

# **TEXAS MEDIATOR CREDENTIALING ASSOCIATION GRIEVANCE RULES AND PROCEDURES**

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### STANDARDS OF PROFESSIONAL CONDUCT

The TMCA finds it necessary and appropriate to maintain appropriate standards of professional conduct and to deal with individual grievances against TMCA Credentialed mediators in a manner that does not discriminate. To carry out this responsibility, the TMCA promulgates the following rules and procedures for the handling of such grievances.

## PART I GENERAL RULES AND PROCEDURES

1.01 Reference to Rules: These rules and procedures are to be called the TMCA Grievance Rules and Procedures or the TMCA Grievance Procedure, and may be cited as such.

1.02 Objective of Rules: These rules establish the procedures to be used in the handling of grievances against mediators who are Credentialed by the TMCA.

1.03 Construction of Rules: These rules are to be broadly construed to ensure the operation, effectiveness, integrity, and continuation of the handling of grievances by the TMCA. The following rules apply in the construction of these rules:

A. The use of the singular includes the plural, and vice versa; and

B. In computing any period of time prescribed or allowed by these rules, the day of the act or event after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or any day on which the U.S. Post Office is closed, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or any day on which the U.S. Post Office is closed.

1.04 Application of Rules: These rules apply to all grievances against TMCA Credentialed mediators for Ethical Misconduct occurring after the date these rules are adopted by the TMCA Board of Directors.

1.05 Conflict in Rules: Nothing in these rules is to be construed, explicitly or implicitly, to amend or repeal in any way the Ethical Rules for TMCA Credentialed mediators.

1.06 Definitions:

A. Board and Board of Directors mean the Board of Directors of the TMCA.

B. Burden of Proof means the greater weight and degree of the evidence admitted for consideration by the Committee or the Board.

C. Committee means the Grievance Committee, a permanent committee of the TMCA.

D. Complainant means the person, firm, corporation, or other entity initiating a Complaint or Inquiry.

E. Complaint means a completed TMCA Grievance Form received by the TMCA in its address designated for the receipt of Complaints that, upon examination by the Committee, is determined to allege Ethical Misconduct against a TMCA Credentialed mediator under the Ethical Rules. To constitute a possible Complaint for consideration by the Committee the Complainant must fully complete the Grievance Form, which must

include (among other things required in the Form, and unless otherwise provided by the Board) a clear and detailed statement of the following:

(1.) What mediator conduct (mediator conduct is what a mediator has done or has failed to do) the Complainant believes to be in violation of the TMCA Standards of Practice and Code of Ethics; and

(2.) Which provision or provisions of the TMCA Standards of Practice and Code of Ethics (referred to by the number and substance of the provision) the Complainant believes the mediator conduct has violated.

F. Confidentiality of Mediation means that the following may not be disclosed to anyone, unless otherwise agreed to be disclosed by the affected persons who participated in the Mediation, or as may otherwise be required by law:

(1.) Any communication relating to the subject matter of any civil or criminal dispute made by a participant in a Mediation, whether before or after the institution of formal judicial proceedings;

(2.) Any record or writing made at a Mediation;

(3.) All other matters occurring during Mediation, including the conduct and demeanor in a Mediation of an affected person or their counsel who participated in a Mediation; and

(4.) All matters that the affected persons who participated in a Mediation agree will not be disclosed.

G. Credentialed, Credential and Credentialing mean and include any of the TMCA credentialing designations, and candidates for credentialing.

H. Ethical Misconduct includes:

(1.) Acts or omissions by a Credentialed mediator, individually or in concert with another person or persons, that violate one or more of the Ethical Rules;

(2.) Violation of any TMCA grievance decision;

(3.) Failure of a Respondent to furnish information requested by the Committee or the Board, unless the Respondent, in good faith, asserts a right to protection under the law from disclosure, for example the confidentiality of communications between attorney and client, which after review by the requestor (the Committee or the Board) is approved; and

(4.) Representing that the mediator is Credentialed by the TMCA, when the mediator is not so Credentialed, prior to being Credentialed, during a period of Credentialing suspension, or after de-Credentialing.

I. Ethical Rule and Rules mean the TMCA Standards of Practice and Code of Ethics for TMCA Credentialed mediators, and all amendments, supplements, additions and revisions to the same that are from time to time adopted by the TMCA.

J. Grievance Form and Form mean that form or forms approved by the Board to be used in the making of a Complaint.

K. Grievance Proceeding means a proceeding brought against a mediator under these Grievance Rules and Procedures pursuant to a Complaint.

L. Grievance Procedure, and Grievance Rules and Procedures, mean these Texas Mediator Credentialing Association Grievance Rules and Procedures.

M. Inquiry and Inquiries mean any written matter concerning mediator conduct received by the Committee. A Grievance Form which is incomplete or determined by the Committee not to constitute a Complaint is an Inquiry.

N. Just Cause means such cause as is found to exist upon a reasonable inquiry that would induce a reasonably intelligent and prudent person to believe that a mediator has committed an act or omission of Ethical Misconduct requiring that a Sanction be imposed.

O. Mediation means mediation as it is defined in the Ethical Rules.

P. Participate and Participated, and Participant in Mediation are words used to identify a person who has an interest to be protected by the Confidentiality of Mediation, and who during a Mediation:

(1.) Communicated with the mediator or another person in the Mediation about a matter relating to a claim or defense raised or expected to be raised in the Grievance Proceeding; or

(2.) Made a record or writing at the Mediation relating to a claim or defense raised or expected to be raised in the Grievance Proceeding; or

(3.) Witnessed or learned of such communications or records made by other persons.

Q. Respondent means any mediator who is the subject of a Complaint.

R. Sanction means any of the following:

(1.) De-Credentialing, which means the withdrawal of a Credentialed status by the TMCA.

(2.) Resignation of a Credentialed status in lieu of de-Credentialing.

(3.) Indefinite suspension of a Credentialed status upon such reasonable terms as the Committee determines to be appropriate under the circumstances.

(4.) Suspension of a Credentialed status for a limited period of time.

(5.) Probation (deferred implementation) of suspension of a Credentialed status.

(6.) Public reprimand.

(7.) Private reprimand.

(8.) The refund of fees paid to the mediator for the mediator's services.

S. TMCA means the Texas Mediator Credentialing Association.

T. Waivers, Waiver and Waivers of Confidentiality mean the knowing, intentional and permanent giving up and relinquishment in writing of the right to the Confidentiality of Mediation.

## PART II THE GRIEVANCE COMMITTEE AND GRIEVANCE PROCESS

2.01 Composition of Committee: The chair of the Board shall appoint the members of the Committee and the chair of the Committee with the consent of a majority of the Board, according to rules and policies adopted from time to time by the Board. The Committee shall consist of three members, one who must be a member of the public (public members shall not be attorneys or mediators, and may not have, other than as consumers, any financial interest, direct or indirect, in Mediation or the provision of Mediation services.), and one who must be a Credentialed mediator (excluding candidates). The mediator's Credentialed status must be in good standing during the member's service on the Committee, and the mediator must never have been sanctioned by the TMCA.

The Board May authorize the appointment of additional Committees as it deems necessary to adequately process and resolve grievances against mediators in Texas pursuant to these Grievance Rules and Procedures.

2.02 Appointment and Terms: All persons serving on the Committee at the time these Grievance Rules and Procedures become effective shall continue to serve for their then un-expired terms, subject to resignation or removal as herein provided. Nominations of persons to serve on the Committee shall be made annually through a process determined by the Board, and all appointments shall be made by the chair of the Board not later than January 1st of each year. If the chair fails or refuses to make the appointments in a timely manner, the existing members of the Committee shall continue to hold office until the nominations and appointments are made and the successor member is qualified. One Committee member will be appointed for an initial term of one year, one for an initial term of two years, and one for an initial term of three years. Thereafter, all terms will be

for a period of three years, except for appointments to fill un-expired terms, which will be for the remaining period of the un-expired term. Any member of the Committee who has served two consecutive terms, whether full or partial terms, is not eligible for reappointment until at least three years have passed since his or her last prior service. No member may serve as chair of the Committee for more than two consecutive terms of one year each. All members are eligible to serve as chair of the Committee.

2.03 Organizational Meeting of Committee: The last chair of the Committee shall call an organizational meeting of the Committee not later than January 20 of each year; shall obtain the written oaths of office from each new member; and shall preside until the new chair has been appointed.

