



## ICAR 76A

### **Idaho Court Administrative Rule 76A. Removal of Child Custody Mediators from Roster.**

(a) **Purpose.** The purpose of this rule is to:

(1) establish a quality control process for child custody mediators (mediators) who are on the Idaho Supreme Court's Roster of Child Custody Mediators (Roster), and

(2) allow for removal of a mediator from the Roster if a complaint is upheld.

(b) **Grounds for Removal.** The following actions or omissions constitute misconduct and may be grounds for removal of a mediator from the Roster:

(1) violation of a federal, state, or local criminal code or regulation when the offense adversely affects the mediator's ability or fitness to perform their duties or may have an adverse effect on the administration of justice or public if the mediator continues to work as a child custody mediator in the courts;

(2) a current or past civil protection order or criminal no contact order against him or her; when such order adversely affects the mediator's ability or fitness to perform mediator duties or may have an adverse effect on the administration of justice, or public if the mediator continues to work as a child custody mediator in the courts;

(3) fraud, dishonesty, or corruption related to the functions and duties of a mediator;

(4) knowing and willful disclosure of confidential or privileged information obtained while serving as a mediator, unless required by law;

(5) incompetence, unprofessional, or unethical behavior;



(6) failure to follow standards prescribed by law or professional organizations, or as set forth in the Idaho Rules of Family Law Procedure, court policy, procedure, or order, including engaging in conduct that constitutes discrimination or harassment;

(7) misrepresentation of credentials or other credentials or other material misstatement of fact relative to appointment as a mediator, or to an application for placement on the Roster; or

(8) noncompliance with any continuing education requirements.

**(c) Complaint Submission and Review.**

(1) **Submission of Complaint.** Anyone with knowledge of misconduct by a mediator on the Roster may submit a complaint.

(A) *Timing.* A complaint must be submitted within 180 days of the discovery of the facts constituting the alleged misconduct to the Administrative Office of the Courts (Administrative Office).

(B) *Contents.* The complaint must state, to the extent known, the following:

(i) date, time, and location (including judicial district), of the alleged misconduct;

(ii) case name and number of the proceeding in which the alleged misconduct occurred, if applicable;

(iii) description of the alleged misconduct and why the complainant believes it was improper; and

(iv) name, title and telephone number of potential witnesses.

(2) **Review of Complaint.** The Statewide Manager for Family Court Services or designee (Manager) will review the complaint within a reasonable amount of time, not to exceed 14 days from receipt, to determine whether the allegations, if true, are grounds for removal from the Roster.



(A) *No Grounds*. If the Manager determines that the complaint does not allege misconduct that, if true, are grounds for removal, they will forward the complaint and a recommendation to the Director of the Court Services Division or designee (CSD Director).

(i) If the CSD Director agrees, the Manager will dismiss the complaint and notify the complainant in writing.

(ii) If the CSD Director determines that the complaint alleges misconduct that, if true, are grounds for removal and decides further action or review is needed, the complaint will be forwarded to the Director of Human Resources or designee (HR Director) for review or investigation under subparagraph (d)(1).

(B) *Grounds*. If the Manager determines that the complaint alleges conduct that, if true, are grounds for removal, the Manager will forward the complaint and a recommendation to the CSD Director. The CSD Director will review the complaint and recommendation, and forward the information, along with any additional recommendations to the HR Director for review or investigation under subparagraph (d)(1).

**(d) Investigation and Findings.**

**(1) Investigation.**

(A) *Notice*. Upon receipt of the request to review or investigate, the HR Director will provide the mediator with a copy of the complaint and an opportunity to respond. The review or investigation must be completed within 35 days of receipt of the request to investigate.

(B) *Interim Suspension*. In the interest of the administration of justice or the public, the Supreme Court may suspend the mediator from court appointments and the Roster during an investigation or until a final decision is made.

(C) *Response from Mediator*. Within 14 days of receipt of notice from the HR Director, the mediator may submit any relevant evidence or information in writing to the HR Director. The HR Director will review all information provided and will include any response from the mediator in the investigative report.

(D) *Meetings with Mediator and/or Witnesses*. The HR Director may conduct meetings with the mediator, complainant, and witnesses. Meetings may occur in-person, over the telephone, or video conferencing. The HR Director may contact witnesses and give evidence the weight they deem appropriate. Meetings are confidential, unless otherwise requested by the mediator and agreed to by the HR Director.



(E) *Report of Investigation*. At the conclusion of the investigation, the HR Director will submit findings and recommendations to the CSD Director which includes specific factual findings as to whether misconduct occurred that are grounds for removal.

## **(2) Findings.**

(A) *No Grounds*. If upon review of the Report of Investigation, the CSD Director determines that no grounds for removal exist, the CSD Director must dismiss the complaint and notify the mediator and complainant in writing. The notification must include an explanation of the reason for the determination.

