Florida Dispute Resolution Center

THE RESOLUTION REPORT ONLINE

June 2007 - Volume 22, Number 2
News on Dispute Resolution trends, laws and ethics

Welcome to the online edition of the Resolution Report, **June 2007**
This online version allows you to get your news faster and more efficiently. We hope you will find this format to be beneficial. Your feedback and suggestions for the newsletter are always welcome.

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- SC05-998
- Proposed Revision to Rule 10.610, Survey

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- CME Audio Packages

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Message from the Director

By Sharon Press

As the summer heats up, we have been busy preparing for the annual conference and implementing the changes to CME and mediator qualifications which take full effect on August 1. We also are continuing to monitor the Florida Supreme Court's release of opinions, awaiting the results of the second Oral Argument in SC05-998, In Re: Petition of the Alternative Dispute Resolution Rules and Policy Committee on Amendments to Florida Rules for Certified and Court-Appointed Mediators. In answer to the questions so many of you pose: 1) we do not have any special advance notice of how the Court will rule and 2) we do not know when the Court's opinion will be released. Watch the website (www.flcourts.org/adr) because we will update it with a link to the Opinion as soon as it is released (which incidentally is on Thursdays).

When the last Newsletter went out, we were able to inform you that Rosezetta Bobo had departed, but we had not yet hired Earnestine Reshard who I am delighted to introduce to you. Earnestine hit the ground running, immediately delving into the program statistics in order to get the FY 2005 – 2006 Compendium of Mediation and Arbitration Programs complete and to the printer. As I write this message, the Compendium is available on line and should be delivered from the printer today. Special thanks to all of the DRC staff who worked on this project, but especially Ramon for the development of the electronic data collection form, Stephanie for the initial collection of information, Kimberly for all her technical assistance, and Earnestine for completing the charts, and seeing the project through to its completion. Plans are already underway to begin collecting the information for FY 2006 – 2007 and we hope to have that data available to you by the end of the calendar year.

I hope you will review the proposed amendment to Florida Rules for Certified and Court-Appointed Mediators Rule 10.610, Advertising and provide your recommendations to the Supreme Court Committee on ADR Rules and Policy via the on-line survey linked to the recommendations. I want to highlight that the Committee, via an Advertising and Public Education Subcommittee chaired by Judge Burton Conner, has been working on this rule amendment for a significant period of time, but it is in no way a final product. The Committee is very interested in comments, suggestions and ideas from mediators about the proposal and ways to improve the language. The time to impact the proposal is now. Please take a few moments to review the rule proposal and respond.

In a sneak peek on what's coming up, we just received the consultants' report on the Assessment of the Mediation Training Standards and Procedures and in the next issue we will feature the recommendations from that report.

I'll end my message with a point of personal privilege. I want to extend my heartfelt appreciation to my friends and colleagues who have responded with kind notes of support and sympathy on learning of the passing of my father, Lionel Press. Needless to say, it has been a difficult period of time, but with the incredible support of my colleagues at the DRC who picked up all of the loose ends and kept everything

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running smoothly during my 2 week unexpected absence, all of you who have sent your thoughts, and my wonderful family with whom I was able to cry and laugh, I am moving forward in celebration of my father's life. His generosity, spirit, and quest for justice for everyone will continue to inspire me in all that I do.

PS: I look forward to seeing you at the Annual DRC Conference August 23 – 25! If you have not yet made your hotel reservations, do not delay!

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16th Annual Dispute Resolution Center
Conference for Mediators & Arbitrators: Insight and Inspiration
August 23-25, 2007; Rosen Centre Hotel; Orlando

One Conference for all Mediators and Arbitrators

Thursday, August 23, 2007	Arbitration Training (10 am - 5 pm) Early Conference Registration & Welcome Reception (5 pm - 7 pm)
Friday, August 24, 2007	DRC Conference (8:30 am - 5:30 pm)
Saturday, August 25, 2007	Conference continued (8 am - 12 noon)

Educational Hours:
*Conference: 12.9 CME hours with a minimum
of 2.2 mediator ethics, 2.2 domestic violence and 2.1 diversity hours
(additional ethics, dv and diversity hours may be gained in individual workshops)
* There are NO CME hours for the Arbitration Training
*Florida CLE credits for Conference: 13.0 general with 4.5 ethics
*Florida CLE Credits for Arbitration Training: 6.5 general with 1.0 ethics

Early Bird Registration Fees:
Conference $125
Arbitration Training $125

DRC Lodging Rate: $99
Rosen Centre Hotel, 9840 International Drive, Orlando
Reservations: 1-800-204-7234 or

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Supreme Court of Florida

WEDNESDAY, FEBRUARY 28, 2007

CASE NO.: SC05-998

IN RE: PETITION OF THE ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY COMMITTEE ON AMENDMENTS TO FLORIDA RULES FOR CERTIFIED AND COURT APPOINTED MEDIATORS

The above case is hereby scheduled for oral argument at 9:00 a.m. Monday, May 7, 2007. Thirty minutes are allocated for oral argument. Parties are expected to use only as much time as is actually needed.

The proponent of any change and any party filing a comment with this Court are invited to participate in oral argument, provided a proper request for oral argument is filed with this Court on or before March 28, 2007.

The allocation of time shall be agreed upon by the parties and shared by any interested parties who have requested oral argument. The parties shall notify the Clerk of Court no later than April 25, 2007, how the time is to be divided.

To comply with Florida Rule of Judicial Administration 2.140(b)(5), the proposed amendments have been posted to the court's website at http://www.floridasupremecourt.org/clerk/comments/index.shtml.

NO CONTINUANCES WILL BE GRANTED EXCEPT UPON A SHOWING OF EXTREME HARDSHIP.

