

CHAPTER 14. GRIEVANCE MEDIATION AND FEE ARBITRATION
14-1. ESTABLISHMENT
RULE 14-1.1 ESTABLISHMENT

The Florida Bar Grievance Mediation and Fee Arbitration Program (hereinafter "the program") is hereby established as a means to empower complainants and respondents to resolve disputes without the involvement of formal disciplinary processes.

Added April 6, 1989 (542 So.2d 975); Amended: Nov. 14, 1991, effective Jan. 1, 1992 (593 So.2d 1035); July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Amended and Renamed May 20, 2004, (SC03-705), (875 So.2d 448).

RULE 14-1.2 JURISDICTION

(a) Fee Arbitration. The program shall have jurisdiction to resolve disputes between members of The Florida Bar or between a member of The Florida Bar and a client or clients over a fee paid, charged, or claimed for legal services rendered by a member of The Florida Bar when the parties to the dispute agree to arbitrate hereunder either by written contract or by a request for arbitration signed by all parties, or as a condition of probation or as a part of a discipline sanction as authorized elsewhere in these Rules Regulating The Florida Bar.

The program shall not have jurisdiction to resolve disputes involving matters in which a court has taken jurisdiction to determine and award a reasonable fee to a party or that involve fees charged that constitute a violation of the Rules Regulating The Florida Bar, unless specifically referred to the program by the court or by bar counsel.

The program shall have authority to decline jurisdiction to resolve any particular dispute by reason of its complexity and protracted hearing characteristics.

(b) Grievance Mediation. The program shall have jurisdiction to mediate the issues in a disciplinary file referred to the program in which the public interest is satisfied by the resolution of the private rights of the parties to the mediation. The program shall not have jurisdiction to resolve the issues in a disciplinary file if any issue involved in that file must remain for resolution within the disciplinary process.

Added April 6, 1989 (542 So.2d 975); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004 (SC03-705), 875 So.2d 448).

RULE 14-1.3 AUTHORITY OF BOARD OF GOVERNORS

The board of governors shall appoint a standing committee to administer the program and the board may adopt policies for implementation thereof.

Added April 6, 1989 (542 So.2d 975); Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004 (SC03-705), (875 So.2d 448).

RULE 14-1.4 APPLICATION OF RULES AND STATUTES

The Florida Arbitration Code (chapter 682, Florida Statutes), shall apply to arbitrations conducted under this chapter except as modified by or in conflict with these rules.

The Florida Rules for Certified and Court-Appointed Mediators shall apply to proceedings under this chapter unless otherwise stated herein or in conflict with the provisions of this rule or the Rules of Professional Conduct. A program mediator shall not report the misconduct of another member of The Florida Bar if the Florida Rules for Certified and Court-Appointed Mediators and applicable law preclude such report.

Added May 20, 2004 (SC03-705), (875 So.2d 448).

14-2. STANDING COMMITTEE RULE 14-2.1 GENERALLY

(a) Appointment of Members; Quorum. The board of governors shall appoint a standing committee on grievance mediation and fee arbitration comprised of:

- (1) 6 lawyers who are certified as mediators under this chapter;
- (2) 3 nonlawyers who are certified as mediators under this chapter;
- (3) 6 lawyers who are certified as arbitrators under this chapter; and
- (4) 3 nonlawyers who are certified as arbitrators under this chapter.

The board of governors will appoint a chair and vice-chair of the committee from the members listed above. A majority of members of the committee constitutes a quorum. The lawyer members of the committee shall be members of The Florida Bar in good standing.

(b) Terms. All members shall be appointed for 3-year terms, each term commencing on July 1 of the year of appointment and ending on June 30 of the third year thereafter. Terms shall be staggered so that one-third of the members of the committee shall be appointed each year. No committee member may serve for more than 2 consecutive full terms.

(c) Duties. The standing committee shall administer the program, certify mediators and arbitrators for the program, promulgate necessary standards, forms, and documents, and make recommendations, as necessary, to the board of governors for changes in the program.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2000 (763 So.2d 1002); May 20, 2004 (SC03-705), corrected opinion issued July 7, 2004, (875 So.2d 448); December 20, 2007, effective March 1, 2008 (SC06-736), 978 So.2d 91).

14-3. CERTIFICATION OF PROGRAM MEDIATORS AND ARBITRATORS

RULE 14-3.1 APPLICATION REQUIRED

(a) Applications. Persons wishing to become program mediators or arbitrators shall apply to the committee for its review and certification. The committee shall promulgate standards and forms for certification hereunder. Membership in The Florida Bar shall not be required for certification.