2.04 Oath of Committee Members: As soon as possible after appointment, but before the new Committee member participates in any business of the Committee, each newly appointed member of a Committee shall execute in writing the following oath:

“I will faithfully execute my duties as a member of grievance Committee, as required by the TMCA Grievance Rules and Procedures, and will, to the best of my ability, preserve, protect, and defend the Constitution and laws of the United States and of the State of Texas. I will keep secret and confidential all such matters and things as shall come to my knowledge as a member of the grievance Committee arising from or in connection with each grievance brought under the TMCA Grievance Rules and Procedures, unless permitted to disclose the same in accordance with the TMCA Grievance Rules and Procedures, unless ordered to do so by a court in the course of a judicial proceeding, unless requested to do so by the Board in a proceeding before the Board, or unless otherwise required by law. I have neither directly nor indirectly paid, offered, or promised to pay, contributed any money or valuable thing, or promised any public or private office to secure my appointment.”

2.05 Duties of Committee Members: After the Committee receives a Grievance Form, and prior to any action by the Committee in the determination that the Form constitutes an Inquiry or a Complaint, notice shall be sent by the Committee to the Complainant of:

- A. The names and addresses of the Committee members for the purpose only of determining whether or not the Committee member is disqualified; and
- B. That the Complainant may challenge the qualification of a Committee member by sending a detailed written statement challenging the qualifications of a Committee member to the Board within twenty days of the receipt of the notification of the names and addresses of members of the Committee.

A member of the Committee is disqualified to serve on the Committee to consider an Inquiry or a Complaint if:

- A. The member has served as a representative of any party in the matter which is the subject of the Inquiry or Complaint, or a person with whom the member has been

previously associated as a partner, shareholder, co-owner, employee or employer, served as a representative of any party in the matter which is the subject of the Inquiry or Complaint during such association; or

B. The member has served as a mediator in any part of the matter which is the subject of the Inquiry or Complaint, or a person with whom the member has been previously associated as a partner, shareholder, co-owner, employee or employer has served as a mediator in any part of the matter which is the subject of the Inquiry or Complaint during such association; or

C. The member knows that he or she, individually or as a fiduciary (fiduciary includes such relationships as executor, administrator, trustee, and guardian), has an interest in the subject matter of the Inquiry or Complaint; or

D. The member is related to any party to the Inquiry or Complaint by affinity (marriage) or consanguinity (blood) within the third degree. Relationships by affinity and consanguinity shall be defined and determined as provided in the “Rules for Determining Relationships” found in Section 5.07 of these rules; or

E. The member has a personal bias or prejudice concerning the subject matter of the Inquiry or Complaint or a party to the Inquiry or Complaint, or personal knowledge of disputed evidentiary facts concerning the Inquiry or Complaint; or

F. The member or any mediator with whom the member has previously been associated in the provision of dispute resolution services has been a material witness (a witness to something significant) concerning the matter which is the subject of the Inquiry or Complaint; or

G. The member participated as counsel, advisor or material witness (a witness to something significant) in the matter which is the subject of the Inquiry or Complaint; or

H. The member knows that he or she, individually or as a fiduciary, or the member’s spouse or minor child residing in the member’s household, has a financial interest in the subject matter of the Inquiry or Complaint or in a party to the Inquiry or Complaint, or any other interest that could be substantially affected by the outcome of the Inquiry or Complaint (financial interest means ownership of a legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party, except that: (i) ownership in a mutual or common investment fund that holds securities is not a “financial interest” in such securities unless the member participates in the management of the fund; (ii) an office in an educational, religious, charitable, fraternal, or civic organization is not a “financial interest” in securities held by the organization; (iii) the proprietary interest of a policyholder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a “financial interest” in the organization only if the outcome of the proceeding could substantially affect the value of the interest; (iv) ownership of government securities is a “financial interest” in the issuer only if the outcome of the proceeding could substantially

affect the value of the securities; (v) an interest as a taxpayer or utility ratepayer, or any similar interest, is not a “financial interest” unless the outcome of the proceeding could substantially affect the liability of the member or a person related to the member within the third degree of affinity or consanguinity, more than other members.); or

I. The member or the member’s spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(1.) Is a party to the Inquiry or Complaint, or an officer, director, or trustee of a party; or

(2.) Is known by the member to have an interest that could be substantially affected by the outcome of the Inquiry or Complaint; or

(3.) Is to the member’s knowledge likely to be a material witness (a witness to something significant) in connection with the Inquiry or Complaint.

J. The member or the member’s spouse, or a person within the first degree of affinity or consanguinity to either of them, or the spouse of such a person, is acting as a representative of any party in connection with the Inquiry or Complaint.

K. Any other circumstances likely to affect a member’s impartiality or independence.

Promptly after the Committee receives a Grievance Form and prior to any action by the Committee in the determination that the Form constitutes an Inquiry or Complaint, each Committee member shall certify in writing to the chair of the Board that the member is not disqualified under any provision of Section 2.05 of these rules, or state in writing to the chair of the Board that the member is disqualified under one or more of the provisions of Section 2.05 of these rules, and withdraw from serving on the Committee to consider the Grievance Form, Inquiry or Complaint.

No party is entitled to challenge the service of a Committee member except as provided for in these rules. The Complainant or Respondent may challenge the qualification of a Committee member within twenty days of the receipt of the identification of the Committee members. Any alleged reasons for disqualification of a Committee member are conclusively waived if not received by the Board in a detailed written statement within twenty days after receipt by the respective party of notification of the names and addresses of members of the Committee; however, grounds for disqualification not reasonably discoverable within the twenty day period may be asserted within twenty days after they were discovered, or in the exercise of reasonable diligence should have been discovered. The Board shall promptly notify the parties of its determination of a challenge. The Board’s decision shall be final. No challenge to the qualifications of a Committee member shall stop or delay the grievance process or Grievance Proceeding.

If a member is disqualified, withdraws, or is unable to serve, promptly after such determination or disqualification or inability to serve, another member shall be appointed by the chair of the Board with the consent of a majority of the Board to serve only on that

Complaint and the related grievance. After appointment of another member to the Committee pursuant to this provision, the process described in Section 2.05 of these rules shall be repeated with respect to the newly appointed member.

2.06 Committee Member Expenses: Members of the Committee shall serve without compensation, but the Board may authorize reimbursement by the TMCA for their reasonable, actual, and necessary expenses.

2.07 Processing Inquiries and Complaints: The TMCA shall promptly send to the maker of every written statement, from whatever source, which is received by the TMCA and apparently intended to allege Ethical Misconduct by a mediator, a TMCA Grievance Form and a copy of these Grievance Rules and Procedures. All completed Grievance Forms received by the TMCA shall be promptly sent to the Committee. As soon as reasonably possible after the Committee receives a Grievance Form, but not earlier than twenty days after the receipt by the Complainant of the notice of the names and addresses of the Committee members or upon the resolution of any challenges by the Complainant to the qualifications of Committee members, the Committee shall examine the Form to determine whether it constitutes an Inquiry or a Complaint.

A. Inquiry: If the Form is determined by the Committee to constitute an Inquiry, the Committee shall notify the Complainant that:

(1.) The Form has been determined to be an Inquiry and the reason the Form does not constitute a Complaint; and

(2.) Subject to the limitations of time to bring Complaints in Section 5.02 of these rules, the Complainant has the right for one additional time to amend the Grievance Form or provide additional or missing information or material concerning the matter with a request that the Form be re-evaluated by the Committee; and

(3.) The Complainant has the right within twenty days after receipt of the notice, to appeal to the Board the Committee's determination that the matter submitted is an Inquiry and does not constitute a Complaint.

B. Complaint: If the Committee determines that the Grievance Form may constitute a Complaint, the Committee shall next determine whether or not the Form was received within the two year limitation period as provided in Section 5.02 of these rules. If it does not clearly appear that the Form was received by the TMCA after the expiration of the two year limitation period, the Committee shall notify the Complainant of such determination and that the Complainant must obtain and send to the Committee the following items so that such items are received by the Committee within thirty days from the receipt of the notice to the Complainant:

(1.) A statement of the names, addresses and telephone numbers of all persons who Participated in the Mediation, with the exception of the mediator (the mediator waived confidentiality for the purpose of a Grievance Proceeding at the time the mediator was

Credentialed), and a statement as to how each such person Participated in the Mediation; and

(2.) A Waiver of Confidentiality, in the form provided by the Committee with the notice, to be obtained from all persons who Participated in the Mediation, with the exception of the mediator; and

(3.) A written statement that the Complainant has obtained and sent to the Committee a written Waiver of Confidentiality from each person who Participated in the Mediation; and

(4.) A written statement giving the Committee the Complainant's permission to contact the persons identified by the Complainant and Respondent as having Participated in the Mediation, to confirm that such persons either did or did not Participate in the Mediation, and how such persons Participated in the Mediation. The Committee may, but is not obligated, to make such a contact or confirmation.