A True Copy
Test:

Thomas D. Hall
Clerk, Supreme Court

vm
Served:

HON. SHAWN L. BRIESE, CHAIR, SUPREME COURT COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY
DR. GREGORY FIRESTONE, VICE CHAIR, SUPREME COURT COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION RULES AND POLICY
HENRY M. COXE, III, PRESIDENT, THE FLORIDA BAR
FRANCISO R. ANGONES, PRESIDENT-ELECT, THE FLORIDA BAR
JOHN F. HARKNESS, JR., EXECUTIVE DIRECTOR, THE FLORIDA BAR
CHIEF JUDGES OF THE DISTRICT COURTS OF APPEAL
CLERKS OF THE DISTRICT COURTS OF APPEAL
CHIEF JUDGES OF THE JUDCIAL CIRCUITS
CLERKS OF THE JUDICIAL CIRCUITS
JOHN ANTHONY BOGGS
JOHN WILKINS DAY
MERRETT R. STIERHEIM
KENNETH R. HART
H. RAY LANIER
NANCY NEAL YEEND
GARY N. FEDER
KENNETH R. STARR
JAYNE MARIE LAMBERT
EDGARDO RODRIGUEZ-QUILICHINI
BARBARA L. RUTBERG
DEBRA CARTER
MARTIN G. HOLLERAN
TERRY WHEELER
RONALD J. LEBIO
LINDA FIELDSTONE
KATHRYN B. ANDERSON

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Proposed Revision to Rule 10.610, Survey

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy requests your input on a proposed revision to rule 10.610, Florida Rules for Certified and Court-Appointed Mediators. Please review the proposal and respond to the survey questions via the attached link by ***July 20, 2007***. Thank you in advance for your input.

Rule 10.610. Advertising Marketing Practices *DRAFT FOR COMMENT – April 12, 2007*

(a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practices, including advertising, which contains false or misleading information. A mediator shall ensure that any ~~advertisements of~~ marketing of the mediator's qualifications, services to be rendered, or the mediation process are is accurate and honest.

(b) Supreme Court Certification. Any marketing practice in which a mediator indicates that such mediator is " Florida Supreme Court certified" is misleading unless it also identifies at least one area in which the mediator is certified.

(c) Other Certifications. Marketing publications that generally refer to a mediator being "certified" are misleading unless the advertising mediator has successfully completed an established program for qualifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term "certified" in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.

(d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better mediator.

(e) Prohibited Claims or Promises. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.

(f) Additional Prohibited Marketing Practices. A mediator shall not engage in any marketing practice that diminishes the importance of a party's right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial system.

Committee Notes

200X Revision.
The roles of a mediator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any mediation marketing practice, a former adjudicative officer should not lend the prestige of the judicial

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office to advance private interests in a manner inconsistent with this rule. For example, the Committee believes that the depiction of a mediator in judicial robes would be inappropriate. However, an accurate representation that the mediator has 25 years of judicial experience would not be inappropriate. This rule is not intended to prohibit appropriate reference to prior adjudicative service by use of such terms as "circuit judge retired," "former judge of compensation claims," and "former general magistrate."

Proposed Revision to Rule 10.610, Florida Rules for Certified and Court-Appointed Mediators

The Supreme Court Committee on Alternative Dispute Resolution Rules and Policy your input on a proposed revision to rule 10.610, Florida Rules for Certified and C Appointed Mediators. Please review the proposal and respond to the survey questi the attached link by July 20, 2007. Thank you in advance for your input.

*** 1. I am in support of the revisions proposed by the ADR Rules and Policy Committe:**

◯ Yes ◯ No

2. I request that the Committee consider the following general comments:

3. I suggest the following amendments be made to subsection (a) of the rule draft:

(a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practices, including advertising, which cc misleading information. A mediator shall ensure that any advertisements of marketing of the mediator's qualifications, services to t the mediation process are is accurate and honest.

4. I suggest the following amendments be made to subsection (b) of the the draft rule:

(b) Supreme Court Certification. Any marketing practice in which a mediator indicates that such mediator is " Florida Supreme Cou misleading unless it also identifies at least one area in which the mediator is certified.

5. I suggest the following amendments be made to subsection (c) of the draft rule:

(c) Other Certifications. Marketing publications that generally refer to a mediator being "certified" are misleading unless the adverti has successfully completed an established program for qualifying mediators that involves actual instruction rather than the mere pa Use of the term "certified" in advertising is also misleading unless the mediator identifies the entity issuing the referenced certificat

or field of certification earned, if applicable.

6. I suggest the following amendments be made to subsection (d) of the draft rule:

(d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative exp including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better mediator.

7. I suggest the following amendments be made to subsection (e) of the draft rule:

(e) Prohibited Claims or Promises. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism of obtaining business.

8. I suggest the following amendments be made to subsection (f) of the draft rule:

(f) Additional Prohibited Marketing Practices. A mediator shall not engage in any marketing practice that diminishes the importance right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial s

9. I suggest the following amendments be made to the Committee Notes:

200X Revision. The roles of a mediator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be ir the prestige of the judicial office is used for commercial purposes. When engaging in any mediation marketing practice, a former ac officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For exa Committee believes that the depiction of a mediator in judicial robes would be inappropriate. However, an accurate representation mediator has 25 years of judicial experience would not be inappropriate. This rule is not intended to prohibit appropriate reference adjudicative service by use of such terms as "circuit judge retired," "former judge of compensation claims," and "former general ma

Finish >>

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Case and Comment

By Perry Itkin

"The Judge Did What?!?"

In *Stallworth v. Phinney*, 947 So.2d 1292 [Fla. 1st DCA 2007] the trial court modified the parties' final judgment of dissolution to order, pursuant to the parties' agreement, that the parties' daughter would complete her elementary education at a particular school [no problems yet]. The Appellee former husband thereafter unilaterally elected to place the daughter in a different school [uh oh!]. As you might expect, the Appellant former wife then filed an emergency motion for contempt and requested that the motion be considered at an expedited evidentiary hearing.

The trial court declined to hold the requested hearing and entered an order denying the Appellant's motion [now there's a problem]. The judge then directed the parties to mediate the issue, and granted the Appellee the final authority to choose a school if mediation was unsuccessful [the problem is getting bigger!].

