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different schedule than the court order. In accordance with statutory guidelines, the court can also consider variation from the actual percentage of time where one of the parties is bearing a disproportionate share of the expenses related to the children.

(Effective July 1, 2004)

RULE 500: PROCEDURES FOR HANDLING COMPLAINTS ABOUT COURT-PROGRAM MEDIATORS

a. Application

The rules in this chapter establish the court's procedures for receiving, investigating, and resolving complaints about mediators in the court's mediation program for general civil cases, as required by rule 3.868 of the California Rules of Court. Nothing in these rules should be interpreted in a manner inconsistent with the rules 3.865-3.862 of the California Rules of Court or as limiting the court's inherent or other authority, in its sole and absolute discretion, to determine who may be included on or removed from its list of mediators or who may be recommended, selected, appointed, or compensated as a mediator by the court. These rules also do not limit the court's authority to follow other procedures or take other actions to ensure the quality of mediators who serve in the court's mediation program in contexts other than when addressing a complaint. The failure to follow a requirement or procedure in these rules will not invalidate any action taken by the court in addressing a complaint.

b. Definitions

As used in this chapter:

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1. “The rules of conduct” means the Rules of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases set out in rules 3.850-3.860 of the California Rules of Court.

2. “Court –program mediator” means a mediator who:

(a) Has agreed to be included on the court’s list or panel of mediators for general civil cases and is notified by the court or the parties that he or she has been selected to mediate a case within the court’s mediation program; or

(b) Has agreed to mediate a general civil case in the court’s mediation program after being notified by the court or the parties that he or she was recommended, selected, or appointed by the court or will be compensated by the court to mediate that case.

3. “Inquiry” means an unwritten communication presented to the court’s complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.

4. “Complaint” means a written communication presented to the court’s complaint coordinator indicating that a mediator may have violated a provision of the rules of conduct.

5. “Complainant” means the person who makes or presents a complaint.

6. “Complaint Coordinator” means the person designated by the presiding judge to receive complaints and inquiries about the conduct of mediators.

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7. “Complaint proceeding” means all of the proceedings that take place as part of presenting, receiving, reviewing, responding to, investigating, and acting on any specific inquiry or complaint.

8. “Mediation communication” means any statement that is made or any writing that is prepared for the purpose of, in the course of, or pursuant to a mediation or a mediation consultation, as defined in Evidence Code section 1115, and includes any communications, negotiations, and settlement discussions between participants in the course of a mediation or a mediation consultation.

c. Confidentiality

(a) Preserving the confidentiality of mediation communications

All complaint proceedings will be conducted in a manner that preserves the confidentiality of mediation communications, including but not limited to the confidentiality of any communications between the mediator and individual mediation participants or subgroups of mediation participants.

(b) Confidentiality of complaint proceedings

All complaint proceedings will occur in private and will be kept confidential. No information or records concerning the receipt, investigation, or resolution of an inquiry or a complaint will be open to the public or disclosed outside the course of the complaint proceeding except as provided in rule 3.871(d) of the California Rules of Court or as otherwise required by law.

d. Submission of inquiries and complaints to the complaint coordinator

All inquiries and complaints should be submitted or referred to the complaint coordinator.

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e. Addressing inquiries

If the complaint coordinator receives an inquiry, the coordinator must inform the person making the inquiry that the complaint procedure provides for investigation of written complaints only and that the person should submit a written complaint if he or she wants to the court to conduct an investigation or take action. If the person does not submit a complaint, the complaint coordinator may prepare a written summary of the inquiry.

f. Acknowledgement and preliminary review of complaints

(a) Acknowledgment of complaints

When the complaint coordinator receives a complaint, the coordinator will send the complainant a written acknowledgment of this receipt.

(b) Preliminary review of complaints

(1) The complaint coordinator will review each complaint to determine whether it warrants investigation or can be promptly, informally, and amicably resolved or closed.

The coordinator may:

(A) Informally contact the complainant to obtain clarification or additional information or to provide information that may address the complainant's concern.

(B) Communicate informally with the mediator to obtain the mediator's perspectives.

(2) If it appears to the complaint coordinator that the mediator may have violated a provision of the rules of conduct, the complaint coordinator must inform the mediator about the complaint and give the mediator an opportunity to provide an informal response.

