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**State Bar Association of North Dakota
Joint Alternative Dispute Resolution Committee**

Robert J. Udland
Chair

October 22, 2012

North Dakota Supreme Court
Judicial Wing, 1st Floor
600 E. Boulevard Ave.
Bismarck, ND 58505-0530

Re: Proposed Appellate Mediation Rule and Protocol

Dear Justices:

Enclosed with this letter are a draft Appellate Mediation Rule and Protocol and proposed amendments to Rule of Court 8.9, submitted for your consideration by the Joint Committee on Alternative Dispute Resolution. This proposal has been expanded to include trust matters, as well as family law and probate appeals.

This proposal was submitted to the Board of Governors of the State Bar Association of North Dakota for review and comment as required by Section 3.B. of Administrative Rule 43. The Board of Governors continues to oppose the proposal.

The Committee met to consider the Board of Governors' position, and moved to forward the proposal to the Court despite the Board's opposition. It is the Committee's opinion that no mediation will occur under this proposal if appellees in the affected cases have the option to reject mediation. The proposal is designed to relieve parties of the mediation requirement under certain circumstances.

The Joint Committee on Alternative Dispute Resolution submits this proposal for the Court's consideration. If there are any questions, please don't hesitate to contact me.

Sincerely,



Robert J. Udland, Chair
Joint Committee on Alternative Dispute Resolution

c: SBAND Board of Governors

N.D.R.App.P. 5 – Appellate Mediation Program

1 (a) Eligible Cases. Only final and appealable judgments and orders in the following types of
2 cases will be eligible for participation in appellate mediation:

3 (1) divorce cases involving property or spousal support;

4 (2) any case involving parenting rights, residential responsibilities or support of minor children;
5 and

6 (3) any case arising under the Uniform Probate Code or the Uniform Trust Code.

7 Upon the request of either party, a case that meets the Appellate Mediation Program criteria will be
8 referred to mediation. A party may request an order from the Court exempting the case from the
9 Appellate Mediation Program by filing a motion and an affidavit with the Clerk of the Supreme
10 Court. The Court may exempt the case if:

11 (1) The issues raised are limited to a question of law; or

12 (2) Prior appellate mediation has been attempted and the issues are substantially similar; or

13 (3) Other good cause is shown.

14
15 (b) Time to Request Mediation..Any party contemplating appeal may forward a request for
16 mediation to the Family Mediation Program Administrator, identified in North Dakota Supreme
17 Court Administrative Order 17, no later than 60 days after the service of notice of entry of judgment
18 or order in any of the cases identified in subsection a. The request must be simultaneously served on
19 every party under N.D App. P. 25. The time for filing a notice of appeal under N.D App. P 4 is not
20 affected by any request or assignment for mediation.

21 (c) Screening and Assignment of Mediator. The Family Mediation Program Administrator

22 shall determine whether a case meets the requirements for eligibility and appropriateness for
23 mediation. Once a case has been approved for appellate mediation, the Family Mediation Program
24 Administrator shall forward a Notice of Mediation to counsel, any unrepresented party, and the Clerk
25 of the Supreme Court. The Notice of Mediation shall identify the mediator who has been assigned,
26 and a deadline for completion of the mediation.

27 **(d) Appellate Mediators.** Any lawyer qualified as an appellate mediator under North Dakota
28 Rules of Court 8.9 may be assigned to mediate.

29 **(e) Time Limitations/Period for Mediation.** The mediation must be completed within 45 days
30 of the assignment of an appellate mediator.

31 **(f) Transcripts and Appellate Briefs. Ordering of Transcript and Filing of Briefs.** In order to
32 expedite the mediation process and spare the parties as much initial expense as possible, the ordering
33 of the transcript in respect to cases eligible for and assigned for mediation, shall be extended to a
34 date fifteen (15) days from the filing of the notice of appeal.

35 **(g) Extensions/Tolling.** The time for filing briefs is not automatically tolled pending mediation.
36 In cases in which mediation has been requested, any motions for enlargement of time for briefs must
37 be filed with the clerk of the Supreme Court under N.D App. P 26(b).

38 **(h) Mediation Outcome.** In appeals settled in whole or in part pursuant to this rule, a stipulation
39 of the parties shall be filed with the Supreme Court, within 5 days of completion of the mediation,
40 requesting the court to enter an appropriate order, which may include voluntary dismissal under N.D
41 App. P 43. In appeals not settled and terminated from mediation, briefing and oral argument will
42 proceed under the rules. In those cases settled by mediation prior to the filing of a notice of appeal,
43 the requesting party is responsible for filing any appropriate document with the district court.