The appellate court reversed the trial judge and remanded the case to the trial court with directions that an evidentiary hearing be promptly held. The appellate court determined that:

In refusing to hold an evidentiary hearing, the trial court denied the former wife due process.

"I Was Just Going Along With The Program!"

COMMENT: That's nice but it does not rise to the level of duress in an effort to set aside a mediated marital settlement agreement according to the Second District Court of Appeal! This is a good case which defines and illustrates what is and what is not "duress". Remember, *Florida Rules for Certified and Court-Appointed Mediators*, Rules 10.310(b) and 10.420(b)(4) provide:

Rule 10.310. Self-Determination

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

Rule 10.420. Conduct of Mediation

(b) Adjournment or Termination. A mediator shall:

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(4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability . . . . [COMMENT: There's no wiggle room here!]

In *Williams v. Williams*, 939 So.2d 1154 [Fla. 2nd DCA 2006] the Wife appealed an order granting in part and denying in part her motion to enforce the parties' mediation agreement. The Husband cross-appealed and argued that the trial court should have set aside the agreement in its entirety.

At the court ordered mediation conference, the parties reached an agreement and executed a written mediation agreement, settling a number of issues. The agreement provided that the Wife shall be designated the primary residential parent for the parties' two minor children. Further, it provided as follows:

"4. *WIFE'S EQUITABLE DISTRIBUTION:* The Wife shall receive as an equitable distribution the following: a. The marital home located at [address specified]. The Husband shall convey to the Wife all his right, title, and interest in and to the marital home. The Wife shall be responsible for paying the mortgage and shall hold the Husband harmless for payment of same. The Husband shall vacate the marital home on or before April 1, 2005. The Wife agrees to make a good-faith effort to refinance the marital home within ninety (90) days after the entry of the Final Judgment."

Eventually, the Wife filed a motion to enforce the mediation agreement, asserting that the Husband failed to comply with its terms.

At an evidentiary hearing on the motion to enforce, the Husband claimed that he signed the agreement without understanding it. He complained about the child support provision and stated that he would not agree to the Wife staying in the marital home. He did not provide any detail as to his financial situation but asserted that the provisions as to child support and the marital home would leave him without enough money for his own expenses. He added that he did not want a divorce and that he thought he and the Wife would "make up." He testified that he signed the agreement because he "was going along with the program" but that "I didn't agree." He also stated that he had not consulted with his attorney before signing the agreement.

The mediator told the court that each party was represented by counsel at the mediation conference. He explained the negotiations that took place and stated that the Husband asked and got answers to his questions. He added that the Husband did not appear to be confused in any way and that he had "no doubt" the Husband understood what he was signing. [COMMENT: This is the **first appellate opinion** containing a reference to the recently enacted Mediation Confidentiality and Privilege Act. The reference is in a footnote: "The mediator testified without objection and without any party asserting confidentiality as to the mediation communications. *See* § 44.405, Fla. Stat. (2005)."]

The attorney who represented the Husband at the mediation conference testified that she discussed the details of the settlement proposals with the Husband to make sure there were no misunderstandings. The parties agreed to the wording in the agreement that the Wife would be responsible for making the mortgage payments and would make a good faith effort to refinance the home. The good faith language was used because the parties recognized refinancing might not be possible. The attorney added that she went through the agreement with the

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Husband "word-for-word" and had "no doubt" that he understood the agreement. [COMMENT: Just in case you were wondering, the Husband waived the attorney-client privilege, enabling the attorney to testify at the hearing. That attorney did not represent the Husband at the hearing and did not represent him in the appeal.]

The trial court expressed concern about the refinancing language being unfair to the Husband and ordered the Wife to refinance the home and directed that if she did not obtain refinancing within ninety days after entry of the final judgment of dissolution, the home "shall be sold." The Wife contended that the trial court erred by rewriting the agreement and by failing to enforce the parties' agreement.

The appellate court held

Even if the court is correct that the refinancing provision is unfair to the Husband, this does not provide a legal basis for the court to rewrite the parties' agreement or to set it aside. "Bad domestic bargains - meaning unfair or unreasonable property and monetary settlement agreements - are nevertheless enforceable so long as they are knowing, voluntary and not otherwise against public policy."

Regarding duress, it "is a condition of mind produced by an improper external pressure or influence that practically destroys the free agency of a party and causes him to do an act or make a contract not of his own volition." Here, no evidence supports the conclusion that the Husband was under duress in executing the agreement or the refinancing provision. Rather, the evidence reflects that the Husband did not want to get divorced and that he had misgivings about the agreement and how it would impact him. As the trial court found, the Husband understood the agreement and what took place at the mediation conference.

Because the Husband failed to present any legal grounds [under Florida Rule of Civil Procedure 1.540] *for relief from the mediation agreement, the trial court should have enforced it in its entirety and should not have modified its terms. Accordingly, we affirm the trial court's order to the extent it grants the motion to enforce, but we reverse to the extent the order finds the Husband was under duress and revises the agreement to provide for sale of the marital home in the event the Wife is unable to refinance.*

COMMENT: Other than the specific footnoted reference to the mediator's testimony, this opinion also is illustrative of the *some* of the types of *permitted* disclosures the F.S. 44.405(4)(a), the Mediation Confidentiality and Privilege Act. The court cited *Florida Rule of Civil Procedure* 1.540 as providing "the framework for challenging settlement agreements entered into after the commencement of litigation and utilization of discovery procedures." See also *Macar v. Macar,* 803 So.2d 707, 713 (Fla. 2001) and Fla. Fam. L.R. P. 12.540.

Rule 1.540(b) provides, in pertinent, part as follows:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, decree, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial or rehearing; (3) fraud (whether heretofore denominated intrinsic or extrinsic),

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misrepresentation, or other misconduct of an adverse party; (4) that the judgment or decree is void; or (5) that the judgment or decree has been satisfied, released, or discharged, or a prior judgment or decree upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or decree should have prospective application.

