

# MC3 Grievance Procedure

## A. Scope and Purposes

1. The MC3 utilizes the procedures set forth below (Grievance Procedure) to respond to reports to MC3 that an MC3-Certified Mediator has not appropriately followed any of the following standards of conduct for mediators, which all MC3-Certified Mediators have agreed to be bound by:
  - a. The Model Standards of Conduct for Mediators adopted by the American Arbitration Association, the American Bar Association, and the Association for Conflict Resolution (revised 2005).
  - b. The California Standards of Conduct for Mediators in Court-Connected Mediation Programs for Civil Cases (California Rules of Court, 3.850 et seq.).
2. The purposes of this Grievance Procedure are to:
  - a. Support and enhance the credibility of the MC3-Certified Mediator designation.
  - b. Fulfill the expectations of those who rely on MC3 certification in selecting a mediator.
  - c. Provide a fair, respectful, informal, and confidential process for addressing reports that an MC3-Certified Mediator has not appropriately followed the applicable standards of conduct.
  - d. Establish guidelines for MC3 to impose remedial conditions upon, suspend, or revoke the MC3 certification of an MC3-Certified Mediator who MC3 concludes has not appropriately followed applicable standards of conduct or has not cooperated with the Grievance Procedure.
3. This Grievance Procedure and the actions taken pursuant to it are not intended to adjudicate whether or not a mediator has in fact violated applicable standards of conduct or to serve as a basis for imposing legal liability on an MC3-Certified Mediator or for setting aside an agreement reached in mediation.

## B. Grievance Director, Grievance Administrators, and Grievance Panels

1. Grievance Director. The MC3 Board of Directors shall appoint a member of the Board as the Grievance Director. The Grievance Director shall be a person who the Board determines has appropriate knowledge and experience regarding mediator ethics, standards of conduct, and quality assurance and shall agree, in writing, to follow the MC3 Grievance Procedure. The name of and contact information for the Grievance Director shall be listed on the MC3 website.
2. Grievance Administrators. The Board of Directors may appoint one or more Grievance Administrators to serve for an indefinite or a fixed term. The name and contact information of any Grievance Administrator who is currently serving an indefinite or fixed term shall be listed on the MC3 website. The Grievance Director may designate herself or himself or another

qualified person to serve as Grievance Administrator on an *ad hoc* basis for the purpose of addressing a specific inquiry or grievance.

- a. A person designated as a Grievance Administrator shall have appropriate knowledge and experience regarding mediator ethics, standards of conduct, and quality assurance and shall agree, in writing, to follow the MC3 Grievance Procedure.
  - b. A Grievance Administrator shall serve on a volunteer basis unless compensation or a stipend is approved by the MC3 Board of Directors.
3. Grievance Panel. Upon the referral of a grievance by a Grievance Administrator to the MC3 Board of Directors, the Board may appoint a Grievance Panel to investigate that grievance and make recommendations to the Board. A Grievance Panel shall not include any Grievance Administrator who referred the grievance to the Board or performed other duties under Section E.

### **C. Informal Inquiry about Conduct of MC3-Certified Mediator**

1. Any person who has a question or concern about whether an MC3-Certified Mediator has appropriately followed the applicable standards of conduct may contact the Grievance Director or a Grievance Administrator who is then serving a fixed or indefinite term to informally and confidentially discuss the question or concern.
2. The Grievance Director or a Grievance Administrator who receives an inquiry:
  - a. Shall attempt to address the question or concern by providing relevant information about mediation and the applicable standards of conduct.
  - b. Shall inform the person that no formal action will be initiated based on the inquiry and of the process for initiating a formal grievance about an MC3-Certified Mediator.
  - c. May offer to contact the MC3-Certified Mediator to discuss or obtain additional information about the situation but shall only do so with the consent of the person making the inquiry.
  - d. Shall make a record of any inquiry that appears to indicate that an MC3-Certified Mediator may have not appropriately followed an applicable standard of conduct. To the extent the information is available, the record shall include the name and contact information of the person making the inquiry, the name of the MC3-Certified Mediator, and a brief summary of the pertinent circumstances. The record shall be maintained by the Grievance Director.
  - e. Shall maintain the confidentiality of the inquiry and shall not disclose it except as provided in this Grievance Procedure.