(b) CLE Credit for Service. Members of The Florida Bar who are program mediators and arbitrators shall be entitled to a maximum of 5 hours of CLE credit in each reporting period in the area of ethics for service in the program as provided in the policies adopted under this chapter.

Added April 6, 1989 (542 So.2d 975). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); March 23, 2000 (763 So.2d 1002); Amended and Renamed May 20, 2004, (SC03-705) (875 So.2d 448).

14-4. INSTITUTION OF PROCEEDINGS

RULE 14-4.1 ARBITRATION PROCEEDINGS

(a) Institution of Proceedings. All arbitration proceedings shall be instituted by the filing of a written consent to arbitration by written contract between the parties to the arbitration, or orders of this court in proceedings under these Rules Regulating The Florida Bar imposing a sanction or condition or probation, or by the consent form prescribed in the policies adopted under the authority of this chapter and signed by each party to the controversy.

(b) Position Statement and Relevant Documents. Each of the parties shall provide the arbitrator(s) with a concise statement of that party's position, including the amount claimed or in controversy, on the form prescribed and authorized by the standing committee. If there is a written contract regarding fees between the parties, a copy of that written contract shall accompany the request or submission.

(c) Referral by Intake Counsel or Bar Counsel. Intake counsel with the consent of the parties and concurrence of staff counsel, or bar counsel, with the consent of the parties, and the concurrence of the chief branch staff counsel, may refer appropriate cases to the fee arbitration program.

(d) Referral by Grievance Committees. Grievance committees, with concurrence of bar counsel and consent of the parties, may refer appropriate cases to the fee arbitration program.

(e) Referral by Board of Governors. The board of governors, with the agreement of the parties and upon review of a file referred to it as authorized elsewhere under these Rules Regulating The Florida Bar, may refer appropriate cases to the fee arbitration program if they meet the criteria established by the policies adopted under the authority of this chapter.

Added April 6, 1989 (542 So.2d 975). Amended: July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Oct. 20, 1994 (644 So.2d 282); Amended and Renamed May 20, 2004, (SC03-705), (875 So.2d 448); November 19, 2009, effective February 1, 2010 (SC08-1890) (34 Fla.L.Weekly S628a).

RULE 14-4.2 GRIEVANCE MEDIATION PROCEEDINGS

(a) **Referral by Bar Counsel.** Bar counsel, with the consent of the parties, may refer any file to the program that meets the criteria established by any policies adopted under the authority of this rule.

(b) **Referral by Grievance Committees.** Grievance committees, with concurrence of bar counsel and consent of the parties, may refer any file to the program that meets the criteria established by the policies adopted under the authority of this chapter.

(c) **Referral by Board of Governors.** The board of governors, upon review of a file referred to it as authorized elsewhere under the Rules Regulating The Florida Bar, may refer same to the program if it meets the criteria established by the policies adopted under the authority of this chapter.

(d) **Referral by Referees.** Referees, with concurrence of The Florida Bar, may refer any file to the program that meets the criteria established by the policies adopted under the authority of this chapter. Concurrence of The Florida Bar requires agreement of bar counsel and the member of the board of governors designated to review the disciplinary matter at issue.

(e) **Referral by Order of Supreme Court of Florida.** The Supreme Court of Florida may order referral of any file to the program that meets the criteria established by the policies adopted under the authority of this chapter.

Added May 20, 2004 (875 So.2d 448).

14-5. EFFECT OF AGREEMENT TO MEDIATE OR ARBITRATE AND FAILURE TO COMPLY

RULE 14-5.1 EFFECT OF REFERRAL TO MEDIATION AND FAILURE TO COMPLY

(a) **Closure of Disciplinary File.** Upon referral for mediation of the issues involved in a disciplinary file, the disciplinary file shall be closed without the entry of a sanction and shall remain closed except as provided in subdivision (b), below:

(b) **Effect of Respondent's Failure to Attend or Comply.** It shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to attend an agreed-upon mediation conference without good cause. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to fully comply with the terms of a written mediation agreement without good cause.

(c) **Effect of Complainant's Failure to Attend.** If a file referred for mediation is not fully resolved by reason of a complainant's failure to attend without good cause, the disciplinary file based thereon may remain closed.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Amended and Renamed May 20, 2004, (SC03-705) (875 So.2d 448).