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CASE AND COMMENT

By Perry S. Itkin, Esquire
Dispute Resolution, Inc.
2200 NE 33rd Avenue, Suite 8G
Fort Lauderdale, FL 33305-1889
954-567-9746
E-mail: PerryItkin@MediationTrainingCenter.com
Florida Mediator Blog: http://floridamediator.blogspot.com/

June, 2007 *Resolution Report*

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SHORT TAKES

DRC Staff Changes

Earnestine Reshard, has recently joined our unit as our new Senior Court Analyst II. She comes to us from the private sector where she worked as a Training Coordinator for the Human Resources Department. She conducted soft skills training workshops for a workforce of two-hundred in the areas of "Managing Conflict," Effective Communications, and Team building. Earnestine has more than twenty years of experience in the public service arena. She is a two time graduate of Florida State University (G-o-o Seminoles!) where she obtained a Bachelors of Science degree in Political Science and a Masters in Public Adminstration. Please join me in welcoming Earnestine as our newest member of the Alternative Dispute Resolution Center.

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SHORT TAKES

** *Mediator Qualifications Board Vacancy* **

Mediator Qualifications Board Vacancy – Central Division

Please send a resume if you are interested in filling a family attorney member position on the Mediator Qualifications Board for the Central Division. The MQB reviews the grievances filed against Florida Supreme Court certified mediators and mediators who serve pursuant to court order. The Central Division includes the following circuits: 5th, 6th, 7th, 9th, 10th, 12th, 13th, and 18th.

Pursuant to rule 10.730, the attorney member must:

- be licensed to practice law in Florida,
- "have a substantial trial practice,"
- NOT be either "certified as a mediator [or] judicial officer" during the term of service on the board, and
- 1 attorney member of the division "shall have a substantial dissolution of marriage law practice"

Member of the MQB are appointed by the Chief Justice of the Florida Supreme Court and serve as volunteers. Recruiting attorney members of the MQB is challenging since most of the attorneys we know are also mediators so if you know someone who would make a good addition, please encourage them to let us know.

Letters of interest and resumes should be sent to:

Florida Dispute Resolution Center
500 S Duval Street
Tallahassee, FL 32399-1905

Or via fax to: 850/922-9290

Or via e-mail to DRCMail@flcourts.org

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New Mediator Ethics Advisory Opinions

The opinions of the Mediator Ethics Advisory Committeeare rendered pursuant to the authority of rule 10.900, Florida Rules for Certified and Court-Appointed Mediators, and are based on the specific facts outlined in the question. They are based on the Committee's interpretation of the rules in effect on the date the opinions were rendered. The summary of each opinion has been prepared for quick reference. Any inconsistency between the summary and the opinion should be resolved in favor of the opinion.

Mediator Ethics Advisory Committee issued the following opinions sincethe last Resolution Report:

2006-005

Based on the facts of the question, the filing of a grievance with The Florida Bar does not appear to be prohibited by the statutory and rule confidentiality requirements. Whether the reporting of the attorney litigant's action is prohibited is beyond the scope of the Committee's function since it would involve an interpretation of the attorney ethics code.

2006-006

A mediator is obligated to advise a party of the *right* to seek counsel, if the mediator believes that the party does not understand or appreciate how an agreement may adversely affect the party's legal rights or obligations, but is prohibited from giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues."

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2006-007

A. While a mediator may facilitate discussion on the subject between the parties, the mediator may not "dictate" to the parties who attends their mediation.
B. The appropriate procedure would be for the nonparty participants to be told that they are also bound by the confidentiality requirements in statute and rule.
C. Although a mediator would not commit a direct violation of confidentiality by suggesting that a party, without the consent of all parties, discuss mediation communications with someone who does not attend the mediation, it is nonetheless unethical to do so because it could lead to a breach of confidentiality by another.

2006-008

A. A mediator may report to the court that a party or counsel has failed to attend a mediation if this conclusion is based on observation by the mediator and is not dependent on a "mediation communication" as defined in 44.403, Florida Statutes.
B. The mediator may report the fact of nonpayment of mediation fees to the court.

2007-001

A mediator may report a party's failure to appear at mediation so long as it is based on the physical fact of a failure to appear and not on a mediation communication or assertion.

2007-002

A. It would not be appropriate to routinely attach the mediated settlement agreement to a circuit civil case in light of the requirements of rule 1.730(b), Florida Rules of Civil Procedure.
B. If one party objects, the agreement can not be attached.
C. The Committee declines to answer this question since it asks for an opinion on the behavior of someone other than a certified or court-appointed mediator.

Advisory Opinion MEAC 2006-005
MEDIATOR ETHICS ADVISORY COMMITTEE c/o Dispute Resolution Center Supreme Court Building Tallahassee, FL 32399

September 21, 2006

The Question

I have been recently involved in a mediation and during the mediation it was learned that there was an expenditure from funds held in escrow by one of the attorneys representing a party to the litigation.

The information about the expenditure from the escrow was made by the attorney responsible for preserving the escrowed funds while in private session with the mediator.

The mediator, in private session with the other party explained that certain monies were paid from the escrowed funds. It is not anticipated that either party will complain about the mediator.

The question is whether the confidentiality required during mediation prohibits a grievance being filed with the Bar relating to the attorney who released the funds from escrow. An additional question is because the party to the litigation is a lawyer who may have authorized the release of the funds from escrow, does confidentiality preclude a statement to the Florida Bar about the attorney litigant.

Submitted by a Certified Family Mediator
Central Division

Authority Referenced

Rules 10.330, 10.360, 10.400, 10.600, Florida Rules for Certified and Court-Appointed Mediators:
Sections 44.403(1) and 44.405(4)(a)Mediation and Confidentiality and Privilege Act, Chapter 44, Florida Statutes
Rules Regulating The Florida Bar 4-8.3 and Comments to 4-1.12

Summary

Based on the facts of the question, the filing of a grievance with The Florida Bar does not appear to be prohibited by the statutory and rule confidentiality requirements. Whether the reporting of the attorney litigant's action is prohibited is beyond the scope of the Committee's function since it would involve an interpretation of the attorney ethics code.