When a Waiver of Confidentiality signed by each person who the Complainant contends Participated in the Mediation is received by the Committee within the time and form required by these rules, the Committee shall send to Respondent the following:

(1.) A copy of the Complaint; and

(2.) Copies of the Waivers of Confidentiality provided by the Complainant; and

(3.) A copy of the written statement that the Complainant has obtained and sent to the Committee a written Waiver of Confidentiality from each person who Participated in the Mediation; and

(4.) A copy of the Complainant's statement identifying those who Participated in the Mediation; and

(5.) Notice that within twenty days after the receipt of the Waivers of Confidentiality the Respondent may file a written objection with the Committee (file means received by the Committee) that the Complainant has not obtained a Waiver of Confidentiality from each person who has Participated in the Mediation. The notice shall inform the Respondent that with such objection the Respondent shall provide the names, addresses and phone numbers of those persons from whom the Waivers of Confidentiality have not been obtained, together with a statement as to how each such person Participated in the Mediation (without disclosing in such statement any Confidentiality of the Mediation); and

(6.) Notice to respond to the Committee in writing to the allegations of the Complaint within thirty days after receipt of the notice; and

(7.) The names and addresses of the Committee members for the purpose only of determining whether or not the Committee member is disqualified; and

(8.) That the Respondent may challenge the qualification of a Committee member by sending a detailed written statement challenging the qualifications of a Committee member to the Board within twenty days of the receipt of the notification of the names and addresses of members of the Committee.

The thirty day period for Respondent to respond to the Complaint shall not be postponed, stopped or extended as a result of a challenge to the qualification of a Committee member, or any objection to the Grievance Proceeding, or any other reason not approved by the Committee in writing.

If Respondent challenges the qualifications of a Committee member, the Committee shall take no further action on the Complaint until the challenge is resolved.

If the Committee determines that Waivers of Confidentiality have not been obtained from all persons who Participated in the Mediation, the Committee shall notify Complainant and Respondent of such determination, and that:

(1.) Complainant shall have twenty days after the receipt of the notice to obtain and send to the Committee the required Waivers of Confidentiality; and

(2.) If the Committee does not receive the required Waivers within such twenty-day period, the Complaint shall be dismissed; and

(3.) Complainant shall have twenty days from the receipt of the notice of the Committee's determination requiring additional waivers to appeal the Committee's determination to the Board.

2.08 Location and Manner of Committee Proceedings: The location of Committee proceedings shall be as determined by the Committee.

The deliberations discussions and communications of the Committee on the merits of any grievance may be conducted in person, by telephone, by video teleconference, by mail, by email or by any other means as long as all Committee members are present, receive the communication, or otherwise participate in the communication, deliberations or discussions.

2.09 Committee Determination of Just Cause: The chair of the Committee shall convene the Committee in person or by other means approved by the Committee, for a hearing to determine whether there is Just Cause, not more than sixty days after the later to occur of the following:

(1.) Receiving the Respondent's written response to the Complaint; or

(2.) The date the Committee gives the parties notice of its decision that Respondent has not defaulted after the Respondent has challenged a notice of default from the Committee; or

(3.) The resolution of all challenges to the qualifications of Committee members.

At least twenty days prior to the Just Cause hearing the Committee shall give the Respondent and Complainant notice:

(1.) Of the date, time, location (or means) of the hearing; and

(2.) That they may appear, be heard and have counsel present at the hearing; and

(3.) That if they intend to appear at the hearing they shall at least ten days prior to the hearing send notice to the Committee and the other party that they will appear, and whether they will appear with or without counsel.

Appearance before the Committee may be in person or by other means approved by the Committee, but the inability or failure to so appear shall not postpone, stop, extend or preclude further grievance proceedings. No request for continuance, resetting, or agreed pass of further grievance proceedings may be granted unless required by the interest of justice as determined by the Committee.

The Committee may receive such evidence at the hearing as the chair of the Committee in his or her discretion finds appropriate for purposes of determining Just Cause. The provisions of Section 2.13 E. of these rules shall apply to evidence at the hearing.

An official record of the Just Cause hearing shall be made, and transcribed (reduced to writing), if necessary, as provided in Section 2.20 of these rules.

2.10 Disposition Upon a Failure of the Committee to Find Just Cause: If a majority of the Committee fails to find that Just Cause exists, it shall promptly dismiss the Complaint and so notify the Complainant and the Respondent that:

(1.) The Committee does not find Just Cause; and

(2.) The Complaint is dismissed; and

(3.) Within thirty days from receipt of notice of dismissal, the Complainant may appeal the Committee's decision to the Board or re-file the Complaint with additional not previously presented.

2.11 Disposition upon a Committee Finding of Just Cause: Should the Committee find Just Cause, the Committee shall send Complainant and Respondent notice of:

- (1.) The Committee's finding of Just Cause; and
- (2.) The information in Section 2.13 of these rules.

The Committee may at anytime recommend that Complainant and Respondent go to Mediation as provided in Section 2.21 of these rules.

2.12 Confidentiality: With the exception of any final Sanction imposed by the Committee or the Board, the hearings, deliberations, voting, and discussions of the Committee, and all information, records, proceedings, hearing transcripts, statements, and any other information coming to the attention of the Committee or the Board, are strictly confidential and are not subject to disclosure, discovery or production, unless otherwise provided by these rules or required by law.

2.13 Complaint Hearings and Proceedings before the Committee:

A. Notice of hearing on Complaint: The Committee shall send written notice to the Complainant and Respondent:

- (1.) Of the date, time, location (or means) and proceedings of the hearing to consider a Complaint against a mediator; and
- (2.) That they may have counsel present at the hearing; and
- (3.) A copy of the Complaint and any response of the Respondent received by the Committee shall be enclosed with the notice of the hearing.

Within twenty days of receipt of the notice, the parties shall send in writing to the Committee, with a copy to the other party, the following information:

- (1.) A list of the names, addresses, and telephone numbers of all witnesses expected to be called to testify (testify means to state under oath based on personal knowledge) before the Committee; and
- (2.) A written summary of the issues of fact expected to be contested; and
- (3.) A list of documents expected to be presented to the Committee at the hearing; and
- (4.) Written summaries of the testimony (testimony includes statements made or to be made under oath based on personal knowledge) expected to be elicited from each witness; and
- (5.) The estimated length of time for presenting the entire case to the Committee; and
- (6.) Whether or not they will have counsel present at the hearing; and

(7.) Any other matter required by the Committee.

B. Counsel at Hearing on Complaint: The parties may have counsel represent them at the hearing subject to the provisions of Section 2.23 of these rules.

C. Witnesses at Hearing on Complaint: The Respondent, the Complainant, and the Committee may, if they so choose, question witnesses, including the Complainant and Respondent. The inability or failure to exercise this opportunity does not postpone, stop, or preclude further proceedings.

D. Production of Information for Hearing on Complaint: At any time during the proceedings, the Committee may require the parties to produce any documents, information or evidence it deems necessary or appropriate.

If either the Respondent or the Complainant reasonably believes that the other party has the ability to produce specific information or documents that are significant to the presentation or defense of the Complaint, and that the information or document cannot be voluntarily obtained, then that party may, not later than twenty days after the filing of, or the time for the filing of (whichever occurs first), the first responsive statement to the Complaint by the Respondent, submit a written request to the Committee asking that the Committee request the information or document for use in the hearing or for use in preparing for the hearing. The request shall be promptly sent by the Committee to the other party with a notice that such party may file a response with the Committee within twenty days after receipt of the request. If a party objects that the information or documents requested are protected by law from disclosure, such as confidential communications between attorney and client, the chair of the Committee shall evaluate the objection and grant or deny it as he or she deems appropriate.

The written request shall specifically state the information or documents sought, the basis for the belief that the other party has the ability to produce them, and a detailed explanation about how the requesting party will be prejudiced or harmed if the information or document is not produced.

Each party shall upon the request of another party exchange information and documents that are relevant to the Complaint. A party requesting that the Committee assist in obtaining such information or documents from another party must include with the request to the Committee evidence that the information sought was requested but not produced prior to seeking intervention of the Committee.

Failure or refusal of a party to comply with a request by the Committee for information or documents may result in the dismissal of the Complaint or Sanction of the Respondent. When making a decision on the merits of the Complaint the Committee may also take such failure or refusal into consideration.

A decision by the Committee on a request for information or documents may be reviewed only on appeal of the entire case to the Board. No reversal of a decision by the

Committee on a Complaint may be based on the granting or denial of such a request without a showing of significant unfairness or harm.

E. Evidence for Hearing on Complaint The chair of the Committee shall admit all evidence offered by the parties that is relevant, reliable and significant to the proceedings, and that the chair deems necessary to an understanding and determination of the dispute, and that the chair deems necessary for a fair and complete hearing.

The admission or exclusion of evidence shall be at the discretion of the chair of the Committee. The chair may exclude evidence deemed by the chair to be unreliable, insignificant, cumulative, or irrelevant to the proceedings. If a party objects that certain evidence is protected by law from disclosure or admissibility, such as confidential communications between attorney and client, the chair shall evaluate the objection and admit or prohibit the evidence, as he or she deems appropriate. Conformity to legal rules of evidence shall not be necessary. The chair shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client. The chair may, but is not required to, be guided by the Texas Rules of Evidence used in civil cases that are in effect at the time (the provisions of which will be provided to the parties at the TMCA website or in another manner approved by the Board). No ruling upon the evidence shall be a basis for reversal of a Committee decision solely because it fails to strictly comply with the Texas Rules of Evidence.