RULE 14-5.2 EFFECT OF AGREEMENT TO ARBITRATE AND FAILURE TO COMPLY

(a) **Closure of Disciplinary File.** A disciplinary file that involves only fee issues shall be closed without the entry of a sanction upon the entry of an agreement to arbitrate.

(b) **Effect of Respondent's Failure to Attend or Comply.** It shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to attend an agreed-upon arbitration conference without good cause. Likewise, it shall be a violation of the Rules Regulating The Florida Bar for a respondent to fail to fully comply with the terms of an arbitration award without good cause.

(c) **Effect of Complainant's or Other Opposing Party's Failure to Attend.** If a file referred for arbitration is not fully resolved by reason of a complainant's or other opposing party's failure to attend without good cause, the disciplinary file based thereon may remain closed.

Added May 20, 2004 (875 So.2d 448).

14-6. NATURE; ENFORCEMENT OF AWARD; EFFECT OF FAILURE TO PAY RULE 14-6.1 BINDING NATURE; ENFORCEMENT; AND EFFECT OF FAILURE TO PAY AWARD

(a) **Binding Determination.** The parties to a proceeding under these rules shall be bound by the terms of the arbitration award subject to those rights and procedures to set aside or modify the award provided by chapter 682, Florida Statutes, or by the terms of an agreement reached in mediation.

(b) **Enforcement of Determination.** In addition to any remedy authorized in this chapter, an arbitration award may be enforced as provided in chapter 682, Florida Statutes.

(c) **Effect of Failure to Pay Award.** Failure of a member of the bar to pay an award within 90 days of the date on which the award became final, without just cause for such failure, shall result in the member being delinquent and not authorized to practice law, as provided elsewhere in these rules defining delinquent members.

Added April 6, 1989 (542 So.2d 975). Amended July 23, 1992, effective Jan. 1, 1993 (605 So.2d 252); Renumbered and Renamed May 20, 2004, (SC03-705) (875 So.2d 448); December 20, 2007, effective March 1, 2008 (978 So.2d 91)..

14-7. IMMUNITY AND CONFIDENTIALITY RULE 14-7.1 IMMUNITY AND CONFIDENTIALITY

(a) **Immunity.** The members of the standing committee, mediators, arbitrators, staff of The Florida Bar, and appointed voluntary counsel assisting the committee, mediators, and arbitrators, shall have absolute immunity from civil liability for all acts in the course of their official duties.

(b) Confidentiality of Arbitration Proceedings and Records. All records, documents, files, proceedings, and hearings pertaining to fee arbitration under these rules shall be made available, upon inquiry, to anyone. Provided, however, that an arbitrator's mental processes shall not be subject to discovery and a panel of arbitrators may retire into executive session to consider the issues raised and to reach a decision as to an award.

(c) Confidentiality of Mediation Proceedings and Records. All records, documents, files, and proceedings pertaining to mediation under this chapter shall be made available only as provided in the Florida Rules for Certified and Court-Appointed Mediators and applicable law.

Added March 23, 2000 (763 So.2d 1002). Renumbered from rule 14-5.3 and amended May 20, 200, (SC03-705) (875 So.2d 448).

FEE ARBITRATION PROCEDURAL RULES

RULE I. PREAMBLE

The following rules are those standards by which the program must conduct proceedings in fee arbitration matters.

RULE II. SELECTION OF ARBITRATORS

(a) Referral to Arbitrators. Upon the filing of a written agreement wherein the parties agree to arbitrate under the provisions of Chapter 14, Rules Regulating The Florida Bar, or upon entry of an order by the Supreme Court of Florida requiring arbitration under that chapter, the matter shall be referred to The Florida Bar's fee arbitration program.

Unless otherwise agreed by the parties the matter shall be referred to a sole arbitrator when the amount in controversy is \$75,000 or less.

Unless otherwise agreed by the parties the matter shall be referred to a panel of 3 arbitrators, 1 of whom shall be designated panel chair for the case, if the amount in controversy exceeds \$75,000.

The parties may stipulate to the use of 1 or 3 arbitrators without regard to the amount in controversy.

All 3-member panels shall consist of at least 1 nonlawyer and 1 lawyer. This requirement may be waived by the parties.

(b) Eligibility to Serve. It shall be the obligation of any arbitrator designated as a sole arbitrator or panel member to disclose any reason why the arbitrator cannot ethically or conscientiously serve. When an arbitrator declines or is unable to serve, staff shall designate another arbitrator. The standing committee chair has the authority to remove a sole arbitrator or panel member from hearing a particular matter if, in the judgment of the chair, the member should not serve.