44 **(i) Confidentiality.** Statements and comments made during mediation conferences and in

45 related discussions, and any record of those statements, are confidential and shall not be disclosed
46 by anyone (including the Family Mediation Program Administrator, counsel, or the parties; and their
47 agents or employees) to anyone not participating in the appellate mediation process. Mediators shall
48 not be called as witnesses, and the information and records of the Family Mediation Program
49 Administrator shall not be disclosed to judges, staff, or employees of any court.

50

Appellate Mediation Protocol

Purpose:

To improve the lives of families who appear before the court by trying to resolve disputes through mediation in order to minimize family conflict, encourage shared decision-making, and support healthy relationships and communication among family members.

Objectives:

- (1) To support improved family decision-making and to promote agreement and compromise vs. further litigation and competition;
- (2) To improve access to mediation by providing funding;
- (3) To improve post litigation family problem-solving and communication capacities by reestablishing communication through mediation;
- (4) To decrease litigation costs for litigants;
- (5) To create incentives to pursue mediation including flexibility to negotiate critical issues without judicial intervention;
- (6) To determine best practices for family mediation in North Dakota;
- (7) To improve rural access to post litigation mediation services, as well as access by underprivileged and minority persons;
- (8) To work with the domestic violence services community in order to assess risk and provide services where appropriate; and to ensure proper protections are put in place and mediators are well-trained in signposts, risks, and exit planning strategies;
- (9) To reduce post-decree litigation and conflict in family cases; and
- (10) To help the public, judiciary, and bar become more aware of the benefits and nature of the mediation process.

Policies & Procedures:

This program is created under the auspices of the North Dakota Supreme Court. The Court has appointed the Joint Committee on Alternative Dispute Resolution and the Subcommittee on Appellate Mediation to collaborate on the program and provide guidance.

1) Program Management:

- a. The Family Mediation Program Administrator, identified in North Dakota Supreme Court Administrative Order 17, will manage and oversee the operation of the program under the auspice of the North Dakota Supreme Court.

- b. The University of North Dakota Conflict Resolution Center will offer assistance to the program as needed by providing expertise, professional assistance, training and education. Compensation will be negotiated as required.

2) Research and Evaluation: The program will include evaluation components.

3) Implementation Model for Appellate Mediation: Any party contemplating appeal may forward a request for mediation to the Family Mediation Program Administrator, no later than 60 days after the service of notice of entry of judgment or order in any final and appealable judgments and orders in the following types of cases:

- a. divorce cases involving property or spousal support;
 - b. any case involving parenting rights, residential responsibilities or support of minor children;
- and
- c. any case arising under the Uniform Probate Code or the Uniform Trust Code.

Upon the request of either party, a case that meets the Appellate Mediation Program criteria will be referred to mediation. A party may request an order from the Court exempting the case from the Appellate Mediation Program by filing a motion and an affidavit with the Clerk of the Supreme Court. The Court may exempt the case if:

- (1) The issues raised are limited to a question of law; or
- (2) Prior appellate mediation has been attempted and the issues are substantially similar; or
- (3) Other good cause is shown.

The request must be simultaneously served on every party under N.D App. P 25. The time for filing a notice of appeal under N.D App. P 4 is not affected by any request or assignment for mediation.

Exclusions: The Family Mediation Program Administrator shall not refer proceedings where a current domestic violence protection order or other order for protection between the parties currently exists. In these cases, the court shall not proceed with mediation except in unusual cases where:

- a. Mediation is requested by the victim of the domestic violence or sexual abuse, and an exception to the order of protection is made by the court;
- b. The mediation is provided by a mediator trained to address the needs and safety of victims where domestic violence is at issue;
- c. The victim of domestic violence is provided the opportunity for separate meetings during the mediation, and to mediate using separate rooms if they choose;

d. The mediation takes place in a courthouse or other building where security measures are in place; and

e. The victim has an advocate or support person of their choice in the mediation.

