

OFFICE OF
APPELLATE COURTS

FILE NO. C1-84-2140 & C8-84-1650

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STATE OF MINNESOTA

FILED

IN SUPREME COURT

In Re Amendment of the Rules on
Lawyers Professional Responsibility.

REPORT ON PILOT MEDIATION PROGRAM,

RULE 6X, RLPR

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INTRODUCTION

On January 28, 1994, the Supreme Court Advisory Committee to Review Lawyer Discipline in Minnesota and Evaluate the Recommendations of the American Bar Association issued its report. The report noted that many disciplinary complaints involving incivility and the breakdown of the attorney-client relationship are dismissed because they do not provide a basis for believing that a violation of the Rules of Professional Conduct has occurred. In order to address these complaints, to provide greater consumer satisfaction and, in part, to free additional resources for the Director's Office, the Committee recommended the establishment of a mediation pilot project (Exhibit 1). On December 12, 1994, in response to the petition of the Minnesota State Bar Association, the Court issued an order amending the Rules on Lawyers Professional Responsibility by adding Rule 6X establishing a pilot mediation program for complaints filed against lawyers in the Third, Fourth and Twelfth Bar Association Districts (Exhibit 2).

PROGRAM SETUP AND OPERATION

The mediation pilot project started in July 1995. Prior to that time, a request for volunteer mediators was sent to every mediator listed on the State Court Administrators Neutral Roster, over 1,000 mediators statewide. Over 500 mediators volunteered to serve on the project. Geographic considerations and a desire to keep the mediator pool relatively small so that mediators would likely handle more than one case during the pilot project, resulted in the selection of a smaller pool of mediators to

participate in the project. In the Fourth District (Hennepin County) a pool of 51 mediators was selected; in the Third District (Wabasha, Olmsted, Winona and Houston counties) a pool of 21 was selected; and in the Twelfth District (Lac Qui Parle, Yellow Medicine, Swift, Chippewa, Kandiyohi, Renville and Meeker counties) a pool of 13 was selected. The pool of mediators includes both lawyers and non-lawyers as well as some mediators who also serve on the District Ethics Committees. A special training session for the mediators was held in June 1995.

Complaints received by the Office of Lawyers Professional Responsibility (OLPR) are reviewed by an OLPR attorney for an initial determination as to handling. Complaints may either be summarily dismissed, referred for investigation, referred for mediation, or referred for investigation with the option to mediate. Procedures in the OLPR were established for processing mediation matters and guidelines issued for determination of matters suitable for mediation (Exhibit 3). Referrals to mediators are sent directly to the mediators by the OLPR in Fourth District matters. In the Third and Twelfth Districts, the referrals are sent to the District Ethics Committee Chairs who, in turn, make the assignment to the mediator. Notices of referrals to mediation are accompanied by a brochure explaining the mediation program (Exhibit 4), evaluation forms for completion by the parties upon completion of the mediation (Exhibit 5), and a report form to be returned to the OLPR by the mediator (Exhibit 6). During the course of a mediation, the file is tracked by the OLPR in the same manner as files sent for disciplinary investigations.

Upon receipt of a report from the mediator, a final disposition of the file is made by the OLPR. If there has been a mediated agreement or the matter was resolved between the parties before mediation, the file will be closed with a determination that discipline is not warranted. If the matter is returned without a mediated agreement, the complaint is again reviewed for determination whether to commence a disciplinary investigation or dismiss without investigation.

STATISTICS

The OLPR has tracked the progress of all cases referred to mediation (Exhibit 7). For the period July 1, 1995, through May 31, 1997, 93 matters have been referred for mediation. Of these, 84 were referred to the Fourth District, 8 were referred to the Third District, and 1 was referred to the Twelfth District. For purposes of comparison, during the same period of time 462 matters were referred to the Fourth District Ethics Committee for investigation, 19 were referred to the Third District Ethics Committee, and 13 were referred to the Twelfth District Ethics Committee.

Out of the 93 matters referred for mediation, 36 resulted in mediated agreements, 51 were returned without a resolution, and 6 remain pending.

Of the 51 matters returned without a resolution, 27 were returned after the complainant declined to participate in mediation; 12 were returned after a mediation meeting was held but no agreement reached; 10 were returned with a report indicating that the matter had been resolved between the parties prior to mediation; 1 was returned because the mediator determined that the best interests of the parties or public would not be served by mediation; and 1 was withdrawn from mediation by the Director.

The 51 matters returned without a mediated agreement were reviewed for disposition as disciplinary files. Out of the 51, 42 were summarily dismissed without further investigation; 7 were referred to the District Ethics Committee for investigation and dismissed after investigation; and, 2 were referred for investigation and remain pending at the District Ethics Committee.

As of May 20, 1997, 34 matters had been referred to District Ethics Committees for investigation with the investigator being specifically given the option to mediate the complaint. Out of those 34 matters, 2 matters were mediated with a resulting mediated agreement; 2 matters resulted in admonitions issued after investigation; 21 matters resulted in dismissals; and the balance remain pending.

The matters referred for mediation involve the following areas of law:

Family Law - 28	Sexual Abuse - 2
Personal Injury - 19	Bankruptcy - 1
Miscellaneous Litigation - 16	Immigration - 1
Probate/Estate Planning - 7	Medical Malpractice - 1
Criminal - 4	Workers' Compensation - 1
Real Estate - 4	Discrimination - 1
Collections - 4	Corporate - 1
Employment - 2	Consumer - 1

The types of complaints referred to mediation fall into the following categories:

Non-communication - 37	Improper Withdrawal - 11
Neglect - 33	Failure to return file - 6
Excessive Fees - 25	Rudeness - 5
Negligence - 14	Harassment - 3
Competence - 11	Non-payment of debt - 1

SURVEY AND EVALUATION RESULTS

In each matter referred to mediation, all parties were asked to complete an evaluation to return upon completion of the process. Additionally, the Director sent a follow-up survey questionnaire to all mediation participants. The results of those evaluations and surveys are attached as Exhibits 8, 9, and 10.

RECOMMENDATION

It cannot be said that the mediation program has been an unqualified success. The stated goals of the program are to decrease consumer dissatisfaction with the services rendered by their lawyers and to conserve resources for the Director's Office. As to the latter, there is no indication of any net saving of resources. Day-to-day administration of the program involves much the same cost as sending matters to the District Ethics Committees for investigation. On top of that is the separate database of qualified mediators which must be maintained, training that must be provided to the

mediators and additional attorney review of matters returned without a mediated resolution.

There is not overwhelming evidence that consumer dissatisfaction has been decreased. Although half of the complaints referred to mediation have resulted in a mediated agreement or a resolution prior to mediation, a significant number of them (about one-third) are not mediated because the complainant declines participation. On the other hand, the majority of those responding to survey inquiries were satisfied with the process.

Given the mixed results to date, the Director cannot recommend that the mediation project be expanded statewide and made a permanent part of the disciplinary system. The pilot project is scheduled to end on July 1, 1998. The Director recommends that the Court refer consideration of the pilot project to the MSBA for further review during the final year of its operation with direction that a final recommendation be made at that time.

Dated: June 25, 1997.