(c) **Postponements.** If, at the time set for hearing by a panel, all members of the panel are not present, the panel chair, with the consent of the parties, may postpone the hearing or proceed with fewer than 3 members.

(d) **Death or Inability to Serve.** If any member of the panel dies or becomes unable to continue to serve while the matter is pending, but before an award has been made, a substitute panel member shall be appointed by the panel chair unless the parties consent to proceed with the hearing. If a substitute panel member is appointed, the member shall review the evidence admitted and recorded in the proceedings, if recorded. If not recorded, the review shall consist of an examination of evidence admitted and oral summary by the panel chair followed by argument thereon from the parties.

(e) **Powers of Arbitrators.** Arbitrators shall be vested with all the powers and shall assume all the duties granted and imposed upon arbitrators in accordance with chapter 682, Florida Statutes.

(f) **Time.** The panel or the sole arbitrator assigned shall hold the hearing within 45 days after receipt of the assignment and shall render the award within 10 days after the close of the hearing, unless extended by the chair of the standing committee for good cause. Failure of an arbitrator or panel to comply with these time requirements shall not otherwise divest the arbitrator or panel of the authority to conduct proceedings authorized by these policies and applicable rules.

RULE III. RECORD OF PROCEEDINGS

Any party may provide, at the party's cost, the service of a stenographer to record the proceedings. If the proceedings are transcribed, the arbitrators shall be promptly provided with a copy that shall be open to inspection by all of the parties to the arbitration. By stipulation of the parties, the proceedings may be recorded by tape recorder or other electronic means.

RULE IV. HEARINGS

(a) **Setting and Notice of Hearing.** The chair of the panel or the sole arbitrator, as the case may be, shall coordinate with the parties and panel members and thereafter fix a time and place for the hearing and shall cause written notice thereof to be served personally or by registered or certified mail on the parties to the arbitration at the address stated on the agreement to arbitration form not less than 10 days before the hearing. A copy of the notice of hearing shall be provided to the program administrator. A party's appearance at a scheduled hearing shall constitute a waiver of any deficiency in the notice of hearing.

(b) **Absence of Party.** The arbitration may proceed in the absence of a party who, after notice, fails to attend or to obtain a postponement from the panel chair or sole arbitrator. Postponement shall only be granted upon good cause shown. Despite the absence of a party or parties, no award shall be made without the submission of evidence to support the claim.

(c) Representation by Counsel. Each party has the right to be represented by counsel at any arbitration hearing.

(d) Presentation of Evidence. If all parties to the controversy so agree, they may waive an evidentiary hearing and may submit their positions and contentions in writing, together with exhibits, if any, to the arbitrators who shall render a final decision based on the information before them. The arbitrators shall require all parties and witnesses to be sworn before they testify. The arbitrators, if they so desire, may request opening statements and prescribe the order of proof. In any event, all parties shall be afforded a reasonable opportunity for the presentation of any evidence. Depositions shall be allowed only for the perpetuation of testimony. All other pre-hearing discovery is prohibited. The procedures for subpoenas and witness attendance shall be as prescribed in section 682.08, Florida Statutes as amended. Subpoenas may be enforced as provided in section 682.08, Florida Statutes, or as elsewhere provided in chapter 3 of the Rules Regulating The Florida Bar.

(e) Right of Party to Attend; Appearance by Telephone. All parties shall have the right to attend all hearings. The exclusion of other persons or witnesses shall be within the discretion of the arbitrators. Subject to the discretion of the arbitrator(s) a person may appear and/or give testimony by telephone at hearings held under the authority of these rules. Provided, however, that any person who participates by authorized telephone appearance shall not be allowed to testify unless that person is physically present before an officer authorized to administer oaths and is administered an oath.

(f) Presiding Arbitrator. The arbitrators shall select 1 of their members as chair. The chair of the panel or the sole arbitrator shall preside at the hearing and shall rule on the admission and exclusion of evidence and on questions of procedure, and shall exercise all powers relating to the conduct of the hearing. The hearing should be informal in nature without strict observance of the rules of evidence or the Florida Rules of Civil Procedure.

(g) Factors to Consider Regarding Reasonable Fees. In reaching their decision, the arbitrators may consider all factors they deem relevant, including but not limited to the intention and understanding of the parties at the time the representation was undertaken as well as those factors for determining the reasonableness of a fee enumerated in rules 4-1.5(b) and (c), Rules of Professional Conduct.