F. Burden of Proof for Hearing on Complaint: The Burden of Proof is upon the Complainant to prove the allegations of the Complaint.

G. Official record for Hearing on Complaint: An official record of the hearing shall be made, and transcribed (reduced to writing) if necessary, as provided in Section 2.20 of these rules.

H. Setting the Complaint Hearing: The Complaint must be set by the Committee for a hearing to receive evidence on a date not sooner than forty-five days nor later than one hundred and twenty days after the filing (receipt by the Committee) of Respondent's first response to the Complaint, unless the Committee in its discretion determines that it is necessary or appropriate to set the hearing at a later date. If the Committee recommends Mediation prior to the hearing, the hearing must be set not sooner than twenty days or later than sixty days after the earlier to occur of the following:

- (1.) The date of the completion of the Mediation as set by the Committee; or
- (2.) The receipt by the Committee of written notice from the Complainant or Respondent that he or she does not agree to go to Mediation, or that the parties have mediated and the Mediation been unsuccessful; or
- (3.) The failure of Complainant or Respondent to notify the Committee within twenty days after receipt of the notice that they agree to go to Mediation.

I. Default on Complaint: The Respondent's failure to respond to the Complaint in the time and manner required in these rules is to be considered an admission by Respondent of the matters alleged in the Complaint, unless the Committee after a hearing determines otherwise. If the Respondent fails to respond to the Complaint in the time and manner required in these rules, the Committee shall give the Complainant and Respondent notice:

(1.) That the Respondent has defaulted; and

(2.) Respondent has the opportunity to file with the Committee a response and a statement under oath setting out facts that support good cause for the default within twenty days after receipt of the notice.

The Committee may set a hearing to consider the circumstances of the default at any time not less than thirty days after the date Respondent received notice of the default. The Committee shall not be required to hold a hearing on the default, but may make a decision on the default on the basis of the response and statement of good cause for the default, if any, filed by the Respondent. If the Committee sets a default hearing, at least twenty days prior to the hearing, the Committee shall give notice to the Complainant and Respondent of the date, time and location (or means) of the hearing, that they may have counsel present at the hearing, and that if they intend to appear at the hearing they shall at least ten days prior to the hearing send notice to the Committee and the other party that they will appear, and whether they will appear with or without counsel. Appearance before the Committee may be in person or by other means approved by the Committee, but the inability or failure to so appear shall not postpone, stop, extend or preclude the proceedings. The decision to have a default hearing is within the sole discretion of the Committee. No request for a continuance or resetting of the hearing or Committee action on the default may be granted unless required by the interests of justice as determined by the Committee.

The Committee may receive such evidence at the hearing as the chair of the Committee in his or her discretion finds appropriate for purposes of determining issues of default and good cause. The provisions of Section 2.13 E. of these rules shall apply to evidence at the hearing.

An official record of the default hearing shall be made, and transcribed (reduced to writing), if necessary, as provided in Section 2.20 of these rules.

The Burden of Proof is upon the Respondent to prove there was no default or there was good cause for the default.

Within thirty days after notice of default to the Respondent or within thirty days after a default hearing, whichever occurs first, the Committee shall send notice of the Committee's decision on the default to the Complainant and Respondent.

J. Committee Decision on Complaint: A written decision, written findings of fact, conclusions, and any Sanctions shall be made in writing by the Committee and sent to Complainant and Respondent within thirty days after the earlier to occur of the following:

(1.) Subject to Section J. (4.), (5.) or (6.) of these rules below, the conclusion of the last hearing at which the Committee hears evidence on the Complaint; or

(2.) Subject to Section J.(4.), (5.) or (6.) of these rules below, the date Respondent files with the Committee a response and a statement setting out facts that support good cause for a default within twenty days after receipt of the notice of default in the event that without a hearing the Committee finds that Respondent defaulted; or

(3.) Subject to Section J. (4.), (5.) or (6.) of these rules below, the conclusion of the last hearing, if any, at which the Committee hears evidence on a default, or the date the notice of default is sent to the Respondent, in the event Respondent does not respond to the notice and the Committee finds that the Respondent defaulted; or

(4.) The date of the completion of Mediation as set by the Committee after a Committee recommendation of Mediation if the Committee recommends Mediation after the occurrence of the events in Section J.(1.) or J.(2.) of these rules above; or

(5.) The receipt by the Committee of written notice from a party that he or she does not agree to go to Mediation after a Committee recommendation of Mediation, or that the parties have mediated and the Mediation has been unsuccessful if the Committee recommends Mediation after the occurrence of the events in Section J. (1.) or J. (2.) of these rules above; or

(6.) The failure of Complainant or Respondent to notify the Committee within twenty days after receipt of a notice of a Committee recommendation of Mediation, that they agree to go to Mediation, if the Committee recommends Mediation after the occurrence of the events in Section J.(1.) or J.(2.) of these rules above.

2.14 Imposition of Sanctions by the Committee: If the Committee finds that a Sanction should be assessed against the Respondent, a written decision of the Committee shall assess the Sanction. The Committee's decision to Sanction must be by a unanimous vote of the members of the Committee. The Committee may, in its discretion, conduct a separate hearing to receive evidence on the appropriate Sanction to be imposed. Private reprimand is not an available Sanction in a hearing before the Committee. In imposing any Sanction, the Committee shall consider:

(1.) The nature and degree of the Ethical Misconduct for which the Respondent is being sanctioned; and

(2.) The seriousness of and circumstances surrounding the Ethical Misconduct.

In imposing any Sanction, the Committee may consider:

- (1.) The loss or damage to Complainant; and
- (2.) The damage to the profession; and
- (3.) The protection of those who seek mediation services in the future from the type of Ethical Misconduct found; and
- (4.) The profit to the mediator; and
- (5.) The avoidance of repetition; and
- (6.) The deterrent effect on others; and
- (7.) The maintenance of respect for the Mediation profession; and
- (8.) The conduct of the Respondent during the course of the Committee action.

In addition, the Respondent's TMCA grievance record, including any private reprimands, may be considered by the Committee in connection with the determination of the appropriate Sanction to be imposed.

2.15 Restitution: In all cases in which the proof establishes that the Respondent's misconduct involved the misappropriation of funds, and the Respondent is de-Credentialed or Respondent's Credential is suspended, the Committee's decision shall require:

- (1.) The Respondent to make restitution during the period of suspension in the case of suspension of Credentialing, and that its decision of suspension shall remain in effect until evidence of satisfactory restitution is made by Respondent and verified by the Committee; and
- (2.) The Respondent to make restitution before any consideration of reinstatement of Credentialing.

2.16 Notice of Committee Decision: The Complainant and Respondent shall be notified in writing of the decision of the Committee, including any Sanctions imposed. The notice must clearly state that any appeal of the findings, conclusions, or Sanctions must be made in writing and received by the Committee within thirty days of the date of the notice. The decision of the Committee is final thirty days after the notice of the decision is sent to the parties unless an appeal is filed with the Board in the time and manner required by these rules.

2.17 Probated Suspension - Revocation Procedure: If all or any part of a suspension of Credentialing is probated (delayed in its implementation), the Committee shall have the

authority for the full term of suspension, including any probationary period, to hear and determine a motion (a written request supported by specific facts) to revoke probation.

A motion to revoke probation may be filed only by the Complainant, and may be filed with the Committee at anytime during the term of the probation.

A. Location of Committee Revocation Proceedings: The location or other means of Committee revocation proceedings shall be as determined by the Committee.

B. Notice to Respond to Motion to Revoke Probation: After receipt of a revocation motion by the Committee, the Committee shall send to the Respondent a copy of the motion and notice that Respondent must file a response to the motion with the Committee within twenty days after receipt of the notice.

C. Notice of hearing on Motion to Revoke Probation: After the Committee receives a response from the Respondent, the Committee shall send to the Complainant and Respondent:

(1.) A copy of the motion and any response of the Respondent received by the Committee shall be enclosed with the notice of the hearing; and

(2.) Notice of the date, time, location (or means) and proceedings of the hearing to consider the motion; and

(3.) Notice that within twenty days of receipt of the notice, the parties shall send in writing to the Committee, with a copy to the other party, the following information:

(a.) A list of the names, addresses, and telephone numbers of all witnesses expected to be called to testify (testify means to state under oath based on personal knowledge) before the Committee; and

(b.) A written summary of the issues of fact expected to be contested; and

(c.) A list of documents expected to be presented to the Committee at the hearing; and

(d.) Written summaries of the testimony (testimony includes statements made or to be made under oath based on personal knowledge) expected to be elicited from each witness; and

(e.) The estimated length of time for presenting the entire case to the Committee; and

(f.) Whether or not they will have counsel present at the hearing; and

(g.) Any other matter required by the Committee.