MARTIN A. COLE
ACTING DIRECTOR



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REPORT OF THE
ADVISORY COMMITTEE TO
REVIEW LAWYER DISCIPLINE
IN MINNESOTA AND
EVALUATE THE RECOMMENDATIONS OF
THE AMERICAN BAR ASSOCIATION

January 28, 1994

CO-CHAIRPERSONS:

Robert F. Henson Janet M. Dolan

COMMITTEE MEMBERS:

Hon. Nancy C. Dreher
Howard M. Guthmann
Keith F. Hughes
Prof. Kenneth F. Kirwin
Dennis Lazenberry
Hon. Marianne D. Short
Mimi Villaume

Prof. Mel Gray
Prof. Penny L. Herickhoff
Jean Keffeler
David H. Knutson
James P. Shannon
Richard C. Taylor
Martha Zachary

B. REGARDING ALTERNATIVE PROGRAMS

16. On a pilot project basis, the Court should give the Director discretion to send minor complaints to volunteer professional mediators or to participating district bar associations for mediation.

COMMENT: McKay correctly points out that the discipline system currently dismisses the overwhelming number of cases because they do not warrant discipline. Many of these complaints are dismissed without investigation because there is no remedy available for disputes arising from incivility and the breakdown of the attorney-client relationship. McKay strongly urges the creation of additional remedies to provide greater consumer satisfaction with the process and to allow disciplinary counsel more time to work on serious cases of misconduct. The Committee agrees. The high rate of dismissal suggests that the disciplinary system is not the most appropriate remedy for the vast number of complaints filed. These complaints start in the disciplinary process because it is presently the only process available to resolve disputes between attorneys and clients. McKay suggests that if other remedies were available, these matters could be put into such alternative programs. Mediation may be an appropriate vehicle for many of these types of complaints.

The Committee believes a pilot project should be authorized by the Supreme Court and conducted by District

Bar Associations to test the use of mediation for disputes involving a client and his or her attorney. The greatest benefit of using mediation might be to allow the complainant to participate in the process, rather than being an observer. Mediation may allow the discussion to focus on repairing the attorney-client relationship, rather than trying to fix blame. It is also important to assess how much additional time disciplinary counsel would have to investigate serious misconduct if minor matters were diverted.

A concern about establishing a mediation program is that less than half (41%) of the complainants in the survey indicated they were willing to mediate,²⁰ and an examination of these complainants' files revealed that only a fraction of these cases were appropriate for mediation. It is likely, however, that most people are not familiar with the mediation process and that education and explanation by the Director's office of the mediation process would help complainants to see mediation as an appropriate remedy.

The Committee is concerned about the impact of mediation on district bar association volunteer resources.²¹

²⁰ See Appendix 4, Total Complaints Surveyed, Question 11(15).

²¹ In light of the fact, however, that 50% of all dismissed complaints involve non-clients, the number of dismissed complaints that may lend themselves to mediation may be limited. See Appendix 4, "Statistics Compiled by the Office of Lawyers Professional Responsibility Concerning Dismissed Complaints and the identity of Complainants from 10.20/92 to 4/15/93."

Current DEC volunteers may neither be interested in nor qualified to provide mediation services. Volunteers would need to receive training in mediation techniques. In addition, a projected time commitment of 10-15 hours per case is more than current case investigation typically takes.

One alternative is to employ professional mediators. At this time the cost factor would appear to preclude this option. The Committee would encourage, however, professional mediators to volunteer their services during the pilot program. This would enable an evaluation Committee to judge whether a professional system is more effective than one relying on lawyer volunteers.

Finally, additional administrative support will be needed, since it may not be possible for volunteers to coordinate and schedule mediation. Therefore, as Recommendation 18 indicates, mediation should be conducted on a pilot project basis. A pilot project will reveal the effectiveness of mediation and what impact it has on volunteer resources. In addition, a pilot project will identify how many cases are amenable to alternative dispute resolution.

17. The Court should establish a pilot project wherein a complaint involving a fee dispute not warranting discipline would be sent to the local bar association for binding fee

RULE 6X. PILOT MEDIATION PROGRAM FOR COMPLAINTS AGAINST LAWYERS IN THE THIRD, FOURTH, AND TWELFTH BAR ASSOCIATION DISTRICTS

(a) **Scope of the Program.** This rule, rather than Rule 6(b), shall apply from July 1, 1995, through July 1, 1998, to any complaint against a lawyer whose principal office is located in Chippewa, Hennepin, Houston, Kandiyohi, Lac Qui Parle, Meeker, Olmsted, Renville, Swift, Wabasha, Winona or Yellow Medicine county.

(b) **Submission; Referral.** If a complaint of a lawyer's alleged unprofessional conduct is submitted to a District Committee, the District Chair shall promptly forward it to the Director. If a complaint is submitted or forwarded to the Director, the Director shall:

(1) Refer it to the District Committee of the district where the lawyer's principal office is located or, in exceptional circumstances, to another District Committee that the Director reasonably selects, with a direction that the complaint be investigated;

(2) Investigate it without referral;

(3) Refer the complaint for mediation to the District Mediation Project Coordinator or directly to a mediator chosen by the Director. When a complaint is mediated pursuant to this rule, the mediator shall, in all cases, be a trained volunteer mediator who shall be on the Neutral Roster maintained by the State Court Administrator's Office;

(4) Refer the complaint to the District Committee with a direction that the complaint be mediated, if found to be appropriate after investigation; or

(5) Determine that neither discipline nor mediation is warranted.

(c) **District Committee Investigation.** If the Director refers the complaint for investigation, the complaint shall be investigated as provided in Rule 7. If, in the course of the investigation, the investigator concludes that the complaint can be more appropriately dealt with through mediation, the investigator shall promptly consult the Director. If the Director concurs, the Director may withdraw the complaint from investigation and refer it for mediation.

(d) **Mediation.** The mediator shall arrange the mediation sessions and shall report at the conclusion of the mediation. The mediator shall conduct the mediation in accordance with generally accepted principles of mediation and in accordance with policies established from time to time by the Director.

(1) If the mediator decides that the best interests of the parties or of the public would not be well-served by the mediation, the mediator may terminate the mediation at any time.

(2) If a resolution is reached, the mediator shall prepare a written agreement of resolution. The mediator shall report to the District Mediation Project Coordinator or the Director that an agreement has been reached. If either party fails to appear for the mediation session or if no agreement is reached, the mediator shall so report; in that case, the Director shall determine whether to investigate further.

(3) The mediation shall be completed within 45 days of the assignment of the mediator. The Director may, upon request of the mediator, extend the time for good cause.

(4) A lawyer shall participate in good faith in a mediation held pursuant to these rules; failure to do so is separate grounds for discipline.

(5) The mediator may not be called to testify in any proceeding about anything that happened or was said in the mediation. Lawyers who serve as mediators under these rules are not bound by the mandatory reporting rules of Minnesota Rules of Professional Conduct 8.3 to report information learned during the course of the mediation. The mediator may not reveal nor can the mediator be compelled to disclose the mediator's notes or other material that the mediator has prepared, or any document or other material presented or shown to the mediator by one party in the absence of the other party during the course of the mediation. A communication or document otherwise not privileged does not, however, become privileged because of this rule.

Nothing in this rule prevents the parties from revealing or testifying about communications made during the mediation.

(6) The parties may not agree, as part of a resolution through mediation, that the complaining party will waive or settle any claim for legal malpractice.

(7) If the complaint is resolved through mediation, the Director shall determine that discipline is not warranted and, after the applicable

time period, expunge the records of the matter under Rule 20(e). If additional allegations of the lawyer's misconduct come to the Director's attention before the expunction, the Director may reopen the file and investigate the complaint.