### **D. Submission of Formal Grievance**

1. Any person who wishes to assert a formal report that an MC3-Certified Mediator has not appropriately followed an applicable standard of conduct shall submit a written grievance to the Grievance Director.
2. The written grievance should include:

- a. The name and contact information of the person submitting the grievance.
  - b. The name and last known contact information of the MC3-Certified Mediator who the grievance is about.
  - c. The names and last known contact information of all known participants in any mediation(s) in which the MC3-Certified Mediator's conduct that is being complained of occurred.
  - d. A list of the standard(s) of conduct that the person submitting the grievance believes the MC3-Certified Mediator did not appropriately follow and a general description of the pertinent circumstances concerning each such standard.
3. The written grievance shall be confidential and shall only be disclosed as provided in this Grievance Procedure.
  4. Within 5 days after receiving a written grievance, the Grievance Director shall either:
    - a. Designate herself or himself as the Grievance Administrator for that grievance,
    - b. Designate a Grievance Administrator who is then serving an indefinite or fixed term as the Grievance Administrator for that grievance and forward the grievance to that Grievance Administrator, or
    - c. Designate an *ad hoc* Grievance Administrator for the purpose of administering the particular grievance and forward the grievance to that Grievance Administrator.

#### **E. Grievance Administrator's Duties**

1. Acknowledgement of Grievance. Within 5 days after being designated pursuant to D.4, the Grievance Administrator shall send a written acknowledgement and a copy of this Grievance Procedure to the person who submitted the grievance. The Grievance Administrator may ask the person who submitted the grievance to provide additional information at this time or later in the process.
2. Preliminary Assessment and Closure. Within 14 days after being designated pursuant to D.4, the Grievance Administrator shall assess whether there is any reasonable basis for believing that an MC3-Certified Mediator may not have appropriately followed an applicable standard of conduct. If the Grievance Administrator does not see such any such basis in the written grievance, the Grievance Administrator shall discuss the grievance with the person who submitted it and allow that person to provide additional information and to supplement or amend the grievance. If the Grievance Administrator still does not see any reasonable basis for believing that an MC3-Certified Mediator may not have appropriately followed an applicable standard of conduct, the Grievance Administrator may close the grievance. The Grievance Administrator must report such a closure to the person who submitted the grievance and to the Grievance Director.
3. Notification to MC3-Certified Mediator. Unless the Grievance Administrator closes a grievance based on the preliminary assessment (under paragraph 2), within 21 days after being designated pursuant to D.4, the Grievance Administrator shall notify the MC3-Certified Mediator of the grievance and request the MC3-Certified Mediator's response, as follows:

- a. The Grievance Administrator shall send the MC3-Certified Mediator who is the subject of the grievance copies of the written grievance and any amendments or supplements, this Grievance Procedure, and the MC3-Certified Mediator's agreement with MC3.
  - b. The Grievance Administrator may request that the MC3-Certified Mediator provide any information and documents that the Grievance Administrator considers relevant.
  - c. The Grievance Administrator shall request that the MC3-Certified Mediator respond to the grievance and to any request for information or documents, in writing, within 14 days after the notification. The Grievance Administrator or the Grievance Director may allow reasonable extensions of the MC3-Certified Mediator's time to respond, bearing in mind the goal of completing the Grievance Administrator's action on most grievances within 90 days after designation.
4. Investigation. The Grievance Administrator shall gather information to determine whether it appears that the MC3-Certified Mediator did not appropriately follow an applicable standard of conduct and, if so, what action may be appropriate.
- a. The Grievance Administrator may request that the person who submitted the grievance provide additional information or documents, either verbally or in writing.
  - b. At the time of or after providing the notification to MC3-Certified Mediator as provided in paragraph 3, the Grievance Administrator may request that the MC3-Certified Mediator provide additional information or documents, either verbally or in writing.
  - c. The Grievance Administrator may informally and confidentially discuss the grievance with the person who submitted it and with the MC3-Certified Mediator, either separately or, if they consent, together.
  - d. The Grievance Administrator may request information or documents from others, provided that the Grievance Administrator does not reveal any confidential information without the written consent of all participants in any confidential communications.
5. Closure, Resolution, or Referral by Grievance Administrator. Within 90 days after being designated pursuant to D.4, and after reviewing the grievance, any response from the MC3-Certified Mediator, and any additional information obtained through investigation, the Grievance Administrator shall take one of the following actions:
- a. Administrative Closure. If it does not appear to the Grievance Administrator that the MC3-Certified Mediator did not appropriately follow any applicable standard of conduct, the Grievance Administrator may administratively close the grievance. The Grievance Administrator shall report any such administrative closure to the Grievance Director, who shall inform the person who submitted the grievance and the MC3-Certified Mediator that the grievance has been administratively closed.
  - b. Informal Disposition. If it appears that an MC3-Certified Mediator did not appropriately follow an applicable standard of conduct, but that revocation of the mediator's MC3 certification is clearly not warranted, the Grievance Administrator, the Grievance Director, and the MC3-Certified Mediator may agree, in writing, to an appropriate disposition that includes but may not be limited to one or more of the actions listed in Section G.1. The