Opinion

To answer your question, one must first determine whether the communication in question is a "mediation communication" pursuant to Florida Statues. A mediation communication means "an oral or written statement ... by or to a mediation participant made during the course of a mediation..." Section 44.403(1), Florida Statutes. The communication you describe clearly fits this definition. Having determined that the statement was a mediation communication, one must next determine whether it fits within any of the listed statutory exceptions to confidentiality. One of the listed statutory exceptions to the confidentiality of mediation communications is a communication "offered to report, prove or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct." Section 44.405(4)(a) 6. *If* the communication to which you refer is offered in this manner and for this limited purpose, it would appear to qualify as an exception, and thus, *may* be reported.

The Committee notes that while the statutory exceptions to confidentiality apply to all mediation participants, mediators are additionally governed by the Florida Rules for Certified and Court-Appointed Mediators. Accordingly, mediators have the obligation to maintain confidentiality (rule 10.360) and impartiality (rule 10.330), along with their more general obligations to the process (rule 10.400) and profession (rule 10.600). The Committee emphasizes that mediators are not *obligated* to report statutory exceptions by virtue of either the Mediation Confidentiality and Privilege Act, section 44.405(4)(a), Florida Statutes, or the Florida Rules for Certified and Court-Appointed Mediators. The only statutory exception requiring reporting is abuse and neglect of children and vulnerable adults, which exists by virtue of separate mandatory reporting statutes. Section 44.405(4)(a)3, Florida Statutes. Mediators subject to other ethical codes, must, of course, guide themselves based on their concurrent codes of conduct.

As to the question of whether the referenced communication is *required* to be reported to The Florida Bar by an attorney mediator, the Committee must defer to The Florida Bar and the provisions of rule 4-8.3, Rules Regulating the Florida Bar, which deals with the requirement of reporting such matters. While rule 10.650 provides that in the course of providing mediation services, mediation rules control over conflicting ethical standards,[1] the rule also specifically states that other ethical standards to which the mediator is subject are not abrogated. Therefore, as seems to be the case in your situation, concurrent non-conflicting rules would be operative. Your second question, whether an attorney litigant's action is prohibited is beyond the scope of the Committee's function since it would involve an interpretation of the attorney ethics code. If the alleged violation is reported by the mediator, it should be accompanied by a reference to section 44.405(4)(a)6 to provide notice to the recipient of its statutory responsibility to maintain the confidentiality of the communication.

Finally, the Committee cautions that a mediator is prohibited from revealing information obtained during caucus without the consent of the disclosing party. Doing so would violate rule 10.360(b) on confidentiality and may also be an impartiality violation under rule 10.330(a).

Date

Fran Tetunic, Committee Chair

[1] See also 4-1.12 Comments, Rules Regulating The Florida Bar, "A Florida Bar member who is a certified mediator is governed by the applicable law and rules relating to certified mediators."

Advisory Opinion MEAC 2006-006

MEDIATOR ETHICS ADVISORY COMMITTEE c/o Dispute Resolution Center Supreme Court Building Tallahassee, FL 32399

January 10, 2007

The Question

The Facts:

A mediation takes place that results in a partial settlement. Of the two parties, one is represented and one is pro se.

The Question:

Is it forbidden legal advice for the mediator to advise the pro se party to retain an attorney to represent them in court for the trial of the unsettled balance of the matter?

I look forward to hearing from you.

Submitted by a Certified Family and Circuit Mediator
Southern Division

Authority Referenced

Rules 10.330, 10.310(a), and 10.370, Florida Rules for Certified and Court-Appointed Mediators

Summary

A mediator is obligated to advise a party of the *right* to seek counsel, if the mediator believes that the party does not understand or appreciate how an agreement may adversely affect the party's legal rights or obligations, but is prohibited from giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues."

Opinion

In the scenario you describe, the partial agreement may affect legal rights and obligations based on matters included, as well as excluded, from the partial agreement. If the mediator believes a party does not understand or appreciate how a partial or full agreement may adversely affect legal rights or obligations, "the mediator shall advise the party of the right to seek independent counsel." Rule 10.370(b). This obligation to advise of the *right* to seek counsel stands in stark contrast with the prohibition of giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues." Rule 10.370(c). Essentially, the mediator should not tell a party what to do, but "[c]onsistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide." Rule 10.370(a). Based on the facts you present, the most appropriate time to determine if a party understands his/her rights and obligations and advise of the right to seek counsel would be prior to the time the mediation resulted in a partial agreement. What happens following the partial agreement may affect the party's decision to resolve some of the matters at mediation. Along with maintaining impartiality, rule 10.330, the mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination, rule 10.310(a).

_____ _____

Date Fran Tetunic, Committee Chair

Advisory Opinion MEAC 2006-007
MEDIATOR ETHICS ADVISORY COMMITTEE c/o Dispute Resolution Center Supreme Court Building Tallahassee, FL 32399

April 9, 2007

The Question:

I would appreciate guidance from the MEAC on the following scenario that I observed during a small claims mediation.

In XXX county, small claims mediation is conducted in the courthouse at the time of the pre-trial conference.

Parties A & B were referred by the judge to mediation. When the mediator and the parties reached the doorway of the mediation room, the mediator inquired of the 4 people following him, who they were. The parties each identified themselves and introduced the non-party family member they brought with them to the mediation. Upon this introduction, the mediator replied "I only mediate with the named parties so the non-parties [he referred to them by name] will need to wait outside". Both parties objected to their non-parties being "left outside" the mediation room and neither party offered an objection as to the other parties' non-party coming into the mediation room. The mediator replied to their objections by stating that "mediation is confidential so they [non parties] are not allowed in the mediation room, however, if at any time you need to come outside and talk with them, you can do so". To this reply, the parties appeared somewhat more at ease and entered the mediation room.