(e) **Report on the Pilot Program.** No later than July 1, 1997, the Director shall report to the Court on the operation of the pilot program and shall make recommendations.

FILE OPENING AND CLOSING
POLICY AND PROCEDURE NO. 9

TO: All Staff

FROM: Marcia A. Johnson
Director

DATE:

RE: Pilot Project for Mediation of Complaints

Beginning July 1, 1995, and running through July 1, 1998, we will be conducting a pilot mediation project in the 3rd, 4th and 12th districts. Mediation is intended to address two broad categories of complaints: those which, while they may state a legitimate basis for client dissatisfaction, do not constitute a violation of the MRPC; and complaints in which it appears there may have been a minor violation of the Rules but which likely would result in a "low level" admonition.

PROCEDURES AND STANDARDS

A. FILE OPENING

Duty attorneys reviewing complaints in the pilot districts, in addition to the usual options of summarily dismissing or referring a complaint for investigation, will have the additional options of referring a complaint directly to mediation or referring it for investigation with instructions to the investigator to mediate the complaint if the investigation indicates that mediation would be appropriate.

Opening sheets for the 3rd, 4th and 12th DEC's will have checkoffs incorporating the mediation options. The opening sheet for the 3rd and 12th DEC's will be printed on yellow paper as a reminder that mediation is available in these districts. The 4th DEC opening sheets will continue to be printed on blue paper. Please remember that mediation is an option in the 4th DEC.

Matters which should be referred to mediation should be those which involve non-serious misconduct which seems amenable to resolution by mediation. These would include complaints of non-communication, short-term neglect, rude and insensitive behavior, non-payment of professionally-incurred indebtedness, failure to return client files or other property, etc. Please note that this is not intended to be an exclusive list of those types of complaints which may be sent to mediation, nor is it intended that every complaint which falls into one of the listed categories must be sent to mediation. If it appears that the relationship between complainant and respondent is irretrievably damaged, that the conduct is severe, or that the parties would otherwise not be amenable to mediation, a different option should be

above and not specifically excluded below is received and it appears that mediation would be appropriate, it should be referred for mediation. Keep in mind that mediation is intended to resurrect an ongoing relationship with the respondent attorney or to at least amicably resolve a dispute.

Certain matters will not be referred for mediation. Rule 6X(d)(6) specifically excepts from the mediation process claims of malpractice. These should continue to be evaluated for dismissal or investigation in accord with existing guidelines. Other matters which we, as a matter of policy, will not refer for mediation include: complaints involving serious misconduct, complaints by opposing counsel or opposing parties, trust account or financial misconduct complaints, competence violations, serious conflict of interest violations, Rule 1.6 violations, and complaints involving respondents with extensive disciplinary histories or repeated mediations.

After duty attorney review of a complaint and referral for mediation, a disciplinary check will be conducted on the respondent. If the check reveals any disciplinary history or past mediations, the file will be returned to the duty attorney for review of the decision to refer to mediation.

In determining whether to refer a matter directly to mediation or for investigation with instructions to mediate if appropriate, preference should be given to a direct referral to mediation. There are significant philosophical and practical problems inherent in a person first acting as an investigator and then as a mediator. Not all of the DEC investigators have been trained as mediators. All of the mediators, as required by Rule 6X, are trained mediators. A mediator is, ideally, a complete neutral. An investigator, while called upon to be neutrally objective in conducting an investigation, is also called upon to review information and draw conclusions from the facts. We do, however, need to make some referrals for investigation/mediation during the course of the pilot project to evaluate this option.

B. FILE CLOSING/REVIEW

After a matter has been referred to mediation, the mediator appointed will report back to us with one of several results:

1. Mediation successfully completed.
2. Mediation terminated, parties could not reach an agreement.
3. Mediation terminated, complainant refused to participate.

4. Mediation terminated, respondent refused to participate.
5. Mediation terminated, best interests of the parties or the public would not be well-served by mediation.

If the mediator's report indicates a successful mediation, the file will be closed by a Determination That Discipline Is Not Warranted without further attorney involvement.

If the mediator's report indicates that the mediation was terminated because respondent would not participate, the file will be referred to the duty attorney who originally reviewed the complaint for review. Note that Rule 6X(d)(4), RLPR, provides that failure to participate in good faith in the mediation is a separate ground for discipline. Ordinarily these files should be further investigated with a Notice of Investigation sent to respondent which includes in the subject matter for investigation the respondent's failure to participate in the mediation.

If the mediator's report indicates that the mediation was terminated because the complainant refused to participate, because the parties could not reach an agreement, or because the interests of the complainant or the public would not be well-served, the file will be referred to the duty attorney who originally reviewed the complaint for further review. That duty attorney's options will be to either summarily dismiss the complaint or to refer the matter for investigation. Existing standards of review should be utilized in this process. Those cases where a mediator has sent a matter back because the interests of the parties or the public would not be well-served should typically be further investigated. The mediator is, in essence, telling us that something has come up during the course of the mediation that takes this case out of the category of cases that should be mediated.

WHAT TYPE OF COMPLAINTS?

Not all complaints are suitable for mediation. When your complaint is received, the OLPR will decide whether to refer it for mediation. Complaints which are best suited to settlement by mediation may involve short-term neglect, lack of communication, a lawyer's rude or insensitive behavior, failure to pay professionally incurred debts and failure to return a client's file or property.

Complaints excluded from mediation are those which involve serious misconduct, malpractice claims, complaints of opposing counsel or parties, trust account violations or financial misconduct, competence violations, serious conflict of interest complaints, breach of confidentiality claims or complaints against lawyers who have a history of prior discipline.

FOR ADDITIONAL INFORMATION

If you have additional questions, or to obtain this brochure in an alternative media call the Office of Lawyers Professional Responsibility at (612) 296-3952. (Outstate: 1-800-657-3601.) TTY users call MN Relay Service (612) 297-5353; toll free 1-800-627-3529.

OFFICE OF LAWYERS PROFESSIONAL RESPONSIBILITY

ATTORNEY DISCIPLINE MEDIATION

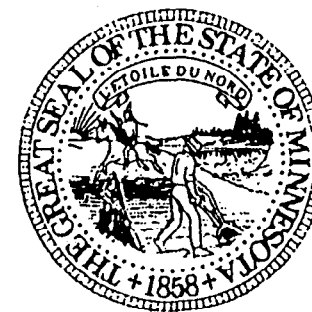


Exhibit 4

MINNESOTA JUDICIAL CENTER
25 CONSTITUTION AVENUE, SUITE 105
ST. PAUL, MINNESOTA 55155-1500

(612) 296-3952; TOLL-FREE 1-800-657-3601
TTY USERS: (612) 297-5353; TOLL-FREE 1-800-627-3529

ATTORNEY CLIENT MEDIATION

The Office of Lawyers Professional Responsibility (OLPR) may determine your complaint is suitable for mediation under a pilot project started by the Minnesota Supreme Court to help resolve some attorney/client disputes.

WHO CAN USE MEDIATION?

Mediation is only available to clients of attorneys whose principal offices are located in Chippewa, Hennepin, Houston, Kandiyohi, Lac Qui Parle, Meeker, Olmsted, Renville, Swift, Wabasha, Winona or Yellow Medicine Counties as a pilot program from July 1, 1995 through July 1, 1998.