Grievance Director shall inform the person who submitted the grievance that the grievance has been addressed by an informal resolution with the MC3-Certified Mediator.

- c. Referral to MC3 Board of Directors. If a grievance is not resolved by administrative closure or informal disposition as provided above, the Grievance Administrator shall refer the grievance to the MC3 Board of Directors. A referral to the Board shall include a copy of the written grievance (and any supplement or amendment thereto), any questions or requests for information that the Grievance Administrator submitted to the MC3-Certified Mediator, any written response of the MC3-Certified Mediator to the grievance or to any questions or requests for information, any additional information that the Grievance Administrator has obtained and believes may be helpful or pertinent in resolving the matter, the Grievance Administrator's recommendation of one or more of the actions listed in Section G.1., and the Grievance Administrator's reasons for that recommendation. The Grievance Administrator shall provide a copy of the referral to the MC3-Certified Mediator and notify the mediator that she or he may submit any response to the Grievance Director, for transmittal to the Board, within 14 days.
6. Extension of Deadlines. Upon request by the Grievance Administrator, the Grievance Director or, if the Grievance Director is serving as Grievance Administrator, the President of MC3, may extend the times for the Grievance Administrator to complete the actions described above. In doing so, the Grievance Director or the President of MC3 shall consider the goal of completing the Grievance Administrator's action on most grievances within 90 days after designation.

#### **F. Procedures on Referral to MC3 Board of Directors**

1. The MC3 Board of Directors shall consider any grievance that is referred by the Grievance Administrator and any response of the MC3-Certified Mediator at the next regularly scheduled Board meeting that occurs at least 30 days after the referral. At that time, the Board shall decide whether further investigation of the grievance shall be conducted.
2. The Board may appoint a Grievance Panel to conduct further investigation of the grievance and to recommend the action to be taken by the Board. A Grievance Panel shall include at least three persons who are knowledgeable about mediator ethics and standards of conduct and shall not include the Grievance Administrator who performed the duties under Section E with respect to the grievance.
3. The Board or a Grievance Panel may request to interview the person who submitted a grievance, the MC3-Certified Mediator, the Grievance Administrator who performed the duties under Section E, and other persons who may appear to have pertinent information. The Board and Grievance Panel shall not have authority to compel any person to participate in an interview but may consider a person's willingness to be interviewed in its recommendation and action. Interviews shall be informally conducted. They shall not be conducted under oath and the rules of evidence shall not apply.
4. The Board shall endeavor to determine the final action to be taken upon any grievance referred to it within 90 days after referral by the Grievance Administrator.
5. All Board discussions about a grievance or the action to be taken concerning a grievance shall occur in closed session.

6. The decision of the MC3 Board concerning the action to be taken on a grievance is final and not subject to reconsideration, review, or appeal.
7. The MC3 President will communicate the MC3 Board's final decision to the person who submitted the grievance and to the MC3-Certified Mediator, in writing.

