear the appeal.
- b. Hearings conducted by the Commission or a panel under this rule shall be de novo.
- c. If, in the discretion of the Commission's chair, a panel is empaneled to hear the appeal, then the Commission's chair or designee shall appoint one of the members of the panel to serve as the presiding officer at the hearing before the panel. The Commission's chair or designee shall serve as the presiding officer at a hearing before the full Commission. The presiding officer shall have such jurisdiction and powers as are necessary to conduct a proper and efficient hearing 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. Nothing herein shall restrict the chair of the Commission from serving on a panel or serving as its presiding officer at any hearing held under the provisions of subsection (e) of this rule.
 - e. Special counsel supplied by the North Carolina Attorney General, at the request of the Commission or otherwise employed by the Commission, may present evidence in support of the denial of certification or recertification.
 - f. The Commission or panel, through its counsel, and the applicant or the applicant's representative may present evidence in the form of sworn testimony and/or written documents. The Commission or panel, through its counsel, and the applicant 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 a full and fair development of the facts. Commission or panel members may question any witness called to testify at the hearing. The Commission or panel shall consider all evidence presented and give the evidence appropriate weight and effect.
 - g. Hearings shall be conducted in private unless the applicant requests a public hearing.
 - h. An applicant and any witnesses or others identified as having relevant information about the matter may appear at the hearing with or without counsel.
 - i. In the event that the applicant fails to appear without good cause, the Commission or panel shall proceed to hear from the witnesses who are present and make a determination based on the evidence presented at the proceeding.
 - j. Proceedings before the Commission or panel shall be conducted informally, but with decorum.
- (3) **Date of the Hearing.** An appeal of any determination by the Mediator Certification and Training Committee to deny an application for mediator certification, mediator training program certification, or mediator training program certification renewal shall be heard by the Commission no later than 180 days from the date the notice of appeal is filed with the Commission, unless waived in writing by the applicant.
- (4) **Notice of the Hearing.** The Commission's office shall serve on all parties by Certified Mail, return receipt requested, notice of the date, time, and place of the hearing no later than sixty days

prior to the hearing, and such service shall be deemed sufficient for the purposes of these rules. A copy of the hearing notice shall also be sent through the U.S. Postal Service by First-Class Mail.

- (5) **Ex Parte Communications.** With the exception of Commission staff, no person shall have any ex parte communication with a member of the Commission concerning the subject matter of the appeal. Communications regarding scheduling matters shall be directed to staff.
- (6) **Attendance.** The presiding officer may, in his or her discretion, permit an attorney to represent a party by telephone or through video conference or 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 wishes to appear by telephone or video conference, then he or she shall notify Commission staff at least twenty days prior to the proceeding. At least five days prior to the proceeding, staff must be provided with the contact information of those who will participate by telephone or video conference.
- (7) **Witnesses.** The presiding officer shall exercise his or 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. At least ten days prior to the hearing, each party shall forward to the Commission's office and to all other parties the names of all witnesses who each intends to call to testify.
- (8) **Rights of the Applicant at the Hearing.** At the hearing, the applicant may:
 - a. appear personally and be heard;
 - b. be represented by counsel;
 - c. call and examine witnesses;
 - d. offer exhibits; and
 - e. cross-examine witnesses.
- (9) **Transcript.** The Commission shall retain a court reporter to keep a record of the proceeding. Any applicant 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 a tape, noncertified transcript, or record made by a court reporter retained by a party are not part of the official record.

- (10) **Commission Deliberation.** The members of the Commission or panel shall deliberate to determine whether clear, cogent, and convincing evidence exists to believe that the education, work experience, training, or other qualifications of an applicant for mediator certification unrelated to moral character, conduct, or fitness to practice, fail to meet the requirements for certification set forth in program rules and/or Commission policies, or whether the qualifications of a mediator training program seeking certification or certification renewal fail to meet any of the requirements for certification or certification renewal unrelated to the moral character, conduct, or fitness to practice of mediator training program personnel set forth in program rules and/or Commission policies.
- (11) **Commission Decision.** After the hearing, a majority of the Commission members hearing the appeal or the panel may find that:
- a. there is not clear, cogent, and convincing evidence to support a denial of certification, and instruct Commission staff to certify the applicant for mediator certification or to certify or recertify the applicant for mediator training program certification; or
 - b. there is clear, cogent, and convincing evidence that grounds exist to deny the application for mediator certification or mediator training program certification or mediator training program certification renewal.

The Commission or panel shall set forth its findings of fact, conclusions of law, and decision to deny certification or certification renewal in writing and serve its decision on the applicant within sixty days from the date the hearing is concluded. A copy of the decision shall be sent by Certified Mail, return receipt requested, and such service shall be deemed sufficient for purposes of these rules. A copy of the decision shall also be sent through the U.S. Postal Service by First-Class Mail.