WHAT IS MEDIATION?

In mediation, the disputing parties work with a neutral third party—a mediator—to help them discuss their concerns, look at both sides of the issue and hopefully settle their dispute.

Your participation is voluntary and there is no fee. If you decide against mediation, your complaint will be sent back to the OLPR for further review. Lawyers are required to participate in mediation.

WHY MEDIATION?

Mediation uses informal, two-way discussion of issues to help solve problems. Issues can be openly discussed and your concerns communicated to your lawyer. Complaints can be settled quickly. Mediation allows you to control the outcome of your complaint.

HOW DOES MEDIATION WORK?

If it is decided that your complaint is suitable for mediation, you will receive a Notice of Referral to Mediation. A mediator will be assigned to handle your complaint and will call or write you to set up a mediation meeting.

Before the mediation meeting, the mediator will read your complaint and your lawyer's response. At the mediation meeting, the mediator will help you and your lawyer discuss your complaint, identify the issues involved and talk over reasonable solutions. The mediator may meet with you and your lawyer individually or together or both.

If you and your lawyer work out an agreement settling your complaint, the mediator will help put your agreement into writing. If no agreement is reached or if either party declines to participate in the mediation or if the mediator determines that the interests

of the parties or the public are not well served by mediation, your complaint will be sent back to the OLPR for further review.

WHO ARE THE MEDIATORS?

Mediators are neutral third parties with special training in mediation and dispute resolution who volunteer their time as a service to the public. Both lawyers and non-lawyers act as mediators.

WHAT CAN THE MEDIATOR DO?

Mediators can:

- Listen to both sides;
- Identify, clarify and help in discussion of the issues involved in your complaint;
- Explore reasonable solutions; and
- Assist in writing down your agreement.

Mediators may not:

- Give legal advice;
- Represent either party;
- Make a final decision regarding settlement of your dispute;
- Discuss what is revealed during the mediation outside the mediation; or
- Be called to give testimony regarding the mediation or compelled to reveal their notes or other documents from the mediation.

MEDIATION EVALUATION FORM - PARTIES

Name: _____

1. Which party are you?

Attorney _____

Complainant _____

2. How much time did you personally spend on this matter (filling out forms, gathering materials, mediating, etc.)?

3. Did you feel you were fully heard? Yes _____ No _____. If no, please explain.

4. Was the process fair? Yes _____ No _____. If no, what was wrong?

5. How satisfied were you with the process?

Very Satisfied _____ Satisfied _____ Not Satisfied _____ Disappointed _____

Comment: _____

6. How satisfied were you with the results?

Very Satisfied _____ Satisfied _____ Not Satisfied _____ Disappointed _____

Comment: _____

7. Was the mediator fair and impartial in dealing with this case?

Yes _____ No _____ Somewhat _____

8. What improvements could be made to make mediation better?

Comment: _____

MEDIATION EVALUATION FORM - MEDIATOR

Name: _____

1. Which complaint did you mediate?

Name of Attorney _____

Name of Complainant _____

2. How much time did you personally spend on this matter (filling out forms, gathering materials, mediating, etc.)?

3. Did you incur any out-of-pocket expenses? Yes _____ No _____. If so, please list them here.

4. Was the process fair? Yes _____ No _____. If no, what was wrong?

5. How satisfied were you with the process?

Very Satisfied _____ Satisfied _____ Not Satisfied _____ Disappointed _____

Comment: _____

6. How satisfied were you with the results?

Very Satisfied _____ Satisfied _____ Not Satisfied _____ Disappointed _____

Comment: _____

7. Do you think that the time you spent on this mediation was worthwhile?

Yes _____ No _____ Somewhat _____

8. What improvements could be made to make mediation better?

Comment: _____

MEDIATOR REPORT TO OFFICE OF LAWYERS PROFESSIONAL
RESPONSIBILITY

Respondent : _____

Complainant : _____

Mediator: _____

DEC _____

The mediation involving the above parties was:

_____ Held on _____, and resulted in a mediated agreement.

_____ Held on _____, and terminated because the parties could not come to an agreement.

_____ Terminated because complainant refused to participate or did not appear at the scheduled mediation session.

_____ Terminated because the respondent refused to participate in good faith or did not appear at the scheduled mediation session.

_____ Terminated because the best interests of the parties or of the public would not be well-served by the mediation.

Dated: _____

MEDIATOR

MEDIATION STATISTICS

July 1, 1995 - May 31, 1997

TOTAL SENT TO MEDIATION 93

3rd Dec - 8
4th Dec - 84
12th Dec - 1

MEDIATION REPORTS RECEIVED 87

TOTAL MEDIATION RESOLVED 36

TOTAL MEDIATION TERMINATED 51

MEDIATION HELD; NO AGREEMENT	<u>12</u>
COMPLAINANT DECLINED TO PARTICIPATE	<u>27</u>
RESPONDENT DID NOT PARTICPATE OR DID NOT APPEAR AT SCHEDULED MEDIATION SESSION	<u>0</u>
BEST INTERESTS OF PARTIES OR PUBLIC WON'T BE WELL-SERVED BY MEDIATION	<u>1</u>
RESOLVED PRIOR TO MEDIATION	<u>10</u>
WITHDRAWN FROM MEDIATION	<u>1</u>

TERMINATION REASON	TOTAL	SD's	DNW'S	Pending
MEDIATION HELD; NO AGREEMENT	12	9	2	1
COMPLAINANT DECLINED TO PARTICIPATE	27	21	5	1
RESPONDENT DID NOT PARTICPATE OR DID NOT APPEAR AT SCHEDULED MEDIATION SESSION	0	0	0	0
BEST INTERESTS OF PARTIES OR PUBLIC WON'T BE WELL-SERVED BY MEDIATION	1	1	0	0
RESOLVED PRIOR TO MEDIATION	10	10	0	0
WITHDRAWN FROM MEDIATION	1	1	0	0

SD = Summary Dismissal
 DNW = Determination Discipline
 Not Warranted

MEDIATION EVALUATION FORM - PARTIES

Name: Complainant

1. Which party are you?
Attorney _____
Complainant _____
2. How much time did you personally spend on this matter (filling out forms, gathering materials, mediating, etc.)?

3. Did you feel you were fully heard? Yes 27 No 2. If no, please explain.

4. Was the process fair? Yes 25 No 2. If no, what was wrong?
Not Sure: 2

5. How satisfied were you with the process?
Very Satisfied 11 Satisfied 13 Not Satisfied 1 Disappointed 3

Comment: _____
No Answer/Not Sure: 1

6. How satisfied were you with the results?
Very Satisfied 6 Satisfied 15.5 Not Satisfied 2.5 Disappointed 3

Comment: _____
No Answer/Not Sure: 2

7. Was the mediator fair and impartial in dealing with this case?
Yes 26 No 1 Somewhat 2

8. What improvements could be made to make mediation better?
Comment: _____

MEDIATION EVALUATION FORM - PARTIES

Name: Respondents

1. Which party are you?
Attorney _____
Complainant _____

2. How much time did you personally spend on this matter (filling out forms, gathering materials, mediating, etc.)?

3. Did you feel you were fully heard? Yes 23 No _____. If no, please explain.

4. Was the process fair? Yes 22 No 1. If no, what was wrong?

5. How satisfied were you with the process?
Very Satisfied 11 Satisfied 9 Not Satisfied _____ Disappointed 2
Comment: _____
No Answer/Not Sure: 1

