

## Mediator Qualifications Board Update

by Sharon Press

Four additional grievances have been filed with the Mediator Qualifications Board since the last report in the Summer 1994 Newsletter. All of the grievances (twelve) which have been filed to date have been against Florida Supreme Court certified mediators. They fall into the following categories:

4 Circuit Mediators (circuit mediations)	2 Southern Division	9 filed by parties to the mediation
1 Circuit Mediator (federal mediation)	9 Central Division	2 filed by attorneys
1 Circuit Mediator (family mediation)	1 Northern Division	1 filed by mediator
1 Family Mediator (family mediation)		
5 County Mediators (county mediations)		

- 4 of the charges were dismissed at the complaint committee level: 1 dismissed for lack of jurisdiction -- complaint arose prior to the effective date of the rules; 3 no violation of the rules found.
- 5 found probable cause that the alleged misconduct if true would constitute a violation of the Rules for Certified and Court-Appointed Mediators: 2 Hearings Held: 1 "No credible evidence to support the charges" [complainant filed an appeal of the Panel's decision to the Florida Supreme Court which dismissed the appeal]; 1 Dismissed for lack of jurisdiction -- violation occurred prior to rule adoption; 2 Complaint Committee met with complainant and mediator to resolve the case -- sanctions accepted by the mediator in both cases; 1 Complaint Committee meeting with the complainant and mediator to resolve the dispute pending.
- 3 pending before complaint committees.

In the last newsletter, we reported that the case involving the allegation that the mediator continued to mediate despite the wishes of the parties to terminate, resulted in complete exoneration of the mediator. The complainants had appealed the panel's decision that there was "no credible evidence to support any of the charges." The Florida Supreme Court dismissed the appeal without an opinion.

Of the two cases which were pending at the time the newsletter went to print, one was dismissed at the complaint committee level for lack of probable cause. In the second case, the complaint committee found probable cause and met with the mediator and the complainant in an effort to resolve the case. The mediator, Stephen DeSilvio, accepted sanctions for violating the following rules:

Rule 10.050(b) by unnecessarily and inappropriately prolonging a mediation session when it became apparent that one or more of the parties were unwilling and unable to participate in the mediation process in a meaningful manner and Rule 10.090(c) for failing to postpone or cancel mediation when one of the parties was unable to participate in a mediation process for physical reasons.

The facts of the case are provided for instructive purposes. This county court case was to be mediated telephonically upon order of the court. The plaintiff was physically present at the mediation and the defendant appeared by telephone. A complete conference call hook-up was not attained by the mediator (it is unclear whether the conference call machinery was not functioning or if the mediator was merely unable to operate the machinery). The result was that the mediation took place without both parties being able to communicate to each other. The plaintiff/complainant filed this grievance stating that she repeatedly requested that the mediation be discontinued. The mediator agreed to the following sanction:

## Mediator Qualifications Advisory Panel

by Risetete Posey

On Saturday, August 28, 1994, immediately following the close of the DRC's annual conference, the newly formed Mediator Qualifications Advisory Panel held their first meeting. All nine members of the Advisory Panel were in attendance; they are:

	County	Family	Circuit
<b>Northern</b>	Mary Ann Reigher	Joanna Mauer	Mattox Hair
<b>Central</b>	Bill Ditto	S. Joseph Davis, Jr.	Chuck Rieders
<b>Southern</b>	Moses Mitchell	Javier Perez-Abreu	Bruce Blitman

An addition to Florida Rules for Certified and Court-Appointed Mediators, rule 10.300, created the Advisory Panel on July 1, 1994. The purpose of the Advisory Panel is to render advisory ethics opinions to written requests for guidance regarding the Standards of Conduct for certified mediators. Rule 10.300(c), states that only those mediators subject to the rules, i.e. mediators who are certified or who have been appointed to mediate a case pursuant to a court order, are eligible to receive advice.

As outlined in rule 10.300(b), the Panel is composed of three county, three family, and three circuit mediators. Each geographic division served by the Mediator Qualifications Board shall have three mediators (one mediator in each certification area) on the Panel.

The Advisory Panel has decided to meet the second Friday or Saturday of every other month. The first review of mediator inquiries was held on October 14. At that meeting, the Panel reviewed three letters which were submitted by certified mediators requesting guidance. Because advisory opinions are to be discussed, the Mediator Qualifications Advisory Panel meetings are not subject to the open meeting laws and will be closed. Any available opinion will be provided on request from the Center and will be summarized in the next newsletter. All references to the mediator who requested the opinion will be kept confidential.

The next MQAP meeting is scheduled to be held during the week of December 4th. If you would like to submit a letter for the Panel to consider, please send it to the Mediator Qualifications Advisory Panel, care of the Dispute Resolution Center, Supreme Court Building, Tallahassee, Florida 32303-1905.

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Effective immediately, the mediator is restricted from performing any mediation by the means of telephone conference call except upon a specific written agreement of all parties to such mediation authorizing such.

In related news, the Florida Supreme Court Committee on Mediation and Arbitration Rules considered the recommendations for amendments to the grievance procedure suggested by the Mediator Qualifications Board and accepted the revisions in concept. A final version will be prepared and circulated to the Mediator Qualifications Board and the Rules Committee prior to final adoption by the Committee and submission to the Florida Supreme Court for consideration. Continue to watch future issues of the newsletter for progress on this project.