## **G. Permissible Actions and Criteria for Action on Grievances**

1. Permissible Actions on Grievance. The Grievance Panel may recommend and the MC3 Board may take one or more of the following actions upon a grievance:
  - a. Close the grievance without further action;
  - b. Counsel, admonish, or reprimand the MC3-Certified Mediator;
  - c. Require that the MC3-Certified Mediator obtain additional training, supervision, or experience as a condition to retaining MC3 certification;
  - d. Suspend the MC3-Certified Mediator's MC3 certification for a specified period of time or until additional training, supervision, or experience that has been required is completed; or
  - e. Revoke the MC3-Certified Mediator's MC3 certification and prohibit the mediator from reapplying for MC3 certification for a specified period of time.
2. Criteria for Determining Action on Grievance. In determining what action to recommend or take concerning a grievance, the Grievance Panel and the MC3 Board shall consider the following factors:
  - a. Whether and, if so, how clearly it appears that the MC3-Certified Mediator did not appropriately follow an applicable standard of conduct;
  - b. The extent to which an act or omission that did not appropriately follow an applicable standard undermines the integrity, goals, or values of mediation or of MC3 certification;
  - c. Whether an act or omission that did not appropriately follow an applicable standard was committed or omitted to comply with another applicable standard or legal obligation and, if so, the extent to which the MC3-Certified Mediator exercised sound judgement in deciding how to address this situation;
  - d. The amount of time that has passed since an act or omission that did not appropriately follow an applicable standard and the MC3-Certified Mediator's actions to improve his or her knowledge and skills during this time;
  - e. The extent to which the MC3-Certified Mediator cooperated and demonstrated self-reflection during the Grievance Procedure;
  - f. Any history of inquiries or grievances about the MC3-Certified Mediator; and
  - g. Other factors that the Grievance Panel and the MC3 Board find pertinent.

## H. Timeframes for Acting

MC3 and its Grievance Director, Grievance Administrators, Grievance Panels, and Board of Directors shall make reasonable efforts to perform the tasks described in this Grievance Procedure within the specified time period. However, the non-completion of an action within the specified time shall not constitute a basis for challenging or invalidating any action upon a grievance.

## I. Recusal

1. Any member of the MC3 Board of Directors or a Grievance Panel, Grievance Director, or Grievance Administrator shall recuse herself or himself from acting with regard to any grievance in which she or he has a personal, business, or financial relationship or interest that might reasonably raise a question about her or his impartiality. The following circumstances do not alone raise a question about impartiality that requires recusal:
  - a. The fact that a member of the MC3 Board of Directors, Grievance Director, Grievance Administrator, or Grievance Panel Member is also an MC3-Certified Mediator, or
  - b. A relationship that is based solely on the fact that the person who is the subject of a grievance is an MC3-Certified Mediator.
2. Any member of the MC3 Board of Directors who served as the Grievance Administrator or on the Grievance Panel that considered a grievance shall recuse herself or himself from any vote on the action to be taken regarding that grievance.
3. In the event that one or more members of the MC3 Board of Directors is recused with respect to a grievance, the members of the Board who are not recused shall act on behalf of the Board with respect to the Grievance. If all members of the Board are recused, the Board shall appoint one or more persons whose impartiality is not reasonably subject to question to perform the actions that would otherwise be performed by the Board.
4. In the event that a Grievance Panel member is recused with respect to a grievance, the Grievance Director shall appoint another Grievance Panel member to act with respect to that grievance.
5. In the event that the Grievance Director is recused with respect to a grievance, the Board of Directors shall appoint an acting Grievance Director to act with respect to that grievance.
6. In the event that a Grievance Administrator is recused with respect to a grievance, the Grievance Director or the MC3 Board of Directors shall appoint another Grievance Administrator to act with respect to that grievance.

## J. Confidentiality of Grievance Proceedings and Records

1. In General. All communications, proceedings, and records concerning grievances about MC3-Certified Mediators shall occur in private and be kept confidential except as provided in this Grievance Procedure or as otherwise required by law.
2. Preserving Confidentiality of Mediation Communications. Grievance proceedings will be conducted in a manner that preserves the confidentiality of mediation communications,

including the confidentiality of any communications between the MC3-Certified Mediator and individual mediation participants or subgroups of mediation participants.

3. Internal Disclosures. MC3 directors, officers, employees, Grievance Directors, Grievance Administrators, and Grievance Panel members may disclose and discuss inquiries, grievances, and grievance proceedings with one another to the extent necessary to administer and monitor Grievance Procedures.
4. Public Disclosures. If an MC3-Certified Mediator's MC3 certification is suspended or revoked, this action shall be reflected on the MC3 website. The MC3 Board of Directors may, in its discretion, authorize public disclosure of the name of an MC3-Certified Mediator against whom action was taken, the action taken, and the general basis on which the action was taken, provided that doing so does not disclose any confidential mediation communications. No other information or records concerning the receipt, investigation, or resolution of an inquiry or a grievance will be open or disclosed to the public.

#### **K. Revision of Grievance Procedure**

1. The MC3 Board of Directors may revise this Grievance Procedure at any time.
2. All persons who are MC3-Certified Mediators at the time of a revision shall be given notice of the revision.