RULE V. CLOSING OF HEARINGS

The arbitrators shall specifically inquire of all parties whether they have any further evidence to submit in whatever form. If the answer is in the negative, the hearings shall be closed. The fee arbitration files shall be preserved for a period of 1 year from the date of submission of the award to the parties. Upon closure of the hearing, the arbitrator(s) may retire into executive session to consider the issues raised and reach a decision as to an award. The mental processes of the arbitrator(s) employed in reaching an award shall not be subject to discovery or use in any proceeding.

RULE VI. THE AWARD

The decision of the arbitrators shall be expressed in a written award on the form prescribed by the standing committee, signed by the arbitrators, which shall include a brief explanation of the basis of the award and shall be submitted to the parties and the program administrator. If there is a dissent, it shall be signed separately but the award shall be binding if signed by a majority of the arbitrators. Unless the agreement to arbitrate or request for and notice of arbitration provides otherwise, the arbitrators may grant any lawful relief, including specific performance. An award may also be entered upon the consent of all the parties. Once the award is signed, the hearing may not be reopened except upon consent of all parties and the chair or sole arbitrator. The award may be confirmed, set aside, modified, or corrected only in accordance with chapter 682, Florida Statutes, as amended.

RULE VII. STANDARDS FOR CERTIFICATION AND TRAINING

(a) Eligibility. Persons eligible to be program arbitrators are:

- (1) retired judges and justices of the courts of the State of Florida;
- (2) persons who were members of circuit fee arbitration committees at the time of or prior to the merger of the grievance mediation and fee arbitration programs;
- (3) persons who have served on a circuit grievance committee for 1 year or more; and
- (4) any other person who, in the opinion of the committee, possesses the requisite education, training, or certification in alternative dispute resolution to be a program arbitrator.

Members of The Florida Bar must be members in good standing, and have no pending recommendation of minor misconduct or finding of probable cause to be eligible for appointment.

(b) Certification. The committee may certify applicants as program arbitrators if they meet the eligibility requirements stated above and have agreed to accept at least 2 referrals per calendar year.

The committee may decline to certify applicants who do not meet the eligibility requirements set forth above or have been found guilty of, pled guilty to, or been disciplined for misconduct that, in the opinion of the committee, renders those persons inappropriate for service as program arbitrators.

(c) Cessation of Referrals and Removal of Certification. A certified arbitrator shall not receive additional referrals where probable cause has been found against the arbitrator until the case has been disposed of. The standing committee may revoke certification of a program arbitrator for any reason that the committee might use to deny

initial certification, and for any other reason that the committee believes would render a program arbitrator unfit.

(d) Reimbursement of Expenses. Program arbitrators shall not be compensated for time devoted to or travel incurred in connection with an arbitration conducted hereunder. Program arbitrators may be reimbursed for out-of-pocket expenses that include, but are not limited to: court reporter fees; telephone calls; photocopying fees (at a maximum of \$.25 per page); and translation services.

VIII. DEATH OR INCOMPETENCE OF A PARTY

In the event of the death or adjudication of incompetency of a party during the course of arbitration but prior to the rendering of a decision, the proceeding shall abate upon the suggestion of death of a party or notice of adjudication of incompetency of a party, unless the personal representative or the guardian of the party consents to go forward. In the event of death or incompetence of a party after the close of the proceedings but prior to a decision, the decision rendered shall be binding upon the heirs, administrators, or executors of the deceased and on the estate and guardian of the incompetent.

GRIEVANCE MEDIATION POLICIES RULE I. ADOPTION OF POLICIES

Pursuant to the authority of chapter 14 of the Rules Regulating The Florida Bar, the board of governors hereby adopts The Florida Bar Grievance Mediation Policies (hereinafter "policies").

RULE II. PROGRAM MEDIATORS.

(a) Eligibility. Persons eligible to be program mediators are:

- (1) Supreme Court of Florida certified mediators;
- (2) retired judges and justices of the courts of the State of Florida;
- (3) persons who were certified program mediators at or before the merger of the grievance mediation and fee arbitration programs; and
- (4) any other person who, in the opinion of the committee, possesses the requisite education, training, or certification in alternative dispute resolution to be a program mediator.

Members of the bar must be a member in good standing and with no pending recommendation of minor misconduct or finding of probable cause to be eligible for appointment.

(b) Certification.

The committee may certify applicants as program mediators if they meet the eligibility requirements stated above and have agreed to accept at least 2 referrals per calendar year.