D. Counsel at Hearing on Motion to Revoke Probation: The parties may have counsel represent them at the revocation hearing subject to the provisions of Section 2.23 of these rules.

E. Witnesses at Hearing on Motion to Revoke Probation: The Respondent, the Complainant, and the Committee may, if they so choose, confront and question witnesses, including the Complainant and Respondent. The inability or failure to exercise this opportunity does not stay, abate or preclude further proceedings.

F. Production of Information for Motion to Revoke Probation: At any time during the proceedings, the Committee may require the parties to produce any documents, information or evidence it deems necessary or appropriate.

If either the Respondent or the Complainant reasonably believes that the other party has the ability to produce specific information or documents that are significant to the presentation or defense of the Complaint, and that the information or document cannot be voluntarily obtained, then that party may, not later than twenty days after the filing of, or the time for the filing of (whichever occurs first), the first responsive statement to the Complaint by the Respondent, submit a written request to the Committee asking that the Committee request the information or document for use in the hearing or for use in preparing for the hearing. The request shall be promptly sent by the Committee to the other party with a notice that the party may file a response with the Committee within twenty days after receipt of the request. If a party objects that the information or documents requested are protected by law from disclosure, such as confidential communications between attorney and client, the chair of the Committee shall evaluate the objection and grant or deny it as he or she deems appropriate.

The written request shall specifically state the information or documents sought, the basis for the belief that the other party has the ability to produce the same, and a detailed explanation about how the requesting party will be prejudiced or harmed if the information or document is not produced.

Each party shall, upon the request of another party, exchange information and documents that are relevant to the motion. A party requesting that the Committee assist in obtaining such information or documents from another party must include with the request to the Committee evidence that the information sought was requested but not produced prior to seeking intervention of the Committee.

Failure or refusal of a party to comply with a request by the Committee for information or documents may result in the dismissal of the motion or revocation of the probated suspension. When making a decision on the merits of the motion the Committee may also take such failure or refusal into consideration.

A decision by the Committee on a request for information or documents may be reviewed only on appeal of the Committee's decision on the motion to the Board. No reversal of a

decision by the Committee on a motion may be based on the granting or denial of such a request without a showing of significant unfairness or harm.

G. Evidence on Motion to Revoke Probation: The chair of the Committee shall admit all evidence offered by the parties that is relevant, reliable and significant to the proceedings, and that the chair deems necessary to an understanding and determination of the dispute, and that the chair deems necessary for a fair and complete hearing.

The admission or exclusion of evidence shall be at the discretion of the chair of the Committee. The chair may exclude evidence deemed by the chair to be unreliable, insignificant, cumulative, or irrelevant to the proceedings. If a party objects that certain evidence is protected by law from disclosure or admissibility, such as confidential communications between attorney and client, the chair shall evaluate the objection and admit or prohibit the evidence, as he or she deems appropriate. Conformity to legal rules of evidence shall not be necessary. The chair shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client. The chair may, but is not required to, be guided by the Texas Rules of Evidence used in civil cases that are in effect at the time. No ruling upon the evidence shall be a basis for reversal of a Committee decision solely because it fails to strictly comply with the Texas Rules of Evidence.

H. Burden of Proof on Motion to Revoke Probation: The Burden of Proof is upon the Complainant to prove the allegations of the motion.

I. Official Record on Motion to Revoke Probation: An official record of the hearing shall be made, and transcribed (reduced to writing) if necessary, as provided in Section 2.20 of these rules.

J. Setting the Hearing on Motion to Revoke Probation: The motion must be set by the Committee for a hearing to receive evidence on a date not sooner than forty-five days nor later than one hundred and twenty days after the filing (receipt by the Committee) or the deadline for the filing of Respondent's first response to the motion, unless the Committee determines that it is necessary or appropriate to set the hearing at a later date. If the Committee recommends Mediation prior to the hearing, the hearing must be set not sooner than twenty days or later than sixty days after the earlier to occur of the following:

- (1.) The date of the completion of the Mediation as set by the Committee; or
- (2.) The receipt by the Committee of written notice from the Complainant or Respondent that he or she does not agree to go to Mediation, or that the parties have mediated and the Mediation been unsuccessful; or
- (3.) The failure of Complainant or Respondent to notify the Committee within twenty days after receipt of the notice that they agree to go to Mediation.

K. Default on Motion to Revoke Probation: The Respondent's failure to respond to the motion in the time and manner required in these rules is to be considered an admission by Respondent of the matters alleged in the motion, unless the Committee after a hearing determines otherwise. If the Respondent fails to respond to the motion in the time and manner required in these rules, the Committee shall give the Complainant and Respondent notice:

(1.) That the Respondent has defaulted; and

(2.) Respondent has the opportunity to file with the Committee a response and a statement under oath setting out facts that support good cause for the default within twenty days after receipt of the notice.

The Committee may set a hearing to consider the circumstances of the default at any time not less than thirty days after the date Respondent received notice of the default. The Committee shall not be required to hold a hearing on the default, but may make a decision on the default on the basis of the response and statement of good cause for the default, if any, filed by the Respondent. If the Committee sets a default hearing, at least twenty days prior to the hearing the Committee shall give notice to the Complainant and Respondent of the date, time and location (or means) of the hearing, that they may have counsel present at the hearing, and that if they intend to appear at the hearing they shall at least ten days prior to the hearing send notice to the Committee and the other party that they will appear, and whether they will appear with or without counsel. Appearance before the Committee may be in person or by other means approved by the Committee, but the inability or failure to so appear shall not postpone, stop extend or preclude the proceedings. A default hearing is not required. The decision to have a default hearing is within the sole discretion of the Committee. No request for a continuance or resetting of the hearing or Committee action on the default may be granted unless required by the interests of justice as determined by the Committee.

The Committee may receive such evidence at the hearing as the chair of the Committee in his or her discretion finds appropriate for purposes of determining issues of default and good cause. The provisions of Section 2.13 E. of these rules shall apply to evidence at the hearing.

An official record of the default hearing shall be made, and transcribed (reduced to writing), if necessary, as provided in Section 2.20 of these rules.

The Burden of Proof is upon the Respondent to prove there was no default or good cause for the default.

Within thirty days after notice of default to the Respondent or within thirty days after a default hearing, whichever occurs first, the Committee shall send notice of the Committee's decision on the default to the Complainant and Respondent.

L. Committee Decision on Motion to Revoke Probation: A written decision granting or denying the motion with written findings of fact and conclusions shall be made in writing by the Committee and sent to Complainant and Respondent within thirty days after the earlier to occur of the following:

(1.) The conclusion of the last hearing at which the Committee hears evidence on the motion; or

(2.) The date Respondent files with the Committee a response and a statement setting out facts that support good cause for a default within twenty days after receipt of the notice of default, in the event the Committee finds that Respondent defaulted; or

(3.) The conclusion of the last hearing, if any, at which the Committee hears evidence on a default, or the date the notice of default is sent to the Respondent, in the event the Committee finds Respondent defaulted; or

(4.) The date of the completion of Mediation as set by the Committee after a Committee recommendation of Mediation, if the Committee recommends mediation after a hearing on a Complaint or a finding that the Respondent defaulted; or

(5.) The receipt by the Committee of written notice from a party that he or she does not agree to go to Mediation after a Committee recommendation of Mediation, or that the parties have mediated and the Mediation has been unsuccessful, if the Committee recommends mediation after a hearing on a Complaint or a finding that the Respondent defaulted; or

(6.) The failure of Complainant or Respondent to notify the Committee within twenty days after receipt of a notice of a Committee recommendation of Mediation, that they agree to go to Mediation, if the Committee recommends mediation after a hearing on a Complaint or a finding that the Respondent defaulted.

The Committee decision granting or denying a motion to revoke a probated (delayed in implementation) suspension may be appealed to the Board, but cannot be superseded , postponed, stopped, or delayed.

2.18 Appeals by Complainant or Respondent: The Complainant or Respondent may appeal to the Board any decision, findings, conclusions, or Sanctions imposed by the Committee. Any Board member who served as a member of the Committee that considered the matter on appeal shall not hear the appeal. The appeal shall be heard by at least a majority of the members of the Board, such majority being determined after the exclusion of any Board member who served on the Committee hearing the matter on appeal. On appeal the Board shall only consider the record made of the Committee proceedings and any briefs (written positions and arguments) filed with the Board (filed means received by the Board). Evidence that was not presented to the Committee may not be presented to the Board on appeal. The Board shall determine the time deadlines for such briefs.

A. Burden of Proof on Appeal: The appealing party has the burden of showing that the Committee's decision is not supported by the evidence.