(B) *Additional Information*. If the CSD Director determines that additional information is required before deciding, a written request must be sent to the mediator with specific questions posed. All questions must be answered and returned within 7 days. If the mediator fails to respond in writing within the allotted time, the CSD Director may determine that grounds for removal exist and, exercising discretion, remove the mediator's name from the Roster.

(C) *Grounds for Removal Present*. If upon review of the Report of Investigation, the CSD Director determines by a preponderance of evidence that grounds for removal exist, the CSD Director must send the mediator the written determination, including a summary of the allegations contained in the complaint, the relevant investigative findings, citations to any rules or procedures that were violated, and notice of removal from the Roster. The CSD Director's determination must be made within 14 days of receipt of the Report of Investigation. Failure to file an appeal under subparagraph (e)(2)(A) within 14 days of the determination will result in a final decision and removal from the Roster.

## **(e) Hearing.**

(1) Request for Hearing. If the mediator contests the CSD Director's determination, the mediator may file an appeal with the Administrative Director of the Courts and request a hearing before the Child Custody Mediation Subcommittee (Subcommittee). The Administrative Director of the Courts may appoint an advisor to assist the Subcommittee with conducting the hearing including the preparation of notices, legal research, and drafting written findings.

## **(2) Hearing Procedures.**

(A) *Notice of Appeal*. The appeal and any request for hearing must be made within 14 days of the CSD Director's written determination. Failure to file an appeal within the timeframe will result in a final



decision and removal from the Roster.

(B) *Hearing Discretionary*. The Subcommittee may set the matter for hearing or decide the matter based on the complaint, Report of Investigation, and the information submitted without a hearing. If a request for hearing is granted, the hearing must take place within 42 days of the written request.

(C) *Discovery*. Discovery shall not be permitted.

(D) *Hearing Recorded*. The hearing must be recorded electronically and is closed to the public, except the complainant may attend with legal counsel.

(E) *Legal Representation*. The mediator may be represented by legal counsel at his/her own expense.

(F) *Evidence*. The Idaho Rules of Evidence do not apply. The Subcommittee will consider any relevant evidence presented, giving such evidence the weight deemed appropriate. The Subcommittee may call witnesses and consider or clarify any relevant evidence presented. At the hearing, the CSD Director, the complainant, and the mediator may introduce relevant evidence including calling and questioning witnesses.

(f) ***Final Decision***.

(1) ***Factors to Consider***. If the Subcommittee finds by a preponderance of evidence that there are grounds for removal under subdivision (b) of this rule, the Subcommittee will recommend to the Supreme Court removal from the Roster as deemed appropriate. In determining whether removal is appropriate, the Subcommittee and the Supreme Court will consider:

(A) the nature and seriousness of the misconduct;

(B) any pattern of misconduct;

(C) the effect of the misconduct on the court system or the complainant;

(D) the amount of experience the mediator has as a mediator; and



(E) any other mitigating or aggravating information presented.

(2) **No Hearing Held.** If no hearing is held, within 14 days of receipt of the complaint, the Subcommittee must issue written findings and recommendations for consideration by the Supreme Court. The Supreme Court will consider the findings and issue a final decision, within 21 days of receiving the findings.

(3) **Hearing Held.** If a hearing is held, within 21 days of the conclusion of the hearing, the Subcommittee must issue written findings and recommendations to the Supreme Court for a final decision. The Supreme Court will consider the findings and issue a final decision, within 21 days of receiving the findings.

(4) **Based on a Majority.** The Subcommittee must act based on majority vote of its members.

(5) **Written Decision.** The Supreme Court must advise the mediator and the complainant of its final decision in writing with a copy to the Administrative Director of the Courts. If the Supreme Court's decision includes removal from the Roster, the Supreme Court must state the reasons for the removal and specify any conditions that must be met in the event the mediator wishes to apply for reinstatement on the Roster. The Supreme Court's decision is final and not subject to further review or appeal.

(g) **Reinstatement.** Mediators who are removed from the Roster for misconduct or noncompliance may apply to the Supreme Court for reinstatement according to the terms and conditions set forth in the Court's rules and as further provided in the final decision. A mediator may apply for reinstatement no earlier than two years following the date of the order removing the mediator from the Roster. The Supreme Court has sole discretion in granting or denying reinstatement, including the discretion to impose further conditions on reinstatement in light of the mediator's specific circumstances.

(h) **Confidentiality.**

(1) Complaints and investigations are confidential in accordance with I.C.A.R. 32, except when a mediator is removed from the Roster, the CSD Director's determination and the final decision, including grounds for the removal and the facts cited in support of the determination or decision, must be made available to the public upon request.

(2) The Administrative Office of the Courts will provide information in accordance with I.C.A.R. 32 to judicial officers, Trial Court Administrators, and court coordinators concerning the removal of any



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mediators from the Roster.

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