My questions are:

A. Is it permissible for a mediator to dictate, over the parties objections, who attends mediation?

B. Is it appropriate for the mediator to instruct nonparties they can not participate in mediation because the mediation is confidential?

C. Is it a violation of confidentiality for a mediator to direct a party or parties that s/he can discuss mediation communications with someone who does not attend the mediation without consent of all parties?

Submitted by a Certified County Mediator
Northern Division

Authority Referenced

Rules 10.230, 10.310(a), 10.360(a), and 10.520, Florida Rules for Certified and Court-Appointed Mediators
Sections 44.403(1) and (2), 44.405(1) and 44.405(4)(a), Florida Statutes

Summary

A. No, while a mediator may facilitate discussion on the subject between the parties, the mediator may not "dictate" to the parties who attends their mediation.

B. No, the appropriate procedure would be for the nonparty participants to be told that they are also bound by the confidentiality requirements in statute and rule.

C. Although a mediator would not commit a direct violation of confidentiality by suggesting that a party, without the consent of all parties, discuss mediation communications with someone who does not attend the mediation, it is nonetheless unethical to do so because it could lead to a breach of confidentiality by another.

Opinion

A. It is not permissible for a mediator to dictate, over the parties' objections, who attends mediation. While a mediator may facilitate discussion on the subject between the parties, the mediator may not "dictate" to the parties who attends their mediation. "Decisions made during a mediation are to be made by the parties." Rule 10.310(a). In the scenario you describe, if the parties seem to be agreeing on having non-parties participate in their mediation, the mediator must confirm that the parties agree as to each nonparty participant. This is consistent with the fundamental concepts of mediation listed in rule 10.230, which include an emphasis on "the needs and interest of the parties" and "procedural flexibility."

B. Since the attendance of a "nonparty" does not impact the confidentiality or privileged nature of mediation communications pursuant to section 44.405, Florida Statutes, the mediator's giving that statute as the reason for excluding the nonparties would be improper. The appropriate procedure would be for the nonparty participants to be told that they are also bound by the confidentiality requirements in statute and rule.

C. Although a mediator would not commit a direct violation of confidentiality by suggesting that a party, without the consent of all parties,

discuss mediation communications with someone who does not attend the mediation, it is nonetheless unethical to do so because it could lead to a breach of confidentiality. Rule 10.520 and section 44.405(1), Florida Statutes. A mediator is required by rule 10.360(a) to "maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties." The word "maintain" is defined by Merriam-Webster Online as "sustain against opposition or danger; uphold and defend." The Committee would interpret the meaning of "maintain" within the context of the rule as requiring the mediator to refrain from taking any affirmative action to undermine the confidentiality of mediation, such as suggesting that a party violate the statutory confidentiality requirements. The Committee notes that this, however, does not place the mediator in the position of having to ensure others' compliance with the law.

In the question you pose, the mediator would be "directing" a mediation participant[1] to disclose a mediation communication[2] to a person other than another mediation participant or participant's counsel. A party who followed the mediator's direction would violate mediation confidentiality, and thus the mediator would be in violation of the requirement in rule 10.360(a) that the mediator maintain confidentiality, unless one of the exceptions listed in section 44.405(4)(a) applies.

Date

Fran Tetunic, Committee Chair

[1] A mediation participant is defined in section 44.403(2) as a party or "a person who attends a mediation in person or by telephone, video conference, or other electronic means."
[2] A mediation communication is defined in section 44.403(1) as "an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant during the course of a mediation, or prior to mediation if made in furtherance of a mediation...."

Advisory Opinion MEAC 2006-008

MEDIATOR ETHICS ADVISORY COMMITTEE c/o Dispute Resolution Center Supreme Court Building Tallahassee, FL 32399

March 29, 2007

The Question:

I have two questions which I would like some clarification on:

A. May a mediator in his/her report, pursuant to Fla. R. Civ. P. 1.730 or Fla. Fam. L. R. P. 12.740 state that a party and/or counsel failed to attend mediation?

B. There are times, especially in family mediation, where one party, at the commencement of mediation informs the mediator that he or she will not pay for his or her share of the mediation fee, believing that the opposing side should be responsible. This may occur, even though there is a court order stating otherwise, and prior financial arrangements have been made. May a mediator in his/her report, pursuant to Fla. R. Civ. P. 1.730 or Fla. Fam. L.R.P 12.740 state that although a party and counsel attends a mediation session, he/she failed to make arrangements for payment for mediation?

Submitted by a Certified Family Mediator
Southern Division

Authority Referenced

Rule 10.520, Florida Rules for Certified and Court-Appointed Mediators
Section 44.403, Florida Statutes
MEAC Opinions: 95-001 and 2006-003

Summary

A. Yes, a mediator may report to the court that a party or counsel has failed to attend a mediation if this conclusion is based on observation by the mediator and is not dependent on a "mediation communication" as defined in 44.403, Florida Statutes.

B. The mediator may report the fact of nonpayment of mediation fees to the court.

Opinion

A. A mediator may report to the court that a party or counsel has failed to attend a mediation if this conclusion is based on observation by the mediator and is not dependent on a "mediation communication," as defined in 44.403, Florida Statutes. Such a report would be consistent with a mediator's obligation to "comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation." Rule 10.520.

The Committee distinguishes a report of "physical failure to attend" from a report to the court that a party "did not have full settlement authority." MEAC 2006-003. In that opinion, the Committee specifically stated that a "mediator may report nonappearance in the event that a party does not physically appear at the mediation."

B. In a previous opinion, the Committee opined that "a mediator... is entitled to compensation at the time the services are rendered in accordance with the agreement of the parties or the Court order appointing the mediator." MEAC 95-001. The Committee further opined that in the event that a mediator is not paid, "the mediator may seek payment in any lawful manner" which includes the "filing of a separate lawsuit or the filing of a motion with the presiding judge seeking payment of the mediator's fee."

