

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC17-935

IN RE: AMENDMENTS TO FLORIDA  
RULES FOR CERTIFIED AND  
COURT-APPOINTED MEDIATORS 10.910

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**COMMITTEE ON ADR RULES AND POLICY RESPONSE TO  
COMMENTS TO THE PROPOSED AMENDMENTS TO RULE  
10.910**

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy (Committee) by and through its Chair, the Honorable Rodney Smith, hereby respectfully submits its Response to Comments the Committee received from four individuals regarding proposed amendments to rule 10.910, Florida Rules for Certified and Court-Appointed Mediators (Mediator Rules).

On August 21, 2017, the Florida Dispute Resolution Center (DRC), on behalf of the Committee, filed comments the Committee received from Matthew Capstraw, Jack Hughes, Dwayne E. Hickman, Sr., and Irwin R. Eisenstein.

The Committee thanks the four individuals for their thoughtful comments.

First, the Committee agrees with Mr. Capstraw that it is important to the diversity of the Mediator Ethics Advisory Committee (MEAC) to be composed of members from each of the geographic regions of the state in order to benefit from the knowledge and experience of different regions. Hence, the Committee preserved the existing provision found in subdivision (a) of Mediator Rule 10.910 for the appointment of nine members to the MEAC with members representing each of the geographic regions. Now that the Mediator Qualifications and Discipline Review Board (MQDRB)

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has four divisions instead of three, the amendments to subdivision (a) provide that each of the four divisions shall have two members on the MEAC with the ninth member appointed from any of the four divisions. The fourth division was added to the MQDRB in the Court's adoption of amendments to rule 10.730 in In re Amendments to the Florida Rules for Certified & Court-Appointed Mediators, 202 So. 3d 795 (Fla. 2016).

Although Mr. Capstraw suggests the additional amendment to provide for one member serving as the secretary of the MEAC, the Committee believes that position is unnecessary given that the DRC staffs the MEAC thereby providing the services of a secretary.

Regarding subdivision (c), Mr. Capstraw suggests that the Committee include a requirement that each member holding a type of certification have their primary mediation practice in that area of certification. Although the Committee does not disagree with the reasoning behind Mr. Capstraw's proposal, that the mediator have a "depth of practice" in the type of mediation they are chosen to represent, it chooses to recommend continuing the practice of the chief justice having the discretion to examine and consider the proposed member's experience when making appointments to the MEAC.

Second, the Committee is willing to make the revision to subdivision (e) proposed by Mr. Hughes through the following adjustment to the language as denoted by underlining:

**Opinions.** Upon due deliberation, and upon the concurrence of a majority of the committee, the committee shall render opinions. A majority of all members shall be required to concur in any advisory opinion issued by the committee. The opinions shall be signed by the chair, or vice-chair in the absence of the chair, filed with the Dispute Resolution Center, published ~~in~~by the Dispute Resolution Center in its newsletter or by posting on the DRC website, and be made available upon request.

The DRC has published MEAC opinions by posting them on its website for many years.

Third, Mr. Hickman's suggestion of additional changes to Mediator Rule 10.910 involving subdivision (d) – (f) are outside of the scope of this rule revision which is primarily to update the rule to include representation of the new four divisions of the state. However, the Committee appreciates and will consider the suggestions in the comprehensive review it is conducting of all of the Mediator Rules in anticipation of recommending revisions.

Fourth, Mr. Eisenstein's comments pertain to the procedures for the MQDRB to conduct good moral character qualifications inquiries and disciplinary proceedings involving mediators which are contained in Part III, Mediator Certification Applications and Discipline, of the Mediator Rules, and are outside of the scope of this rule revision. Therefore, the Committee does not respond to his comments.

### CONCLUSION

The proposed amendment to Mediator Rule 10.910(e), which the Committee agrees to revise in response to Mr. Hughes' comment and asks the court to adopt, is attached in legislative and two-column chart format in Response Appendices A and B. The ADR Committee respectfully requests this court approve that change and confirm its adoption of the other proposed revisions to Mediator Rule 10.910.

Respectfully submitted this 28<sup>th</sup> day of September, 2017.

/s/ Rodney Smith, Circuit Judge  
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## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing Response to Comments to the Proposed Amendments to Rule 10.910 was furnished by e-mail through the Florida Courts E-Filing Portal this 28<sup>th</sup> day of September, 2017, to Dwayne E. Hickman, 8 Broadway, Suite 200, Kissimmee, FL 34741, [dhickman357@yahoo.com](mailto:dhickman357@yahoo.com), Jack Hughes, Lee County Justice Center, 1700 Monroe Street, Fort Myers, Florida 33901, [JHughes@CA.CJIS20.org](mailto:JHughes@CA.CJIS20.org), Matthew Capstraw, 733 N. Magnolia Ave, Orlando, Florida 32803, [MBC@markslawfla.com](mailto:MBC@markslawfla.com) and Irwin Eisenstein, 7295 Sloop PL. 106, Orlando, Florida 32825, [Ironstone44@gamil.com](mailto:Ironstone44@gamil.com).

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