The committee may decline to certify applicants who do not meet the eligibility requirements set forth above or have been found guilty of, plead to, or been disciplined for misconduct that, in the opinion of the committee, renders those persons inappropriate for service as program mediators.

(c) Cessation of Referrals and Removal of Certification.

A certified mediator shall not receive additional referrals where probable cause has been found against the mediator, until the case has been disposed of. The committee may revoke certification of a program mediator for any reason that the committee might use to deny initial certification, and for any other reason that the committee believes would render a program mediator unfit.

(d) Reimbursement of Expenses.

Program mediators shall not be compensated for time devoted to and travel incurred in connection with a mediation conducted under the mediation program. Program mediators may be reimbursed for out-of-pocket expenses that include, but are not limited to: telephone calls; photocopying fees (at a maximum of \$.25 per page); and translation services.

RULE III. GUIDELINES FOR REFERRALS

No referral to mediation may be offered if any aspect of the matter must remain for resolution within the discipline system.

To assist those making referrals these factors should be considered:

- (1) the severity of the alleged misconduct;
- (2) whether dishonesty is involved;
- (3) whether a pattern of possible misconduct is present;
- (4) the nature of the ethical duty involved and whether the duty may yet be fulfilled;
- (5) the public interest and protection thereof; and
- (6) the interest of the complainant, the respondent and any third parties that are involved.

The following types of disciplinary cases are illustrative of disciplinary cases that may be considered for mediation:

- (1) alleged refusal of a lawyer to timely return a clients file or copies thereof;
- (2) alleged refusal of a lawyer to release a lien on a clients recovery in a case in which the lawyer has been succeeded by another counsel;
- (3) alleged refusal of a lawyer to properly withdraw from representation upon discharge by the client;
- (4) alleged failure of a lawyer to conclude legal representation by failure to prepare an essential dispositive document;
- (5) alleged failure of a lawyer to comply with a letter of protection issued on behalf of a client;
- (6) alleged failure of a lawyer to adequately communicate to a client not causing substantial harm to the client;
- (7) alleged neglect by a lawyer which does not cause substantial harm;
- (8) an alleged isolated instance of incompetence by a lawyer that is not part of a pattern of incompetence, when the act is not committed in conjunction with any other rule violation, and the lawyer has not been the subject of prior disciplinary sanction for incompetence; and
- (9) any other matter involving the private rights of the complainant and respondent wherein the public interest is satisfied by a resolution that dismisses the disciplinary case without further bar action.

This list of illustrations is not intended to be an exclusive list, but rather is intended as a guide for those making referrals to the mediation program.

RULE IV. PROCEDURES

(a) Co-mediation.

Co-mediation shall not be required, but may be utilized under appropriate circumstances. When co-mediation is employed, it is preferred that only 1 of the program mediators be a member of the bar.

(b) Records.

A record of all referrals and the result of each shall be maintained in accordance with The Florida Bar's record retention policy.

(c) Appearances at Mediation Conferences.

It is the policy of the bar that persons should personally attend mediation conferences. However, if special circumstances exist and the program mediator agrees, parties may be allowed to attend by telephone or video connection.

(d) Site of Mediation Conference.

Unless otherwise agreed upon by the parties and the program mediator(s), the mediation conference shall be held at the office of a program mediator.

(e) Right to Counsel.

Counsel shall be permitted at mediation conferences only if approved by the parties and agreed to by the program mediator(s).

(f) Time for Mediation.

If the program mediator(s) is(are) able to serve, the initial mediation conference shall be scheduled within 45 days of referral of the file. This time may be extended by agreement of the parties and the program mediator(s). Failure to meet this time requirement shall not divest the program mediator(s) of the authority to proceed otherwise.

(g) Report to The Florida Bar. At the conclusion of a mediation the program mediator shall report to the committee, limited to:

- (1) reference to the matter by identification of the disciplinary file to which it pertains;
- (2) reference to whether the matter settled without resort to a formal mediation conference;
- (3) whether a formal mediation conference was held and, if so, when;
- (4) the parties who attended and those who did not;
- (5) whether the mediation resulted in complete settlement, partial settlement, or impasse; and
- (6) in instances where disciplinary violations of a sort not proper for mediation are divulged or discovered, or a party to the mediation appears to the program mediator to be incompetent to participate in the mediation, a statement that the matter is no longer proper for mediation, without elaboration as to why.

RULE V. COST OF MEDIATION

There shall be no fee charged to any party to mediation conducted under this program.