6. How satisfied were you with the results?
Very Satisfied 8 Satisfied 9 Not Satisfied 2 Disappointed 2
Comment: _____
No Answer/Not Sure: 2

7. Was the mediator fair and impartial in dealing with this case?
Yes 23 No _____ Somewhat _____

8. What improvements could be made to make mediation better?
Comment: _____

MEDIATION EVALUATION FORM - MEDIATOR

Name: Mediator

1. Which complaint did you mediate?

Name of Attorney _____

Name of Complainant _____

2. How much time did you personally spend on this matter (filling out forms, gathering materials, mediating, etc.)?

3. Did you incur any out-of-pocket expenses? Yes 14 No 24. If so, please list them here.

4. Was the process fair? Yes 36 No 2. If no, what was wrong?

5. How satisfied were you with the process?

Very Satisfied 17 Satisfied 15.5 Not Satisfied 3.5 Disappointed 2

Comment: _____

6. How satisfied were you with the results?

Very Satisfied 16 Satisfied 15 Not Satisfied 1 Disappointed 6

Comment: _____

7. Do you think that the time you spent on this mediation was worthwhile?

Yes 31 No 1 Somewhat 6

8. What improvements could be made to make mediation better?

Comment: _____

MEDIATION PILOT PROJECT
SUMMARY OF PARTICIPANT EVALUATIONS
7-1-95 thru 6-12-97

No.	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
1	7/7/95	Neglect, negligence.	Family Law	C declined to participate/DNW		
2	7/10/95	Neglect, communication.	Personal Injury	C declined to participate/DNW		
3	7/12/95	Communication, improper withdrawal, delay in returning file, conspiracy.	Family Law	Mediated agreement/DNW	3.0/5.0/7.0	M would like rules changed to provide for complete confidentiality.
4	7/19/95	Neglect, disrespect.	Personal Injury	C declined to participate/DNW		Survey to C returned undeliverable.
5	7/19/95	Neglect, negligence.	Personal Injury	Mediated/no agreement/DNW		R satisfied, unsure if C satisfied, M was good/fair, med. a good idea & suggests med. be scheduled quicker (2-3 wks of complaint).
6	7/27/95	Neglect, improper delegation to associate.	Personal Injury	Mediated agreement/DNW	1 / 5.0	M suggests asking C what he/she wants out of med.
7	8/1/95	Neglect, communication.	Family Law	Mediated agreement/DNW	1 / 3.0	R felt treated very fair, M was very effective, encourages use of med. C felt M was fair/effective & was satisfied w/process. M states parties were able to repair & have continued relationship.
8	8/7/95	Competence, diligence, communication, fees.	Criminal Defense	C declined to participate/DNW		
9	8/31/95	Neglect.	Estate Planning	Resolved prior to mediation		

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MEDIATION PILOT PROJECT
SUMMARY OF PARTICIPANT EVALUATIONS

7-1-95 thru 6-12-97

No.	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
10	9/1/95	Communication, fees, retainer, return client file, harassment.	Personal Injury	C declined to participate/DNW		C didn't med. becZ didn't want to see R, previous med. terrible experience, very dissatisfied with outcome (DNW).
11	9/25/95	Excessive fees, diligence, communication.	Bankruptcy	C declined to participate/DNW		
12	9/27/95	Non-client complaint of inadequate communication.	Real Estate Escrow Dispute	Mediated agreement/DNW	3.5/1.0/4.3	Parties pleased with process and result. Mediated by telephone.
13	10/12/95	Negligence, excessive fees.	Family Law	Mediated/no agreement/DNW	1 / 6.0	R felt both parties treated fairly, but fee or malpractice disputes should not be mediated becZ M can't resolve. M would like listing of perceived rule violations from OLPR.
14	10/16/95	Inadequate representation, negligence.	Dissolution	Mediated agreement/DNW	8.0/3.0/4.0	R suggests use med to screen comp, concerned DNW kept for 3 yrs, destroy immed. C satisfied, unhappy med leaves "black mark" on the attny's record, wdn't file if had known, shd only be "black mark" if grounds. M suggests screening for true ethic complaint.

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15	10/19/95	Diligence, communication, fee dispute.	Estate Planning	Mediated agreement/DNW	5.0/ /3.0	M satisfied w/process. C somewhat satisfied, but disappointed with result. C suggests M be able to pass Judgment & settle complaints. Complaint for deceased mother, so no verification of C's version available. C feels R talked his way out of complaint.
15	10/19/95					C No. 15's response to 4/8/97 ltr: M shd have more power to settle matter. R came to med rep'd, C felt outnumbered. Still unhappy abt rep. Has great distrust for lawyers now,
16	10/23/95	Diligence.	Family Law	C declined to participate/DNW		
17	10/25/95	Improper contact with represented party, complaint brought by R's client.	Litigation	C declined to participate/DNW		C found other med experiences ineffective, chose not to med becuz felt "according to your response," Bd. did not consider all fact--felt it was billing dispute. C may file again. C states R is known alcoholic.
18	10/30/95	Negligence, excessive fees.	Litigation	Mediated/no agreement/DNW	5.0/ /4.5	R suggests M study facts closer before mediation. M noted that C not mediating in good faith.
19	12/7/95	Misquoted fees, neglect.	Real Estate	Mediated agreement/DNW	6.0/5.0/5.0	All parties appeared to be satisfied with process.

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7-1-95 thru 6-12-97

No	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
20	12/13/95	Communication, fee dispute, competence, malpractice issues.	Family Law	Mediated agreement/DNW	24.0/04/5.0	M & R satisfied w/process. C stated process unfair, bcz R didn't acknowledge error. All C wanted was reduction of bill and agreement reached reducing open bill. C wd like "set standard" attorney fee. M disliked 2-sided copies.
20	12/13/95					R No. 20's response to 4/8/97 ltr: Experience favorable, med seeks to emphasize positive, understanding of each others issues/problems. Neither R nor C were happy w/settlement, but hopefully that mad for good compromise.
21	1/2/96	Failure to produce closed client file.	Personal Injury	Resolved prior to med/DNW		C dissatisfied becz R not disciplined. M felt not appropriate for med. becz no middle ground.
22	1/8/96	Non-payment of professional debt.	Personal Injury	Mediated agreement/DNW	/3.0/	R satisfied, M very effective & med. helped resolve C's concern. C very pleased with process, suggested private mtg. w/M first, wd have liked to know more abt. med. before, felt treated fairly even though M & R knew each other.
23	1/23/96	Harassment.	Estate Planning	C declined to participate/DNW		
24	1/31/96	Communication, diligence, termination.	Personal Injury	Mediated agreement/DNW		R satisfied, believes C also satisfied, M effective, med. is a "Terrific idea!" M stated Med "successful closure "of complaint.