4) Mediation and Orientation: The Appellate Mediation Program will automatically provide up to 6 hours of combined pre-mediation orientations and mediation. Mediators will be compensated at the rate of \$170/hour with a cap of \$1020 per case. The Appellate Mediation Program requires that:

The parties will individually attend a pre-mediation orientation and screening with a designated mediator, and at least one joint mediation session. The program will provide up to 6 hours of mediation without charge to the parties. Should the parties require additional sessions, they may purchase mediation from the mediator. Parties may also apply to the Administrator for additional mediation sessions and may apply for a fee waiver or sliding scale fee should they qualify based upon economic factors. If the parties qualify for a fee reduction and have been approved for additional mediation, any "gap" between \$170/hour and their ability to pay will be paid to the mediator under this program.

5) Court Procedures: Upon the receipt of a request for appellate mediation, the Family Mediation Program Administrator shall determine whether a case meets the requirements for eligibility and appropriateness for mediation. Once a case has been approved for appellate mediation, the Family Mediation Program Administrator shall forward a Notice of Mediation to counsel, any unrepresented party, and the Clerk of the Supreme Court. The Notice of Mediation shall identify the mediator who has been assigned, and a deadline for completion of the mediation.

a. The mediation must be completed within 45 days of the assignment of an appellate mediator.

b. Ordering of Transcript and Filing of Briefs. In order to expedite the mediation process and spare the parties as much initial expense as possible, the ordering of the transcript in respect to cases eligible for and assigned for mediation, shall be extended to a date fifteen (15) days from the filing of the notice of appeal.

c. The time for filing briefs is not automatically tolled pending mediation. In cases in which mediation has been requested, any motions for enlargement of time for briefs must be filed with the clerk of the Supreme Court under N.D App. P 26(b).

d. Upon request of the mediator, the parties should each supply to the mediator, at least 2 days before the scheduled conference, a "Mediation Statement," no more than 4 pages in length. The statement should include: (1) a brief history of the litigation, (2) the history of any efforts to settle the case, including any offers or demands, (3) a summary of the parties' legal positions, (4) the

present posture of the case, including any related litigation, and (5) any proposals for settlement. The Mediation Statement must not be filed in the office of the Supreme Court clerk. Telephonic mediation may be used if all parties and the mediator agree.

6) Selection of Mediators: Any lawyer qualified as an appellate mediator under North Dakota N.D App. P of Court 8.9 may apply to be added to the roster of appellate mediators and will be approved by the Family Mediation Program Administrator. Mediators must carry malpractice insurance that covers their mediation practice.

7) Mediation Assignment: Mediators will be assigned cases by the Family Mediation Program Administrator and will manage cases assigned to them from orientation and screening through conclusion of mediation.

8) Conflicts of Interest & Bias: A mediator may not be removed unless the mediator and/or the parties' petition the Family Mediation Program Administrator based upon bias or conflicts of interest. Parties and attorneys may not request a change of mediator unless they present clear evidence of bias or conflict of interest.

9) Confidentiality: Statements and comments made during mediation conferences and in related discussions, and any record of those statements, are confidential and shall not be disclosed by anyone (including the Family Mediation Program Administrator, counsel, or the parties; and their agents or employees) to anyone not participating in the appellate mediation process. Mediators shall not be called as witnesses, and the information and records of the Family Mediation Program Administrator shall not be disclosed to judges, staff, or employees of any court.

10) Mediation Outcome: In appeals settled in whole or in part pursuant to this rule, a stipulation of the parties shall be filed with the court, within 5 days of completion of the mediation, requesting the court to enter an appropriate order, which may include voluntary dismissal under e 43. In appeals not settled and terminated from mediation, briefing and oral N.D App. P argument will proceed under the rules. In those cases settled by mediation prior to the filing of a notice of appeal, the requesting party is responsible for filing any appropriate document with the district court.

11) Closing: At the close of every mediation case, the mediator and parties shall create a written decision summary for the parties that notes any and all agreements made and uses the parties' own language. The parties will have 5 business days to reconsider the decisions made in mediation. If neither party files a written request to reconsider within 5 business days, the mediator shall send a copy of the decision summary to the parties and their attorneys, along with the Mediation Case Closing Form. (Form A).

a. At the close of every mediation case, the mediator and the parties will complete the required evaluation forms and the mediator shall submit those to the Administrator along with closing form, and the mediator's invoice form. The Mediator is responsible for collecting fees from the parties if appropriate.