Since the mediator would not be relying on a "mediation communication," as defined in section 44.403, Florida Statutes, there would be no statutory confidentiality restrictions on reporting to the court that the fees were not paid (rather than reporting to the Court that the party stated s/he would not pay). Thus, the Committee believes that the mediator may report the fact of nonpayment of mediation fees to the court.

_____ _____

Date Fran Tetunic, Committee Chair

MEDIATOR ETHICS ADVISORY COMMITTEE c/o Dispute Resolution Center Supreme Court Building Tallahassee, FL 32399

March 29, 2007

The Question:

Dear MEAC:

I am the [title omitted], and I have an ethical dilemma with which I hope you can assist me.

The dilemma was created by your recent Advisory Opinion No. 2006-03 which I interpret to stand for the proposition that a mediator may not disclose a non-appearance due to lack of full authority to settle when the information was disclosed during the mediation, and, even more critically, during caucus. This proposition is based upon the theory that strict construction of Fla. Stat. §§ 44.401-406, the Mediation Confidentiality and Privilege Act, requires this information if obtained during mediation to be kept confidential as it is not an enumerated exception to the statute.

My dilemma and concern is whether a mediator can disclose any non-appearance at any stage of the mediation.

My analysis is that a mediator can not. This, of course, conflicts with your opinion 2005-007 which states that a mediator may report a non-appearance if due notice is given to the non-appearing party and good cause is not shown for rescheduling (which while it predates the opinion of 2006-03 it was after the enactment of the Confidentiality and Privilege Act). It also conflicts with Areizaga vs. Board of County Commissioners of Hillsborough County, 935 So. 2d 640 (Fla. 2d DCA 2006) and Rule 10.510 which requires a mediator to be candid with the Court, along with various Rules of Procedure which provide for sanctions for non-appearances.

My analysis is as follows:

Before the enactment of the Mediation Confidentiality and Privilege Act, the mediation commenced when the orientation was delivered by the mediator. With the enactment of Fla. Stat. 44.404, mediation begins when the Order of Referral is signed. My understanding of this provision is that the confidentially attaches when the order is signed, while the remainder of the process begins after orientation.

This provision, when coupled with MEAC Opinion 2006-03 seems to stand for the proposition that since a non-appearance is not an enumerated exception to confidentiality it is confidential.

If this is the case, and I hope it is not, I have difficulty with the concept that a mediator may not disclose that a party violated the Order of Referral to Mediation by failing to appear at the mediation, especially when a number of other sources infer that he/she can disclose that information.

Please help me out with this. Thank you for your kind attention.

Submitted by a Certified County, Family, Circuit and Dependency Mediator
Northern Division

Authority Referenced

Rules 10.360 and 10.510, Florida Rules for Certified and Court-Appointed Mediators
Section 44.403(1), Florida Statutes
Merriam-Webster Online
MEAC 2005-007
Areizaga v. Board of County Commissioners of Hillsborough County, 935 So. 2d 640 (Fla. 2nd DCA 2006)

Summary

A mediator may report a party's failure to appear at mediation so long as it is based on the physical fact of a failure to appear and not on a mediation communication or assertion.

Opinion

A mediator has the ethical obligation to maintain mediation confidentiality. Rule 10.360. Confidentiality applies to a "mediation communication," defined as "an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation." Section 44.403(1), Florida Statutes. The Committee does not view someone's failure to appear at a mediation as an "assertion" as the term is used in section 44.403(1), Florida Statutes. Therefore, the failure to appear would not be a mediation communication subject to confidentiality requirements.

The term "assert" is defined in Merriam-Webster Online as to "state or declare positively and often forcefully or aggressively." While such assertions would normally be in the written or oral mode, they may also be nonverbal. The Committee believes that the type of nonverbal assertion referenced does not extend to the act of not being present for a mediation, but is rather intended to include nonverbal actions such as a nod or shrug of the shoulders when intended to convey information.

The situation you describe is distinguished from that in MEAC 2005-007 because the latter involved communicative assertions (mediation communications) that formed the basis for a mediator reaching the determination that a party lacked the full authority to settle at mediation. The *Areizaga* opinion you reference does not conflict with MEAC 2005-007 because *Areizaga* does not involve mediation communications, but rather the physical fact of a failure to appear. Finally, the Committee notes that the candidness requirement in rule 10.510 is irrelevant since it is limited to the mediator's candor to the court regarding the mediator's qualifications, availability, and other administrative matters.

_____ _____

Date Fran Tetunic, Committee Chair

Advisory Opinion MEAC 2007-002

MEDIATOR ETHICS ADVISORY COMMITTEE c/o Dispute Resolution Center Supreme Court Building Tallahassee, FL 32399

May 1, 2007

The Question:

I am a certified circuit mediator. After a mediation conference in a civil case when a partial or final agreement is reached, the settlement agreement is reduced to writing and signed by all the parties and their counsel, if any, in accordance with Rule 1.730, Florida Rules of Civil Procedure. A Mediation Disposition Report is then filed with the court advising it that the case was resolved. Generally, I do not attach a copy of the mediated settlement agreement to the Mediation Disposition Report. In a recent case, an attorney inquired as to whether or not the mediated settlement agreement might be furnished to the employer for one of the parties. He referred me to Section 44.405(4)(a), Florida Statutes.

Under Rule 12.740(f), Florida Family Rules, a mediated settlement agreement is submitted to the court unless the parties agree otherwise.

I would appreciate a response to the following questions:

A. Would it be appropriate in a civil case to routinely attach a mediated settlement agreement (whether partial or final) to the Mediation Disposition Report which is submitted to the court after a mediation conference?

B. If one party in a civil case requests that the mediated settlement agreement be attached to the Mediation Disposition Report but the other objects, should I attach the mediated settlement agreement to the Mediation Disposition Report filed with the court?