B. Commencement and Notice on Appeal: An appeal, if taken, must be commenced by the filing (receipt by the Board) with the Board of a notice of appeal within thirty days from receipt of the decision of the Committee. The notice of appeal must:

- (1.) State that the appealing party contests the Committee's decision;
- (2.) State exactly what parts of the decision the party contests and why it is contested; and
- (3.) Make a written request that the Board review that part of the decision being contested.

Upon receipt of a notice of appeal, the Board shall send to the parties a copy of the notice and the date by which briefs must be filed with the Board.

C. Board Decision on Appeal: The Committee's decision of de-Credentialing cannot be superseded, postponed, stopped, or delayed while the Committee's decision is on appeal to the Board. A decision of suspension of Credentialing shall be stayed during the time any appeal from such decision is pending if the Respondent requests such a stay and the Committee finds, based upon evidence provided by the Respondent (the Burden of Proof is on the Respondent), that, if the Respondent continues to practice Mediation, the Respondent will not violate the Ethical Rules. The Committee may condition its stay upon reasonable terms, which may include, but are not limited to, the cessation of any practice found to constitute Ethical Misconduct.

The Board may in a written decision affirm, reverse or modify any decision of the Committee on appeal. If a Board decision reverses or modifies a decision of the Committee, and such decision by the Board requires the Committee to take action, the Board shall prescribe what action the Committee is to take and the time such action is to be taken. The parties shall be provided with a copy of the Board decision. A decision by a majority of the Board regarding a matter on appeal shall be a decision by a majority of the members of the Board hearing the appeal (a decision by a majority of the majority). Decisions by the Board on appeal are final when made.

2.19 Publication of De-Credentialing and Suspension of Credentialing: Notice of a final decision (a final decision is one for which any applicable time for appeal has expired) of de-Credentialing or non-probated suspension of Credentialing shall be published at the TMCA website for the entire period of de-Credentialing or suspension of Credentialing. The published notice shall include the name of the mediator, the Credential that is the subject of the Sanction, the reason for the Sanction, the term of the Sanction and any other information concerning the mediator or the Sanction the Board in its discretion deems appropriate.

2.20 Recording of Hearings, Maintenance or Records and Costs: Records of hearings and proceedings before the Committee shall be kept and preserved by the Committee until the time for appeal to the Board has passed. Records of proceedings before the Board and records of hearings and proceedings before the Committee after the time for appeal has passed may be kept by the TMCA for statistical and other purposes determined by the Board.

Complainant and Respondent shall also each have the right to cause the testimony at any hearing to be recorded in a manner approved by the Committee in its sole discretion, and at the requesting party's expense, provided that all records and transcripts remain in the custody of the Committee and may be released only for use in appeals of a Committee decision to the Board.

In the event of an appeal to the Board, the party initiating the appeal shall pay the costs of preparation of the transcript of the official record of the proceedings. The Committee shall determine such costs.

2.21 Mediation: At any time the Committee may recommend that Complainant and Respondent go to a Mediation of any matter that is the subject of the Complaint.

A. Notice of Mediation: The Committee shall send the parties notice of any such recommendation in writing. The notice shall include the following:

(1.) That the Committee is recommending that the parties go to voluntary Mediation, but that Mediation is not being required; and

(2.) That the parties agree on a mediator and a time, date and location for the Mediation; and

(3.) The time within which the Mediation must be completed; and

(4.) That Complainant and Respondent must notify the Committee within twenty days of the notice that they agree or do not agree to go to Mediation; and

(5.) Any other matter the Committee deems appropriate.

B. Proceedings of Mediation: After a recommendation of Mediation, the grievance process shall be suspended, and thereafter shall continue through the grievance process in accordance with these rules and procedures immediately upon the earlier to occur of the following:

(1.) The expiration of the time within which the Mediation must be completed as determined and noticed by the Committee; or

(2.) The receipt by the Committee of written notice from the Complainant or Respondent that he or she does not agree to go to Mediation, or that the parties have mediated and the Mediation been unsuccessful; or

(3.) The failure of Complainant or Respondent to notify the Committee within twenty days after receipt of the notice that they agree to go to Mediation.

## 2.22 Agreements Resolving Complaints:

A. Agreements with Committee or Board Resolving Complaints: The Committee in connection with a Complaint pending before it, or Board in connection with the appeal of a decision by the Committee on any Complaint, may at anytime offer an agreed resolution to the Respondent. All such offers shall be in writing and shall be sent to the Complainant and Respondent in the form of a written decision that shall contain the findings, conclusions, Sanctions, and other terms proposed by the Committee or the Board. An offer by the Committee or Board shall not be considered accepted until the Respondent signs the written decision and returns it to the Committee if it was sent by the Committee or the Board if it was sent by the Board. The grievance process shall not be suspended, postponed, or stopped during the making or consideration of any such offers.

B. Agreements by the Parties Resolving Complaints: The parties may also agree to resolve a Complaint. Upon the receipt by the Committee of written notice from the Complainant and Respondent that an agreement has been reached which disposes of the entire Complaint, the Complaint shall be promptly dismissed by the Committee. If at any time the parties agree that part but not all of the Complaint has been finally resolved, the Complainant and Respondent must file a statement with the Committee (file means received by the Committee) clearly describing what parts of the Complaint have been resolved, what parts of the Complaint have not been resolved and any action requested of the Committee or the Board as a part of the agreed resolution. The Complainant must also immediately withdraw in writing those parts of the Complaint that have been resolved, or the Committee will dismiss them. Those parts of the Complaint that are not withdrawn by the Complainant, dismissed by the Committee after notice to the Committee of the parts that have been resolved, or otherwise resolved, will proceed through the grievance process.

If an agreement settling all or any part of the Complaint provides that the Committee or the Board is to take some action, such action shall not be taken without the unanimous approval of the Committee if it is to be a Committee action, or a majority of the Board if it is to be a Board action. If the Committee fails to unanimously approve an action that the parties agree that the Committee is to take, the agreement shall be reviewed by the Board at the written request of both parties. The determination of a Board majority for this purpose shall be calculated as though the matter were on appeal and the majority determined as provided in Section 2.18 of these rules. If a majority of the Board fails to approve the agreed action, the Complaint will continue through the grievance process until the Complainant dismisses the Complaint or some action to be taken by the

Committee or the Board as a part of the agreed resolution is approved as provided in this paragraph above.

2.23 Counsel: The Respondent and the Complainant may have, but are not required to have, counsel represent them in connection with any matter covered by these rules, subject to the following:

A. Notice Counsel Retained: At such time as an attorney agrees to represent a party in connection with a matter covered by these rules, such party shall send written notice to the Committee and the other party:

(1.) That the party has retained such counsel; and

(2.) The name, address, telephone number, email address and telecopier (fax) number where the TMCA, the Committee, the Board, and the other party may communicate with such attorney.

B. Notice Counsel will attend Hearing: If a party intends to have counsel present at a hearing, such party or his or her attorney shall send to the other party, and the Committee or the Board respectively, written notice of the following at least ten days prior the hearing:

(1.) That the party intends to have counsel present at the hearing; and

(2.) The name, address, telephone number, email address and telecopier (fax) number where the TMCA, the Committee, the Board, and the other party may communicate with such attorney.

C. Communication when Counsel Retained: If a party retains counsel to represent them as provided in these rules the TMCA, the Committee and the Board will communicate with the party and such counsel as provided in Section 5.04 of these rules.

2.24. Attendance at Hearings: Only the Respondent, the Complainant, witnesses, and counsel for the parties may attend hearings. Witnesses may be present in a hearing only while giving testimony, or at such other times and subject to such terms and conditions as are approved by the Committee for proceedings before the Committee, or as are approved by the Board, for proceedings before the Board.

### PART III REINSTATEMENT

3.01 Eligibility for Reinstatement: A de-Credentialed mediator or a mediator who has resigned a Credential in lieu of a Grievance Proceeding may, at any time after the expiration of five years from the date of a final decision of de-Credentialing, or the date of the Committee accepting in writing a resignation of a Credential in lieu of a Grievance Proceeding, petition (a written request) the Board for reinstatement of the Credential. A mediator who has been de-Credentialed cannot apply for any other Credentialed status

without first having the de-Credentialed status reinstated. If the Board denies reinstatement, the mediator may not request reinstatement until the expiration of at least one year after the last denial of reinstatement.

### 3.02 Reinstatement Process:

A. Petition for Reinstatement: A petition for reinstatement shall be verified (written confirmation of the truth made under oath of the matters stated in the petition) and shall set forth all the following information:

- (1.) The name, age, and residential address of the petitioner; and
- (2.) The offenses or misconduct upon which the de-Credentialing or resignation was based; and
- (3.) A statement that the petitioner has made restitution to all persons, if any, naming them and their current addresses, who may have suffered financial loss by reason of the offenses or misconduct for which the petitioner was de-Credentialed or resigned; and
- (4.) A statement that at the time of the filing of the petition the petitioner is of good moral character and possesses the mental and emotional fitness to practice Mediation; and
- (5.) A statement that the petitioner has recently read and understands the Ethical Rules and has not violated the Ethical Rules from the date of de-Credentialing through the date of the petition; and
- (6.) A statement that the public and profession will be served by the petitioner's reinstatement; and
- (7.) Such additional information the Board deems appropriate.