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24	1/31/96					R No. 24's response to 4/8/97 ltr: Excellent! Best use of mediation I can think of!
25	2/6/96	Communication, fee dispute.	Dissolution	Resolved prior to mediation		
26	3/1/96	Failure to communicate settlement offer, profanity, improper withdrawal.	Personal Injury	Mediated/no agreement/DNW	1 / 5.0	R not satisfied--knew wd be "waste of time." R suggests screening, may help in selected cases. M felt C wanted to med, but failed to follow process & C used as forum to vent. M suggests better screening, i.e. D's office call to discuss complaints.
26	3/1/96					R No. 26's response to 4/8/97 ltr: Complaint arose from R's termination of rep. R forced to attend 2 hr. med where nothing accomplished. If D's Ofs has information that attny/cl rel cannot be repaired, shd not be forced to mediate.
27	3/7/96	Inappropriate collection practices, supervision of non-attorney.	Collection	C declined to participate/DNW		
28	3/19/96	Incompetent representation, malpractice, over-billing.	Real Estate	C declined to participate/DNW		
29	3/19/96	Incompetent representation, malpractice, over-billing.	Real Estate	C declined to participate/DNW		

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7-1-95 thru 6-12-97

No.	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
30	3/20/96	Improper solicitation of another attorney's clients.	Personal Injury	Mediated agreement/DNW	12.5/4.0	R satisfied, feels C is also satisfied, suggests keeping med. informal, using experienced lawyers. C satisfied, but feels result was more a result of limited relief he sought--an apology. C suggests M contact parties separately and--cont'd. below.
30	3/20/96					each party submit statement of issues and statement equivalent to settlement offer. M felt med. would resolve add'l. disputes.
30	3/20/96					C No. 30's response to 4/8/97 ltr: Project shd be funded full time. Gives attnys opportunity to resolve minor communication problems w/third party. R has joined DEC since his med.
31	4/1/96	C disputes responsibility for medical bills incurred at R's direction.	Personal Injury	Resolved prior to med/DNW		
32	4/17/96	Negotiated w/o C's consent, legal malpractice.	Litigation	C declined to participate/DNW		
33	4/18/96	Communication.	Litigation	Mediated agreement/DNW	12wks./7.0	R felt med got C to talk w/him & plan course of action, M fair, suggests more feedback/follow through. C felt he was heard, but unsure if agreement accepted by R. M prepared agreement for R & C to sign, suggested more clarity on what happens after med.

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No.	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
34	4/22/96	Lack of professionalism, misrepresentations.	Collection	Mediated agreement/DNW		
35	4/26/96	Improper withdrawal from representation, released privileged info and refusal to give advice on matter unrelated to representation.	Litigation	C declined to participate/DNW		
36	5/7/96	Excessive fees, communication, diligence, failed to provide copies, sent another attorney to hearing.	Family Law	Mediation terminated/DNW		M did not feel best interests of public wd be served by med becuz R no longer worked for firm where conflict arose & settlement wd require approval of former employer and involved diligence & communication issues.
37	5/7/96	Dismissal of conciliation court matter, improper withdrawal from representation.	Personal Injury	Mediated/no agreement/DNW	4.5/2 m/8.0 m = month	R felt waste of time, C irrational & didn't have ethical complaint. C felt fair, but dissatisfied, suggests written agreement, appreciated follow-up. M disappointed when parties don't settle, suggests informing parties of conseqs of not settling.
37	5/7/96					R No.37's response to 4/8/97 ltr: arose from term'd rep due to abuse of R's staff by C. C thought R assoc'd with Def in his lawsuit. R felt he did nothing wrong. Med to impass, sent back to Dir. who dismissed. Med good for some cases, but not all.
38	5/14/96	Communication.	Immigration	C declined to participate/DNW		

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Revised: 6-12-97

MEDIATION PILOT PROJECT
SUMMARY OF PARTICIPANT EVALUATIONS

7-1-95 thru 6-12-97

No.	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
39	5/28/96	Signature on receipt requested before assets received.	Probate	Mediated agreement/DNW	/ /3.0	C partly satisfied, R sent cks as soon as complaint filed, felt M favored R, suggests M listen carefully to C, not be from the old boy's netwk. Med via LD conference call. No rule violation, but prof. helped if C's needs met, no matter how small.
40	6/3/96	C felt intimidated, diligence.	Family Law	Resolved prior to med/DNW		
41	6/10/96	Fee dispute.	Personal Injury	Mediated agreement/DNW	3.5/48.0/5.8	R was pleased w/process & M, C pleased w/process & satisfied w/response to her complaint, M stated C didn't understand Med & suggested info. mat'ls., M used 2-wk break to allow parties to think through issues as were in "stalemate."
42	6/10/96	Communication, attny wouldn't help w/PIP claim, termination of representation, misrepresentations.	Personal Injury	C declined to participate/DNW		
43	6/14/96	Communication, conflict of interest, inadequate representation.	Family Law	Mediated agreement/DNW	/ /4.5	R felt M good, uncertain how med cd resolve other issues. C got to complain & R to respond. Helpful C represented becuz communication w/C was difficult. C felt M not effective, not satisfied, wants M to f/up to be sure "Judgment was carried out."

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No	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
44	6/14/96	Abusive and harassing conduct.	Litigation	Withdrawn from mediation/DNW		Withdrawn by Dir. becuz subject of complaint pending before Ct. R appealed DNW. Bd affirmed DNW.
45	6/17/96	Fail to return over file.	Criminal Defense	Mediated/no agreement/DNW by DEC		C didn't appear at med. R felt med otherwise good way to quickly resolve disputes if parties talk. Failed to participate in DEC inv.
46	6/18/96	Negligence, malpractice.	Family Law	C declined to participate/DNW		C's response to survey request was reiteration of complaint.
47	6/19/96	Received past due billing after representation terminated.	Medical Malpractice	Mediation terminated/DNW		C received letter of apology from R and no longer desired med.
48	6/21/96	Inadequate representation, negligence, malpractice.	Family Law	C declined to participate/DNW		
49	7/2/96	Inadequate representation, forced to make decisions.	Family Law	Mediated agreement/DNW	8.5/6.0/9.0	R satisfied, hopes C was, requests info on preparation. C was satisfied, brought advocate. M suggests rule on ? of use of advocates/attorneys, feels R's required participation & fear of litigation may limit full participation in med.
50	7/8/96	Neglect, communication.	Family Law	C declined to participate/DNW		

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No	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
51	7/9/96	Lack of diligence, communication, conflict of interest.	Employment	C refused mediation/DNW by DEC		C didn't appear at med. DEC investigated & dismissed.
52	7/11/96	Fee dispute.	Litigation	Mediated agreement/DNW	8.0/2.0/2.5	R & C were pleased w/process & result, M also satisfied.
53	7/17/96	Communication, request file, scope of represent.	Litigation	Mediated agreement/DNW		
54	7/17/96	Communication, request file, scope of represent.	Litigation	Mediated agreement/DNW		
55	7/22/96	Communication, diligence, misrepresentations.	Collection of Judgment	Mediated/no agreement/DNW by DEC	1 / 4.0	M incurred \$20 room fee. M felt process unfair becuz parties uninformed of possible result. C only wanted R disbarred. M wants public better educated about mediation.
56	7/22/96	Scope of representation, communication, inadequate representation, termination of representation.	Sex Abuse	Mediated agreement/DNW	1/14.0/	R felt M good, but C not client & complaint was about R's rep of C's adult son. R felt med good way to resolve disputes. C satisfied w/process, but felt alone & wished she had demanded more explanation & apology.