12) Case Closing/Notification: The mediator shall notify the Family Mediation Program Administrator when a mediation case has concluded for any reason, and offer the following reasons: 1) Agreement has been reached in whole or part; or 2) The parties were unable to reach agreement. If the parties and the mediator believe more mediation sessions would help to resolve the case, the parties and the mediator can join in a request for additional sessions that will be paid by the parties on a sliding fee basis directly to the mediator.

RULE 8.9 ROSTER OF ALTERNATIVE DISPUTE RESOLUTION NEUTRALS

1 **(a) Rosters of Neutrals.** The State Court Administrator shall maintain and monitor a roster of
2 neutrals for civil arbitration, civil mediation, and domestic relations/contested child proceedings
3 mediation. Each roster must include the neutral's name, address, and credentials. Each roster
4 must be updated and published on an annual basis and be available for inspection in the clerk of
5 the district court's office. The State Court Administrator may establish a reasonable fee for
6 placement on the roster and a reasonable yearly renewal fee.

7 **(b) Qualifications.** To be listed on a roster, a neutral shall provide the State Court Administrator
8 *(Phone Number 701-328-4216)* with written credentials indicating the neutral meets the
9 following requirements:

10 **(1) Civil Arbitrator Roster.** An arbitrator shall complete 30 hours minimum
11 of arbitration training. The training must include the following topics:

12 **(A)** Pre-hearing communications between parties and
13 between parties and the neutral;

14 **(B)** Components of the hearing process including
15 evidence, presentation of the case, witnesses, exhibits,
16 objectives, awards, and dismissals;

17 **(C)** Settlement techniques;

18 **(D)** Rules, statutes, and practices covering arbitration,
19 including these rules.

20 **(E)** An arbitrator must also complete nine hours of
21 continued arbitration training during each three-year
22 period.

23
24 **(2) Civil Mediator Roster.** A mediator shall complete 30 hours
25 minimum of mediation training, including a minimum of 15 hours
26 of role-playing. The training must include the following topics:

27 **(A)** Conflict resolution and mediation theory,
28 including causes of conflict and interest-
29 based versus positional bargaining and
30 models of conflict resolution;

31 **(B)** Mediation skills and techniques, including
32 information gathering skills,
33 communication skills, problem solving
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42 skills, interaction skills, conflict
43 management skills, negotiation techniques,
44 caucusing, cultural and gender issues, and
45 power balancing;

46
47 (C) Components in the mediation process,
48 including an introduction to the mediation
49 process, fact gathering, interest
50 identification, option building, problem
51 solving, agreement building, decision
52 making, closure, drafting agreements, and
53 evaluation of the mediation process;

54
55 (D) Mediator conduct, including conflicts of
56 interest, confidentiality, neutrality, ethics,
57 standards of practice, and mediator
58 introduction;

59
60 (E) Rules, statutes, and practices governing
61 mediation in the trial court system,
62 including these rules.

63
64 (F) A mediator must also complete nine hours
65 of continued mediation training during
66 each three-year period.

67
68 (3) *Domestic Relations*
69 *Mediator/Contested Child Proceedings*
70 *Mediator Roster.* A domestic relations
71 mediator or a contested child proceedings
72 mediator under N.D.C.C. ch. 14-09.1 shall
73 complete 40 hours minimum of domestic
74 relations mediation training, including two
75 hours minimum of domestic abuse training,
76 and nine hours of continued domestic
77 relations mediation training during each
78 three-year period; and

79
80 (A) have a Bachelor's Degree in
81 Behavioral Science with two years
82 of experience in family/child
83 intervention service; or

84
85 (B) have a Master's Degree in
86 Behavioral Science with one year

87 of experience in family/child
88 intervention service; or

- 89
90 (C) have a license to practice law
91 supplemented with two years of
92 experience in domestic relations
93 cases.

94
95 (4) Appellate Domestic Relations
96 Mediator Roster. A domestic
97 relations proceedings mediator shall
98 complete 40 hours minimum of
99 domestic relations mediation training,
100 including two hours minimum of
101 domestic abuse training, and nine
102 hours of continued domestic relations
103 mediation training during each three-
104 year period; and

- 105
106 (A) have a license to practice law
107 supplemented with two years of
108 experience in domestic relations;
109 and

- 110
111 (B) have two years minimum
112 experience in domestic relations.

113
114 (5) Appellate Estate Mediator Roster. An estate
115 proceedings mediator shall complete 40 hours
116 minimum of domestic relations or civil mediation
117 training, and nine hours of continued trust and estate
118 law training during each three-year period; and

- 119
120 (C) have a license to practice law
121 supplemented with two years of
122 experience in probate cases; and

- 123
124 (D) have two years minimum
125 experience in estate appellate
126 practice.