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(3) The complaint coordinator may close a complaint without initiating an investigation if:

(A) The complaint is withdrawn by the complainant;

(B) No violation of the rules of conduct appears to have occurred or the complaint is without sufficient merit to warrant an investigation;

(C) The conduct alleged would constitute a very minor violation of the rules of conduct, the coordinator has discussed the complaint with the mediator, and the mediator has provided an acceptable explanation or response; or

(D) The complainant, the mediator, and the complaint coordinator have agreed on a resolution to the complaint.

g. Appointing an investigator or a complaint committee

The presiding judge will appoint an investigator who has experience as a mediator and is familiar with the rules of conduct, or a complaint committee that includes at least one such individual, to investigate and make recommendations concerning any complaint that is not resolved or closed by the complaint coordinator as a result of the preliminary review.

h. Investigations

(a) Application

The procedures in this rule apply only if a complaint is not resolved or closed through the preliminary review or if the complaint coordinator initiates an investigation under (c).

(b) Referral of a complaint for investigation

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If a complaint is not closed as a result of the preliminary review, the complaint coordinator will refer it to the investigator or complaint committee for investigation.

The complaint coordinator will provide the investigator or complaint committee with a summary of the preliminary review that includes:

- (1) A copy of the complaint;
- (2) A copy or summary of any response from the mediator;
- (3) A list of any violations of the rules of conduct that it appears may have occurred; and
- (4) Copies of any previous complaints about the mediator and any written summaries of inquiries that are relevant to the current complaint.

(c) Initiation by the complaint coordinator

The complaint coordinator may initiate an investigation based on information received from any source, including an inquiry, indicating that a mediator may have violated a provision of the rules of conduct. To initiate the investigation, the complaint coordinator must refer the information received to an investigator or complaint committee with a list of the violations of the rules of conduct that is appears may have occurred.

(d) Mediator's notice and opportunity to respond

(1) The investigator or complaint committee must provide the mediator with a copy of the materials provided to the investigator or complaint committee by the complaint coordinator under (b) or (c).

(2) The mediator will be given an opportunity to respond to the complaint and the list of apparent violations.

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(e) Preparing report and recommendation

The investigator or complaint committee will conduct the investigation that the investigator or complaint committee considers appropriate. Thereafter, the investigator or complaint committee will prepare a written report that summarizes the investigation and states the investigator's or complaint committee's recommendation concerning the final decision on the complaint. The investigation or complaint committee may recommend one or more actions that are permissible under rule 3.870 of the California Rules of Court.

(f) Informing mediator of recommendation

The investigator or complaint committee may inform the mediator of its recommendation and inquire whether the mediator accepts that recommendation. If the mediator accepts the recommendation, the investigator's or complaint committee's report must indicate this.

(g) The investigator or complaint committee must submit its report and

recommendation to the complaint coordinator. The complaint coordinator must promptly forward a copy of the report and recommendation to the presiding judge or to his or her designee.

(h) Final decision on a complaint that was investigated

(a) Responsibility for final decision

The presiding judge is responsible for making the final decision about the action to be taken on any complaint that was investigated or for designating another judicial officer or a committee that includes a judicial officer to perform this function.

(b) Acting on recommendation

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- (1) Within 30 days after the investigator's or complaint committee's recommendation is forwarded to the presiding judge or the presiding judge's designee, the presiding judge or designee may submit to the complaint coordinator a decision:
- (A) Affirmatively adopting the investigator's or complaint committee's recommendation as the final decision on the complaint; or
 - (B) Directing a different action that is permissible under rule 3.870 of the California Rules of Court.

- (2) If the presiding judge or his or her designee does not submit a decision within 30 days after the complaint committee's recommendation is forwarded , as provided in (1), the investigator's or complaint committee's recommendation will become the final decision on the complaint.

(c) Notification of final action

The complaint coordinator must promptly notify the complainant and the mediator in writing of the final action taken by the court on the complaint.

(d) Authorized disclosures

After the decision on a complaint, the presiding judge, or a person whom the presiding judge designates to do so, may authorize the public disclosure of information or records concerning the complaint proceeding that do not reveal any mediation communications.

The disclosures that may be authorized under this subdivision include the name of a mediator against whom action has been taken, the action taken, and the general basis on which the action was taken. In determining whether to authorize the disclosure of information or records under this subdivision, the presiding judge or designee should

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consider the purposes of the confidentiality of complaint proceedings stated in rule 3.871 of the California Rules of Court.

(i) Interim suspension pending a final decision on a complaint

If the preliminary review or the investigation indicates that a mediator may pose a threat of harm to mediation participants or to the integrity of the court's mediation program, the presiding judge or the other judicial officer or committee designated by the presiding judge to make the final decision about the action to be taken on any complaint may suspend the mediator from the court's panel or list pending final decision on the complaint. The complaint coordinator may make a recommendation to the presiding judge or the designee regarding such a suspension.