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No	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME/R/C/M (hours)	COMMENTS
57	7/22/96	Scope of representation, non-communication, inadequate representation, termination of representation.	Sex Abuse	Mediated agreement/DNW	/14.0/	R satisfied, M effective, suggest more "premediation information." C satisfied w/process, but felt alone & wished she had demanded more explanation & apology. M incurred copying charges.
57	7/22/96					C No. 57's response to 4/8/97 ltr: med came as surprise--brochure didn't mention med. Nervous, afraid do accepted settlement/apology. Still not happy w/outcome of the case handled by R.
58	7/26/96	Diligence, conflict of interest.	Employment arbitration	M acted as facilitator to allow completion of representation	12.0/1yrl	R very satisfied, suggest better communication w/D's Ofs as didn't learn of, complaint until M called. C satisfied w/M, but conflicts not resolved.
59	7/29/96	Negligence, malpractice.	Work Comp	C declined to participate/DNW		
60	7/29/96	Scope of representation, negligence.	Personal Injury	C declined to participate/DNW		
61	8/5/96	Diligence, communication.	Litigation	Resolved prior to med/DNW		Resolved prior to med. R and C satisfied.
62	8/7/96	Fail to provide copies from file.	Family Law	Mediation terminated/DNW	/ 1.0	
63	8/8/96	Terminated representation, conflict of interest.	Litigation	Mediated/no agreement/DNW	/ 2.0	After many phone conferences to prepare for med, C failed to appear.

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No.	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
64	8/22/96	Communication, diligence, inadequate representation, fee dispute.	Family Law	Mediated agreement/DNW	9.0/6.0/7.0	R states this was really a fee dispute and C was able to get money not entitled to, C was satisfied w/process. M and R suggest matters that are clearly fee disputes should be treated as such, not ethics complaints.
65	8/23/96	Rudeness, failure to advocate, fee dispute.	Family Law	Mediated/no agreement/DNW	/hrs./3.5	R felt process fair, not M's fault that no agreement reached. C dissatisfied, not heard, M poor, seemed angry, didn't want to hear she needed another lawyer. M was disappointed, requests Cs be more specific, less rambling. C's appeal of DNW denied.
66	9/3/96	Diligence, communication.	Litigation	Mediated agreement/DNW	/9.0/4.0	R satisfied, med good for some disputes. C was satisfied, M was reimbursed for expenses by North Henn Med Prog. M stated parties anxious to settle and came up w/own solution, suggested parties receive more education about med.
67	9/17/96	Atty. was disorganized, verbally abusive, not a divorce specialist and took notes badly.	Family Law	Mediated agreement/DNW	1.0/1.0/2.5	R satisfied, felt client satisfied, M was good/fair, wd like attny to have choice, OK for disputes that merit it, but not for frivolous claims. C satisfied w/process, but still feels over charged, M incurred postage exp.

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No	DATE OPENED	NATURE OF COMPLAINT	TYPE OF CASE	RESOLUTION	TIME R/C/M (hours)	COMMENTS
68	9/20/96	Inadequate representation, rude conduct, misrepresented facts breach of confidentiality.	Estate Planning	Mediated/no agreement/DNW	10./10./6.0	R dissatisfied, M did fine job, but feel med was only forum for C to vent anger, attnys shouldn't have to participate. C felt med fair, prof. M satisfied w/process, disappointed w/result, parties to have want to resolve. DNW by DEC, affirmed on appeal.
69	9/26/96	Communication, diligence.	Collection of Judgment	Mediated agreement/DNW		Matter was referred to DEC for investigation. Inv. learned that both parties sought an amicable resolution, therefore, inv. mediated.
70	9/27/96	Fee dispute.	Real Estate	Mediated agreement/DNW	15.0/ /5.0	R and C were pleased w/process and M's efforts, M was satisfied and incurred some LD and copying expenses.
71	10/28/96	Diligence, excessive fees, inadequate representation.	Family Law	Mediated agreement/DNW	/6.0/5.0	C happy with med, no improvements needed. M satisfied w/result, states was a fee dispute which may have found its way to fee arb, but resolved and both parties satisfied.
72	10/29/96	Diligence.	Probate	Mediated/no agreement/DNW	7.0/sev/5.0	R was satisfied. C very displeased, system unfair/biased, nothing done, suggests judge hear complaint. M not satisfied w/process bcz unable to answer C's legal Q's. Neither party felt time well spent. C's appeal of DNW denied.

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73	11/12/96	Fee dispute, fail to correct paperwork.	Family Law	Mediated agreement/DNW	1 / 2.5	C felt med showed R is incompetent idiot, unprepared and disorganized, M was effective and she was treated fairly, but unhappy nothing in R's file. M was satisfied, but suggested a ltr from Director explaining purpose of mediation.
74	11/21/96	Fail to return client file, diligence, communication.	Personal Injury	C declined to participate/DNW		
75	12/3/96	Communication, fee dispute.	Litigation	Mediated agreement/DNW	1.0/4.5/3.0	R felt process fair and was very satisfied. C felt process fair and was satisfied. M incurred \$18 copying cost. M felt speaking to both parties prior to med helpful. All important issues resolved.
76	12/18/96	Communication, diligence.	Property Damage	Mediated agreement/DNW		Med was not conducted thru this office. R went ahead w/a previously scheduled mtg. w/C. Miscommunications were resolved to satisfaction of C.
77	1/2/97	Diligence, communication, fee dispute.	Corporate	Resolved prior to med/DNW		
78	1/7/97	Miscommunication, client confidentiality, diligence.	Family Law	Mediated agreement/DNW	2.0/ /3.0	R satisfied w/process and M. C satisfied, hopes R learned how to treat his clients, would like a "better apology" and suggests access to past med. M pleased w/ process.

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Revised: 6-12-97

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79	1/9/97	Communication, diligence, competence, inadequate representation.	Personal Injury	Mediated/no agreement/DNW	4.0/3 yrs/	R satisfied, M great, good way to deal w/client's concerns, suggests "involved" attny pay \$200 fee for overhead. C felt M agreed w/R, legal sys is unfair, wanted a "mark" on R's record. M was satisfied, though not resolved becuz some of C's Q's answered.
80	1/22/97	Fee dispute, mislead old lady.	Criminal defense	Mediated agreement/DNW	5.0/ /5.0	R felt complaint groundless, but recognized need to respond to any complaint, suggest screen out vague dissatisfactions. M states C disappointed couldn't get answers to legal questions. LPRB shd so inform Cs.
81	2/7/97	Communication, diligence, fee dispute.	Family Law	Mediated agreement/DNW	5.0/0.5/2.5	R satisfied w/ M and process. C satisfied w/ M and process. M satisfied.
82	2/10/97	Breach of confidentiality, diligence, fail to follow C's wishes.	Family Law	C declined to participate/DNW		
83	2/13/97	Communication, diligence, termination of representation, fee dispute.	Discrimination and Harassment	Mediated agreement/DNW	1.5/1.5/4.0	R, C & M satisfied w/process & M. C able to state problem w/o interruption and w/respect. M states R & C worked hard getting to info and listening, allowed R & C to clear up miscomm, learning to educate R & C before session. No Henn Med Prog pd M's exp

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84	3/20/97	Diligence, communication.	Family Law	Mediated agreement/DNW		
85	4/22/97	Communication, failed to return papers.	Litigation	Resolved prior to med/DNW		

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Responses of Mediators to Survey

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Abramson, Frank Fourth District	2	1 - Yes/No 1 - Incomp	1 - Yes/No 1 - ?	First case involved a lost file, which lawyer needed to be pushed to locate. Mediation would not have accomplished anything. Believes in mediation, but does not think it is broadly applicable to ethics issues unless complainant only looking for apology or an opening of communications. Therefore, he questions value.	"Each complaint must be analyzed to determine if the matter is susceptible to mediation."
Ayling, Teresa J. Fourth District	3	1 - Yes 2 - No	1 - Yes 2 - No	Complainant did not respond to calls or letters in 2 cases.	Ask complainant if he or she wants to participate in a mediation before assigning.
Chamberlain, Paul W. Fourth District	2	1 - Yes 1 - Incomp	1 - Yes 1 - ?	Excellent for cases where main problem is miscommunication or high emotion cases. Much professional satisfaction in a successful mediation. Good where attny/client relationship breaks down and affects the public perception of bar.	Suggests more detailed explanation of mediation process to parties, especially to complainants.