127
128 (6) A qualified neutral may not provide services
129 during a period of suspension of a professional
130 license.
131

132 (Z) If a neutral is rostered in Minnesota within 60
133 days of the effective date of this rule, the neutral
134 may be placed on the appropriate North Dakota
135 roster within one year of the effective date of this
136 rule as long as the neutral is still in good standing
137 with the Minnesota rostering system.
138

139 (c) **Selection of Neutral.** The parties may select a
140 neutral who is not listed on the State Court
141 Administrator's roster. A court-appointed contested
142 child proceedings mediator under N.D.C.C. § 14-
143 09.1-03 must have the qualifications specified in
144 subdivision (b)(3) of this rule.
145

146 (d) **Continuing Training.** Training requirements may be attained through
147 course work and attendance at state and national ADR conferences. The
148 neutral is responsible for maintaining attendance records and shall disclose
149 the information to program administrators and the parties to any dispute.
150 The neutral shall submit continuing education credit information to the
151 State Court Administrator's office every three years.
152

153 (e) **Certification of Training Programs.** Neutrals shall attend initial and
154 continuing training programs that are approved by the Joint Committee on
155 Alternative Dispute Resolution.
156

157 (f) **Disclaimer.** Each roster must include the following disclaimer:
158 The qualifications for listing a neutral on a roster are minimum standards,
159 and the State Court Administrator's listing of a neutral does not imply the
160 neutral has the requisite degree of skill or competency for a particular case.
161 When choosing a neutral, the parties must make further inquiry about the
162 qualifications and experience of the neutral. The rosters are intended to
163 assist people in locating an appropriate neutral by serving as a starting
164 point.
165

166 (g) **Ethics Enforcement Procedure**

167 (1) *Introduction*
168

169 The purpose of the Code of Ethics, Appendix A, is to provide standards of ethical
170 conduct to guide mediators who provide mediation services, to inform and protect
171 consumers of mediation services, and to ensure the integrity of the mediation
172 process. In order for mediation to be effective, there must be broad public confidence
173 in the integrity of the process. Mediators have a responsibility not only to the parties
174 and the legal system, but also to the continuing improvement of the process. They
175 must observe high standards of ethical conduct. These provisions should be

176 construed to advance these objectives.

177
178 Failure to comply with any provision in the Code of Ethics may be the basis for
179 removal from the roster of mediators maintained by the State Court Administrator
180 and for such other action as may be taken by the North Dakota Supreme Court or the
181 State Bar Association of North Dakota, or other professional organizations. Violation
182 of a provision of the Code should not itself give rise to a cause of action nor should it
183 create any presumption that a legal duty has been breached. Nevertheless, since the
184 rules do establish standards of conduct for mediators, a mediator's violation of a rule
185 may be evidence of breach of the applicable standard of conduct.

186
187 *(2) Scope*

188
189 This procedure applies to complaints against any individual mediator or mediation
190 organization listed on the statewide mediation roster pursuant to this rule.

191 *Advisory Comment*

192 A mediator is subject to this complaint procedure when providing any mediation
193 services. The complaint procedure applies whether the services are court ordered or
194 not, and whether the services are or are not pursuant to North Dakota Rules of Court.
195 The Alternative Dispute Resolution Review Board will consider the full context of
196 the alleged misconduct, including whether the mediator was subject to other
197 applicable codes of ethics, or was representing a mediation organization at the time
198 of the alleged misconduct.

199 *(3) Board*

200
201 The Alternative Dispute Resolution Review Board will consist of three (3)
202 experienced mediators appointed by the Chief Justice of the North Dakota Supreme
203 Court after consultation with the President of the State Bar Association of North
204 Dakota. At least one member appointed must be a non-lawyer mediator. Each
205 member will serve for a term not to exceed three years; however, at the time of the
206 creation of the Board one member will serve one year before being eligible for
207 reappointment, one member will serve two years before being eligible for
208 reappointment and one member will serve three years before being eligible for
209 reappointment. No member may serve more than two consecutive three year terms.
210 The Chief Justice shall designate a Chair of the Board.