Such additional information may include, but is not limited to:

- (1.) A listing of the petitioner's occupations from the date of de-Credentialing or resignation, including the names and current addresses of all partners, associates, and employers, if any, and the dates and duration of all such relationships and employment; and
- (2.) A statement explaining any proceeding or inquiry after the date of de-Credentialing or resignation concerning the petitioner's standing as a member of any profession or organization or holder of any license or office that involved censure, removal, suspension of license, revocation of any license, or discipline of the petitioner and the disposition thereof, and the name and address of each authority in possession of the records; and
- (3.) A statement as to whether any allegations or charges, formal or informal, of fraud were made or claimed against the petitioner at any time after the de-Credentialing or

resignation, and the names and current addresses of the persons or entities making such allegations or charges.

The petitioner has a duty to amend and keep current all information in the petition until the petition has been heard and determined by the Board. The Board may, but is not required to, make any and all contacts it deems appropriate to verify any information provided.

B. Publication of Petition for Reinstatement and Notice of Hearing: Notice that the mediator has petitioned for the reinstatement of a Credential shall be published at the TMCA website for at least thirty days prior to the hearing on the petition. The publication shall be removed from the TMCA website promptly after the date of the Board's decision on the petition. The notice published at the TMCA website shall include the following:

- (1.) The name and address of the petitioner, and the date, time and location (or means) of the hearing to consider the petition;
- (2.) That anyone interested in being heard in connection with the petition may file with the Board (file means received by the Board) a written statement of matters they believe the Board should consider in connection with the petition;
- (3.) That persons filing such statements may attend the hearing, subject to Board approval, if they file with the Board a written request to attend the hearing and agree to be bound by these Grievance Rules and Procedures, any other rules for attendance adopted by the Board;
- (4.) That any such written statement and request to attend the hearing must be filed with the Board and a copy sent to the petitioner at the address for the petitioner stated in the notice, at least twenty days prior to the hearing; and
- (5.) Any other information that the Board in its discretion deems appropriate.

All written statements and requests to attend a reinstatement hearing shall be sent to the petitioner at least ten days prior to the hearing.

3.03 Reinstatement Hearing: The Board shall set a hearing on the petition not earlier than sixty days after publication of the notice at the TMCA website.

A. Location of Reinstatement Proceedings: The location (or means) of the reinstatement proceedings shall be as determined by the Board.

B. Notice of Reinstatement Hearing: The Committee shall send to the petitioner a copy of the notice of the petition published at the TMCA website. The publication shall, together with the other information published, contain notice of the date, time, location and proceedings of the hearing to consider the petition as provided above.

Not later than twenty days prior to the date of the hearing the petitioner shall send in writing to the Board the following information:

- (1.) A list of the names, addresses, and telephone numbers of all witnesses expected to be called to testify (testify means to state under oath based on personal knowledge) before the Board; and
- (2.) A list of documents expected to be presented to the Board at the hearing; and
- (3.) Written summaries of the testimony (testimony includes statements made or to be made under oath based on personal knowledge) expected to be elicited from each witness; and
- (4.) Whether or not petitioner will have counsel present at the hearing.
- (5.) Any other matter required by the Committee.

C. Counsel at Reinstatement Hearing: The petitioner may have counsel represent them at the reinstatement hearing subject to the provisions of Section 2.23 of these rules.

D. Witnesses at Reinstatement Hearing: The petitioner, the Board and any other person present at the hearing may, if they so choose, question witnesses, as well as the petitioner and anyone else present at the hearing. The inability or failure to exercise this opportunity does not postpone, stop or preclude further proceedings.

E. Production of Information for Reinstatement Hearing: At any time during the proceedings, the Committee may require the petitioner to produce any documents, information or evidence it deems necessary or appropriate.

If the petitioner reasonably believes that any person who filed a written statement in response to the publication of the petition has the ability to produce specific information or documents that are significant to the petitioner's defense of matters stated in a written statement, and that the information or document cannot be voluntarily obtained, then that petitioner may submit a written request to the Board asking that the Board request the information or document for use in the hearing or for use in preparing for the hearing. The request shall be promptly sent by the Board to the party who made the written statement with a notice that such party may file a response with the Board within twenty days after receipt of the request. If a party objects that the information or documents requested are protected by law from disclosure, such as confidential communications between attorney and client, the chair of the Committee shall evaluate and make a decision on the objection.

The petitioner's written request shall specifically state the information or documents sought, the basis for the belief that the party from whom the information or documents is sought has the ability to produce the same, and a detailed explanation about how the petitioner will be prejudiced or harmed if the information or document is not produced.

If the petitioner requests that the Board assist in obtaining such information or documents, he or she must include with the request to the Board evidence that the information sought was requested from the party from whom the information or documents is sought, but was not produced prior to seeking intervention of the Board.

Failure or refusal of a person who has filed a written statement in response to the publication of the petition to comply with a request by the Board for information or documents may result in the dismissal of the consideration of the written statement in connection with the Board's consideration of the petition. When making a decision on the merits of the petition the Board may also take such failure or refusal into consideration.

F. Evidence for Reinstatement Hearing: The chair of the Board shall preside over the hearing and shall admit all evidence offered by the parties that is relevant, reliable and significant to the proceedings, and that the chair deems necessary to an understanding and determination of the petition, and that the chair deems necessary for a fair and complete hearing.

The admission or exclusion of evidence shall be at the discretion of the chair of the Board. The chair may exclude evidence deemed by the chair to be unreliable, insignificant, cumulative, or irrelevant. If a party objects that certain evidence is protected by law from disclosure or admissibility, such as confidential communications between attorney and client, the chair shall evaluate the objection and admit or prohibit the evidence, as he or she deems appropriate. Conformity to legal rules of evidence shall not be necessary. The chair shall take into account applicable principles of legal privilege, such as those involving the confidentiality of communications between a lawyer and client. The chair may, but is not required to, be guided by the Texas Rules of Evidence used in civil cases that are in effect at the time.

G. Burden of Proof for Reinstatement Hearing: The petitioner has the Burden of Proof to establish that the best interests of the public and the profession, as well as the ends of justice, would be served by the petitioner's reinstatement. The Board shall deny the petition for reinstatement without a hearing if it is incomplete. The Board shall deny the petition for reinstatement if it contains any false statement of a significant fact, or if the petitioner fails to meet the Burden of Proof.

H. Official record for Reinstatement Hearing: An official record of the hearing shall be made, and transcribed (reduced to writing) if necessary, as provided in Section 2.20 of these rules.

3.04 Relevant Factors to be Considered on Reinstatement: In determining the petitioner's fitness for reinstatement, in addition to any other information or matters the Board may in its discretion consider relevant, the Board may consider:

A. Evidence concerning the nature and degree of Ethical Misconduct for which the petitioner was de-Credentialed or resigned, and the circumstances attending the offenses;

B. The petitioner's understanding of the serious nature of the acts for which he or she was de-Credentialed or resigned;

C. The petitioner's conduct during the Grievance Proceeding;

D. The profit to the petitioner and the hardship to others;

E. The petitioner's attitude toward the administration of justice and the practice of Mediation;

F. The petitioner's good works and other accomplishments; and

G. Any other evidence relevant to the issues of the petitioner's fitness to practice Mediation and the likelihood that the petitioner will not engage in further misconduct.

3.05 Reinstatement Decision and Conditions: If a majority of the Board is satisfied after hearing the evidence, both in support and in opposition to the petition, that the significant allegations of the petition are true, and that the best interests of the public and the profession, as well as the ends of justice, will be served, the Board may authorize the petitioner to be reinstated upon his or her compliance with TMCA Credentialing requirements. If after hearing the evidence the Board determines that the petitioner is not eligible for reinstatement, the Board may, in its discretion, either deny the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof that he or she has satisfied the requirements of these rules. The Board's decision may include such other requirements as the Board deems appropriate. The determination of a Board majority for this purpose shall be calculated as though the matter were on appeal and the majority determined as provided in Section 2.18 of these rules. The Board's decision on a petition for reinstatement is final and shall be sent to the petitioner.

#### PART IV INFORMATION AND ACCESS

4.01 Availability of Materials: The TMCA shall make available to the public in a manner prescribed by the Board these rules, the Ethical Rules, other rules and procedures adopted by the Board, the Form and requirements for the filing of Complaints, and a summary of the grievance process.