Exhibit 10

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Cortes, Kathy Dryke Fourth District	2 - 3	Yes		It's been worthwhile.	Would like to be reimbursed for expenses incurred meeting parties outside metro area.
Doyle, Marilyn J. Fourth District	2	No	No	Both complainants were disrespectful, angry, irrational individuals who felt they were entitled to free legal advice.	Better screening of complainants & section on complaint form asking complainant for five potential resolutions. Suggests Director contact Mediation Services which mediates for Dept. of Education and Dept. of Human Services for suggestions on how they run their mediation program.
Eggimann, Steven C. Fourth District	4	2 - Yes	2 - Yes 2 - No	Valuable tool for Director's Office. Two successful mediations. One could not resolve, one we determined was not appropriate for resolution through mediation. More time consuming than expected, but worth it for the profession.	Compel lawyer to respond in writing <u>before</u> mediation. The seriousness or formality of the matter would be underscored if it was conducted in Director's Office. Hard to do in one-half day session. More than a half day is asking a lot from volunteers, therefore, it would help to pay mediators.

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Fleming-Wolfe, Julie A. Fourth District	2	2 - No	N/A	In both mediations assigned, complainant failed to show. Good idea, but one where complainants do not follow through.	None.
Harbinson, Kent G. Fourth District	2 - 3	Yes	Unknown	"A good idea."	Mildly concerned about the lack of protections for attorneys that are normally available in mediations. In other mediations, parties have equal rights & duties.
Hoff, Gene Fourth District	2	1 - Yes 1 - No	1 - Yes	One complaint returned due to issue which would not be addressed by mediation. Overall opinion is positive, but both parties must want to participate. He's heard from attorneys that mediation should be voluntary.	In some fee disputes, an officer of the firm may need to be included as individual attorney may not have the authority to sign agreement. Clients need to understand that mediation is way to resolution of dispute, not forum to sanction the attorney.
Holsten, Andrea Lundgren Fourth District	5	2 - Yes 1 - No 1 - ?	1 - Yes	One was reassigned by request of respondent, one was resolved by parties w/o mediation, one not held because complainant decided not to mediate. One held, no agreement and, cont.	Mediator does not have access to conference room and suggests that it would be nice if there was a centrally located conference room available at no cost to, cont.

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Holsten, Andrea Lundgren, Fourth District Cont.				one mediated to agreement. Complainants do not, in spite of materials Director's Office provided, understand mediation. Most clients want someone to investigate & punish attorney or make him give money back. Attorneys seem to mediate in good faith. Mediation is good resolution for the right parties. Requires attorneys to listen to client's complaints. Successful mediations resulted from complainant's willingness to sit w/ attorney and honestly communicate.	the mediator.
Jensen, Darrell Fourth District	2	Yes	Unknown	The cases he got resulted from clients unhappy with the outcome of and bill for their divorce proceedings. Both resulted in reduced fees.	None.
Langton, Diane Third District	2	2 - No	N/A	One complainant too busy with job and appeared to want to confront attorney only on paper. Good to give people the chance to mediate. Gives impression the Director's Office is responsive and fair.	None.

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Lockhart, Greer E. Fourth District	1	Unknown	Unknown	Complainant fail to show. Mediator believes complaint filed in anger. Excellent idea. "What we used to do informally, before the LPRB was created."	None.
Lukes, Veronica V. Fourth District	3	1 - No 1 - Yes 1 - Yes	1 - Yes 2 - No	One complainant chose not to mediate - wanted nothing to do with attorney. Second mediation did not settle - attorney came to mtg. w/idea that just being there satisfied LPR requirements. One successful mediation. Excellent idea -- would like to do more.	Educate attorneys regarding why mediation was chosen and expectation of OLPR. Would like feedback from other mediators. Use mediators more by cutting down on number of mediators
Lynch, Diane Third District	2	Yes	Yes	"I think it is effective."	Provide a list of free locations available for holding the mediation. "[C]oncerned about the respondent's level of power, given this is part of a disciplinary procedure."
Mahoney, Richard P. Fourth District	1	Yes	Yes	Good idea. Continue the program.	None.
Martinson, Bradley J. Fourth District	3	3 - Yes	3 - Yes	Two matters were fee disputes resolved by refund or discount. One client apologized for making ethics complaint, later hired attorney for another matter. Works very well if, cont.	Screen for fee disputes. Unfortunate that ethics file opened for fee dispute. These matter should be referred to project before ethics file is opened.

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Martinson, Bradley J. Fourth District Cont.				parties are amenable to process and mediator is skilled. Attorney relieved resolved short of ethics investigation; client satisfied their concerns heard.	
Nelson, James E. Fourth District	2	2 - No	2 - No	Both complainants refused to mediate. But "enough good will [sic] came from this program to merit the effort."	More explanation needed for why the complaint has been diverted to mediation.
Perry, Jerome Third District	1	Yes	Unknown	Good practice - helps public lawyers image.	None.
Phleger, Gary L. Fourth District	2	Yes & No	Yes & No	Success of mediation depends on whether parties have realistic complaint. Overall has positive feeling for process.	Suggests a screening of complainant to see if complainant at all "logical & realistic."
Ryan, James P. Jr. Third District	1	Yes	Yes	A good idea.	None.
Smith, Kathryn N. Twelfth District	1	Yes	Unknown	M felt complaint was matter which would be DNW; therefore, R felt forced to attend med. and compromise when had done nothing wrong. "It seems punitive to require the attorney to attend the mediation or to be subject to sanctions for failure to attend . . . in good faith if he is not subject to some type of, cont.	If type of disputes that are referred to mediation are matters which would not result in discipline for attorney, suggests procedure be modified so attorney required to participate, but be informed that not subject to discipline arising from the underlying proceeding. Cont.

MEDIATOR	NUMBER ASSIGNED	WERE PARTIES SATISFIED	WAS DISPUTE RESOLVED	COMMENTS	SUGGESTIONS/CHANGES
Smith, Kathryn N, Twelfth District Cont.				disciplinary proceeding arising from the underlying complaint."	"[C]all this dispute what is really is - a public relations and communication mechanism to improve the reputation and relationship of attorney and the practice of law."
Sommerville, Michael D. Third District	1	No	No	Complainant did not respond.	None.
Speeter, Lea De Souza Fourth District	2	2 - Yes	Yes	Overall positive results. Program should be continued. All comments received from participants have been positive.	None.
Waller, Janet Fourth District	2	1 - Yes	1 - Yes	One complaint failed to respond or appear. Very good process. Excellent tool for opening communication with the public, restoring faith in attorneys.	Parties need to know the next step if mediation fails or they fail to cooperate. Perhaps Director's Office would like input from mediators as to positions of parties and why mediation failed.