211
212 *(4) Procedure*

213 (A) A complaint must be in writing, signed by the complainant, and mailed or
214 delivered to the Alternative Dispute Resolution Review Board. The complaint must
215 identify the mediator and make a short and plain statement of the conduct forming
216 the basis of the complaint.

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218 (B) The Board shall review the complaint to determine whether the allegations(s), if
219 true, constitute a violation of the Code of Ethics.

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(C) If the allegations(s) of the complaint do not constitute a violation of the Code of Ethics , the complaint must be dismissed and the complainant and the mediator must be notified in writing.

(D) If the Board concludes that the allegations of the complaint, if true, constitute a violation of the Code of Ethics, the Board will undertake such review, investigation, and action it deems appropriate. In all such cases, the Board shall send to the mediator, by certified mail, a copy of the complaint, a list identifying the ethical rules that may have been violated, and a request for a written response to the allegations and to any specific questions posed by the Board. It may not be considered a violation of the Code of Ethics for the mediator to disclose notes, records, or recollections of the mediation process complained of as part of the complaint procedure. Confidentiality will be upheld by the Board and only the records and notes relevant to the complaint will be considered in order to protect the parties and the integrity of the mediation process. Except for good cause shown, if the mediator fails to respond to the complaint in writing within thirty (30) days, the allegations(s) shall will be considered admitted.

(E) The Board, at its discretion, may refer the complainant and mediator to mediation conducted by a neutral and qualified mediator to resolve the issues raised by the complainant. Mediation may proceed only if both the complainant and mediator consent. If the complaint is resolved through mediation, the Board shall dismiss the complaint, unless the resolution includes sanctions to be imposed by the Board. If no agreement is reached in mediation, the Board shall determine whether to proceed further.

(F) After review and investigation, the Board shall advise the complainant and mediator of the Board's action in writing by certified mail sent to their respective last known addresses. Upon request within 14 days from receipt of the Board's action on the complaint, the mediator and the complainant are entitled to a hearing before the Board to contest proposed sanctions or findings, and have the right to bring or defend against all charges, to be represented by an attorney, and to examine and cross-examine witnesses. The Board shall receive evidence that the Board considers necessary to understand and determine the dispute. Relevancy must be liberally construed in favor of admission. The Board shall make an electronic recording of the proceedings. The Board at its own initiative, or by request of the complainant or mediator, may issue subpoenas for the attendance of witnesses and the production of documents and other evidentiary matter. The Board's decision is final.

(5) Sanctions

(A) The Board may impose sanctions, including but not limited to:

- (i) issuing a private reprimand;
- (ii) designating the corrective action necessary for the mediator to remain on the statewide roster;
- (iii) notifying the appointing court and any professional licensing authority with

265 which the mediator is affiliated of the complaint and its disposition;
266 (iv) publishing the mediator's name, a summary of the violation, and any sanctions
267 imposed;
268 (v) removing the mediator from the roster of qualified mediators and setting
269 conditions for reinstatement; and
270 (vi) assessing costs and expenses of proceedings against the mediator, including
271 without limitation, the costs of investigations, service of process, witness fees, and a
272 court reporter's services.

273 (B) Sanctions may only be imposed if supported by clear and convincing evidence.
274 Conduct considered in previous or concurrent ethical complaints against the
275 mediator is admissible to show a pattern of related conduct, the cumulative effect of
276 which constitutes an ethical violation, and in consideration of appropriate sanctions.

277 *(6) Confidentiality*

278 (A) Unless and until sanctions are imposed, all files, records, and proceedings of the
279 Board that relate to or arise out of any complaint shall be confidential, except:

- 280 (i) as between Board members and staff;
281 (ii) on request of the mediator, the file maintained by the Board, excluding its work
282 product, must be provided to the mediator;
283 (iii) as otherwise required or permitted by rule or statute; and
284 (iv) to the extent that the mediator and complainant both waive confidentiality.

285 (B) If sanctions are imposed against any mediator under Section III A (2)-(5), the
286 sanction must be of public record, and the Board file must remain confidential.

287
288 (C) Nothing in this rule may be construed to require the disclosure of the mental
289 processes or communications of the Board or staff.

290 *(7) Privilege; Immunity*

291 (A) Privilege. A statement made in these proceedings is absolutely privileged and
292 may not serve as a basis for liability in any civil lawsuit brought against the person
293 who made the statement.

294
295 (B) Immunity. Board members and staff are immune from suit for any conduct in the
296 course of their official duties.
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