- (12) **Appeals.** The Superior Court, Wake County, shall have jurisdiction over appeals of Commission or panel decisions denying an application for certification of a mediator or mediator training program or mediator training program renewal. The decision denying certification or renewal of mediator training program certification under this rule shall be reviewable upon appeal if the entire record, as submitted, is reviewed to determine whether the decision is supported by substantial evidence. A notice of appeal shall be filed in the Superior Court, Wake

County, no later than thirty days from the date of the actual delivery to the applicant of the decision denying certification or mediator training program certification renewal, or within thirty days from the last attempted delivery by the U.S. Postal Service.

- (13) **New Application Following Denial of Initial Application for Certification or Mediator Training Program Certification Renewal.** An applicant whose application for mediator or mediator training program certification has been denied, or a mediator training program whose application for certification renewal has been denied, may reapply for certification under this rule.

Except as otherwise provided by the Mediator Certification and Training Committee, Commission, or a panel of the Commission, no new application for mediator certification following a denial may be tendered within two years of the date of the denial of the application for mediator certification. A new application for mediator training program certification may be tendered at any time the applicant believes that the program has met the qualifications for mediator training program certification.

- a. A new application following a denial shall be made in writing, verified by the applicant, and filed with the Commission's office.
- b. The new application following a denial shall contain:
 1. the name and address of the applicant;
 2. a concise statement of the reasons upon which the denial was based;
 3. a concise statement of facts alleged to meet respondent's burden of proof as set forth in subsection (e)(13)(g) of this rule; and
 4. a statement consenting to a criminal background check, signed by the applicant or petitioner; or, if the applicant or petitioner is a mediator training program, by the trainers or instructors affiliated with the program.
- c. The new application for certification may also contain a request for a hearing on the matter to consider any additional evidence that the applicant wishes to submit. An application from a mediator training program for certification or certification renewal may contain a request for a hearing on the matter to consider any additional

evidence regarding the effectiveness of the program and/or the qualifications of its personnel.

- d. Commission staff shall refer the new application to the Commission for review. In the discretion of the Commission's chair, the chair or designee may (i) appoint a five-member panel of Commission members to review the matter, or (ii) put the matter before the Commission for review. The panel shall not include any members of the Commission who were involved in a prior determination involving the applicant or petitioner. Members of the Commission shall recuse themselves from reviewing any matter if they cannot act impartially. Any challenges questioning the neutrality of a member reviewing the matter shall be decided by the Commission's chair or designee. No matter shall be heard and decided by less than three Commission members.
- e. If the applicant does not request a hearing under subsection (e)(13)(c) of this rule, then the Commission or panel shall review the application and shall decide whether to grant or deny the new application for mediator certification or mediator training program certification or certification renewal after denial within ninety days from the filing of the new application. That decision shall be final.

If the applicant requests a hearing, then it shall be held within 180 days from the filing of the new application, unless the time limit is waived by the applicant in writing. The Commission shall conduct the hearing consistent with subsection (e)(2) of this rule. In the discretion of the chair of the Commission, the hearing shall be conducted before the Commission or a panel appointed by the chair. At the hearing, the applicant may:

- 1. appear personally and be heard;
 - 2. be represented by counsel;
 - 3. call and examine witnesses;
 - 4. offer exhibits; and
 - 5. cross-examine witnesses.
- f. At the hearing, the Commission may call witnesses, offer exhibits, and examine the applicant and witnesses.

- g. The burden of proof shall be upon the applicant to establish by clear, cogent, and convincing evidence that:
 - 1. the applicant has satisfied the qualifications that led to the denial;
 - 2. the applicant has completed any paperwork required for certification, including, but not limited to, the completion of an approved application form and execution of a release to conduct a background check, and paid any required certification fees; and
 - 3. the applicant, if a mediator training program, has corrected any deficiencies as required by enabling legislation, program rules, or Commission policies, and has addressed and resolved any issues related to the qualifications of any persons affiliated with the program unrelated to moral character, conduct, or fitness to practice.
- h. If the applicant has established that the conditions set forth in subsection (e)(13)(g) of this rule have been met by clear, cogent, and convincing evidence, and is entitled to have the application approved, then the Commission shall certify the applicant.
- i. The Commission or panel shall set forth its decision to certify the applicant or to deny certification in writing, making findings of fact and conclusions of law. The decision shall be sent by Certified Mail, return receipt requested, within sixty days from the date of the hearing. Such service shall be deemed sufficient for purposes of these rules. A copy of the decision shall also be sent through the U.S. Postal Service by First-Class Mail.
- j. The Superior Court, Wake County, shall have jurisdiction over appeals of Commission decisions to deny certification or certification renewal under subsection (e)(13) of this rule. A decision denying certification or certification renewal under this section shall be reviewable upon appeal, and the entire record, as submitted, shall be reviewed to determine whether the decision is supported by substantial evidence. Notice of appeal shall be filed in the Superior Court, Wake County, no later than thirty days from the date of the actual delivery of the decision to the applicant, or thirty days from the date of the last attempted delivery by the U.S. Postal Service. A copy of the decision

shall also be sent to applicant through the U.S. Postal Service by First-Class Mail.

Rule 11. 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.

* * *