4.02 Public and Media Inquiries: The Board shall respond, as appropriate, to all public and media inquiries concerning these rules and the operation of the grievance process in a manner prescribed by the Board.

A. Confidentiality: In responding to inquiries the TMCA may not disclose information that is confidential under these rules or the law, or privileged (protected from disclosure) under Texas law, unless otherwise provided by law. The TMCA shall disclose, upon

proper request, information in its custody or control that is neither confidential under these rules or the law, nor privileged (protected from disclosure) under Texas law, unless otherwise provided by law.

A mediator may waive confidentiality and privilege (protection from disclosure under Texas law) as to his or her grievance record by filing an appropriate waiver on a form to be prescribed by the Board. The TMCA shall maintain complete records and files of all grievance matters, except as otherwise provided in these rules, and compile reports and statistics to aid in the administration of the system.

B. Telephone Inquiries: The TMCA shall maintain a telephone number. The telephone number shall be publicized to Texas residents in a manner approved by the Board. Telephone inquiries about specific mediator conduct will not be taken, but when the caller clearly expresses an interest in making a Complaint the TMCA shall refer the caller to the TMCA website, or send a Complaint form to such person or entity who informs the TMCA that they cannot reasonably access the TMCA website.

## PART V MISCELLANEOUS PROVISIONS

5.01 Effect of Time Limitations: The time periods provided herein by which the Respondent or Complainant must take any action are mandatory. All other time periods herein provided are directory only and the failure to comply with them does not result in the invalidation of an act or event by reason of the noncompliance with those time limits.

5.02 Limitations on time to bring Complaints: No Complaint may be considered and no mediator may be sanctioned for Ethical Misconduct occurring more than two years before the time a Complaint is received by the TMCA, subject to the following.

### A. Complaints:

(1.) If at the time the Committee determines that a Grievance Form may constitute a Complaint it is clear from the statements in the Form that the alleged Ethical Misconduct occurred two or more years prior to the time the Complaint was received by the TMCA, the Committee shall promptly dismiss the Complaint and send the Complainant notice that:

(a.) The Complaint is dismissed; and

(b.) Within twenty days from receipt of notice of dismissal, the Complainant may appeal the Committee's decision of dismissal to the Board.

(2.) If the Complaint is not dismissed as provided in Section 5.02 A. (1.) above, and if the Respondent challenges a Complaint as having been brought after the two year limitation

period in the response to a Complaint filed with the Committee, then at the time of a Just Cause hearing in connection with the Complaint, the Committee shall determine whether or not the Complaint has been brought after the two year limitation period has expired. The Respondent must challenge a Complaint as having been brought after the two year limitation period during the time to respond to a Complaint or any such challenge is waived and cannot be brought thereafter. If it is determined that the Complaint has been brought after the two year limitation period has expired, the Committee shall dismiss the Complaint and give the parties notice that:

(a.) The Complaint is dismissed; and

(b.) Within twenty days from receipt of notice of dismissal, the Complainant may appeal the Committee's decision of dismissal to the Board.

(3.) A Complaint that is based upon a Grievance Form that is filed before the two year limitation period expires, and which after the expiration of the two year limitation period is returned by the TMCA for a significant defect or insufficiency in form, or which is determined by the Committee to be an Inquiry, shall be considered a Complaint filed after the two year limitation period expired. The Committee shall dismiss such a Complaint and give the Complainant notice that:

(a.) The Complaint is dismissed; and

(b.) Within twenty days from receipt of notice of dismissal, the Complainant may appeal the Committee's decision of dismissal to the Board.

A completed Grievance Form that is filed prior to the expiration of the two years and is determined after the expiration of the two years to be a Complaint will be considered to have been filed within the two years.

The two years within which to bring a Complaint will not begin to run where fraud or concealment is involved until such Ethical Misconduct is discovered or should have been discovered in the exercise of reasonable diligence by the Complainant.

5.03 Amendments to Grievance Rules and Procedures: These Grievance Rules and Procedures may be amended or supplemented from time to time by the Board.

5.04 Communications, Notices and Receipts: All communications between (to or from) the TMCA (including the Committee and the Board) and any person under these Grievance Rules and Procedures shall be in writing. The Complainant, in the Grievance Form, and the Respondent, in his or her application for Credentialing, shall provide to the TMCA telephone numbers, addresses, telecopier (fax) numbers, and email addressed through which the TMCA, the Committee and the Board can communicate with the parties. If a party is represented by counsel, the party shall also provide such contact information for their counsel. The parties shall keep all such contact information current with the TMCA. By providing any contact information to the TMCA, the parties are

authorizing the TMCA, the Committee and the Board, to communicate with the parties through such addresses and numbers in connection with any matter covered by these Grievance Rules and Procedures. All notices and communications required to be given or sent by the Board or the Committee to the Complainant, Respondent or counsel for either pursuant to the provisions of these Grievance Rules and Procedures shall be given in writing, and may, in the sender's discretion, be given by certified mail return receipt requested, electronically, by email to the addressee's email address, or by facsimile sent to addressee's telecopier (fax) number provided to the TMCA. In the event a person to whom a notice is to be sent by the TMCA, the Committee and the Board does not provide an email address or telecopier number, such notices shall be given by certified mail return receipt requested. Receipt by the Complainant, or Respondent, or counsel for either of an email or telecopy transmission shall be considered effective and complete when the email or telecopy is sent by the sender, regardless of whether or not the same is actually received by the person to whom it is sent. Receipt by the addressee of mail sent certified mail return receipt requested shall be considered effective and complete at five o'clock p.m. at the place where mailed on the third day after the day the item sent is deposited in the mail with postage paid, regardless of whether or not the same is actually received by the addressee. Receipt by the TMCA, the Committee or the Board of any item, matter or communication in any manner sent to or filed with the Committee or Board shall be considered effective and complete when actually received by the TMCA, the Committee or the Board, respectively.

If a party is represented by counsel in connection with any matter covered by these rules, the other party shall send a copy of any notice or other matter required to be sent to the TMCA, the Committee, the Board, or a party represented by counsel, to such party's counsel.

No Claimant, Respondent or any representative of a party may communicate with any Committee member or Board member about any Inquiry or Complaint, except as provided in these rules.

5.05 Decisions of Board and Committee: Unless otherwise provided in these rules, decisions by the Board shall be made by a majority of the Board, and all decisions by the Committee shall be made by a majority of the Committee.

5.06 Report to Board by Committee: All activities of the Committee shall be reported by the Committee to the Board as required by the Board.

5.07 Rules for Determining Relationships:

A. Consanguinity (Relationships by blood):

The degree of relationship by consanguinity between an individual and the individual's descendant is determined by the number of generations that separated them. A parent and child are related in the first degree, a grandparent and grandchild in the second degree, a great-grandparent and great-grandchild in the third degree, and so on.

If an individual and the individual's relative are related by consanguinity, but neither is descended from the other, the degree of relationship is determined by adding:

- (1.) The number of generations between the individual and the nearest common ancestor of the individual and the individual's relative; and
- (2.) The number of generations between the relative and the nearest common ancestor.

An individual's relatives within the third degree by consanguinity are the individual's:

- (1.) Parent or child (relatives in the first degree);
- (2.) Brother, sister, grandparent, or grandchild (relatives in the second degree); and
- (3.) Great-grandparent, great-grandchild, aunt who is a sister of a parent of the individual, uncle who is a brother of a parent of the individual, nephew who is a child or a brother or sister of the individual, or niece who is a child of a brother or sister of the individual (relatives in the third degree).

**B. Affinity (Relationship by marriage):**

Two individuals are related to each other by affinity if:

- (1.) They are married to each other; or
- (2.) The spouse of one of the individuals is related by consanguinity to the other individual.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

**PART VI LIABILITY**

**6.01 LIABILITY: THE TMCA, THE COMMITTEE, THE BOARD, THOSE ACTING UNDER THE AUTHORITY OF THE COMMITTEE AND THE BOARD, AND THE REPRESENTATIVES AND EMPLOYEES OF THE TMCA, SHALL NOT BE LIABLE TO ANY COMPLAINANT, RESPONDENT, PERSON OR PARTY FOR ANY INTENTIONAL OR NEGLIGENT ACT OR OMISSION OF THE TMCA, THE COMMITTEE, THE BOARD, THOSE ACTING UNDER THE AUTHORITY OF THE COMMITTEE AND THE BOARD, THE REPRESENTATIVES AND EMPLOYEES OF THE TMCA, OR ANY COMPLAINANT, RESPONDENT, PERSON OR PARTY IN CONNECTION WITH ANY GRIEVANCE, INQUIRY, COMPLAINT OR MATTER BROUGHT UNDER THESE RULES, WITH THE ONLY EXCEPTION**

BEING THAT THEY MAY BE LIABLE FOR THE CONSEQUENCES OF THEIR KNOWING AND INTENTIONAL WRONGDOING.