C. If the mediated settlement agreement in a civil case is not attached to the Mediation Deposition Report filed with the court, may either of the parties furnish a copy of the mediated settlement agreement to his or her employer, a friend, acquaintance or other non-interested party?

Certified Circuit Civil Mediator
Northern Division

Authority Referenced

Rule 10.520, Florida Rules for Certified and Court-Appointed Mediators
Section 44.405(4)(a), Florida Statutes
Rule 1.730(b), Florida Rules of Civil Procedure

Summary

A. No, it would not be appropriate to routinely attach the mediated settlement agreement to a circuit civil case in light of the requirements of rule 1.730(b), Florida Rules of Civil Procedure.

B. No, see above.

C. The Committee declines to answer this question since it asks for an opinion on the behavior of someone other than a certified or court-appointed mediator.

Opinion

A. No, it would not be appropriate. "A mediator shall comply with all ... court rules ... relevant to the practice of mediation." Rule 10.520. Rule 1.730(b), Florida Rules of Civil Procedure, the rule applicable to circuit civil mediation, states in relevant part:

> If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. A report of the agreement shall be submitted to the court or a stipulation of dismissal shall be filed. . . . No agreement under this rule shall be reported to the court except as provided herein.

The plain language of the rule makes it clear that, unless the parties agree to file the agreement or the law otherwise requires its filing, the agreement must not be attached to the Mediation Disposition Report. You may *only* attach the mediated settlement agreement when required by law or upon agreement of all parties.

B. In light of the foregoing, it would be inappropriate to attach the mediated agreement to the report if any party objects, because, necessarily, you would not have the consent of all parties.

C. The Committee declines to answer this question since it asks for an opinion on the behavior of someone other than a certified or court-appointed mediator.[1]

Date

Fran Tetunic, Committee Chair

[1] However, the Committee would note that section 44.405(4)(a), Florida Statutes, provides that "there is no confidentiality or privilege attached to a signed written settlement agreement reached during a mediation, unless the parties agree otherwise...."

Florida Dispute Resolution Center
THE RESOLUTION REPORT ONLINE
June 2007 - Volume 22, Number 2
News on Dispute Resolution trends, laws and ethics

GRIEVANCES FILED WITH THE MQB

The Florida Supreme Court adopted the Florida Rules for Certified and Court-Appointed Mediators with an effective date of May 28, 1992. To date, 101 grievances have been filed (and an additional 111 "good moral character" reviews have been considered]. The regular grievances fall into the following categories:

Cases by Division
Northern – 20 (20%)
Central – 46 (45%)
Southern – 35 (35%)

Who Filed Case
Parties Involved in Mediation 74
Attorneys 13
Other.....14

Mediator Certification/ Type of Case Involved
County Mediators/County Cases 18
County Mediators/CDS Cases 2
County Mediator/Arbitration 2
County, Family Mediator/Condo 1
Family Mediator/County Case.....1
Family Mediators/Family Cases 26
Family Mediator/Circuit Case 1
Family Mediator/PC Case.....1
Circuit Mediators/Circuit Cases.....27
Circuit Mediators/Family Cases 3
Circuit Mediators/Federal Cases.....3
Circuit Mediator/Mobile Home 1
Circuit Mediator/Home Owner Association Case..... 1
County Mediator/Home Owner Association Case..... 1
Non-certified Mediator/Worker's Comp Case.....1
Non-certified mediator/ County Case..... 1
Non-certified mediator/ Family Case..... 3
Non-certified mediator/

	Circuit Case..... 1
	Certified Mediators/No Case 7

Complaint Committee Meeting with Mediator and Complainant

- This grievance was filed by a party in a county court (small claims) mediation against a county mediator. The complainant alleged that the contrary to the directions on the summons, the other party brought witnesses to the mediation. The complainant reported that she made several attempts to bring this fact to the attention of the mediator because the presence of the witnesses created a "hostile environment" for the complainant and "precipitated a confrontation" between the other party, the witnesses and the complainant. The mediator allegedly did nothing to address the situation.

  The complaint committee reviewed the grievance and found it to be facially sufficient. The committee requested a response from the mediator with regards to rules 10.220, Mediator's Role, and 10.410, Balanced Process. After reviewing the mediator's response, the complaint committee authorized the hiring of an investigator to talk with the mediator, the complainant, the defendant in the underlying case and anyone else deemed necessary to complete the investigation. After reviewing the investigator's report, the complaint committee continued to have concerns with regards to rules 10.220 and 10.410. In addition, based on the mediator's response, the committee also had questions regarding rule 10.420(a), Conduct of Mediation, and rule 10.350, Demeanor. The complainant committee requested to meet with the mediator and the complainant in an effort to continue the investigation and to attempt to resolve the complaint. As a result of the meeting, the Committee found probable cause that: (1) Allowing the opposing party's children to sit behind the Complainant during mediation did not reduce obstacles to communication, as required in rule 10.220, and (2) Failing to establish who was to be present at the mediation (parties and those agreed to by both parties) prior to starting the mediation did not facilitate a balanced process, as required by rule 10.410. The mediator, Jean Owen, accepted sanctions (sending a letter of apology to the complainant and completing additional continuing education).

- This case involved two grievances which were filed regarding the same mediation. One was filed by one of the named parties to the underlying case, and the other was filed by her mother who attended the mediation. The grievances were consolidated for review by a single complaint committee since the grievances were filed together and each referenced the other's grievance. The underlying case was a modification of a dissolution of marriage in which the former husband attended via telephone. The husband was represented by counsel who was physically present; the complainant was not represented by an attorney, but physically appeared at the mediation with her mother. The complainants alleged that the mediator did not behave in a professional manner, in violation of rule 10.350, and that the mediator failed to accurately explain confidentiality prior to the commencement of the mediation, in violation of rule 10.420(a). The complainants also alleged that the mediator misled them regarding their ability to discuss the mediation with their spouses. Specifically, the complainants believed that the mediator was going to prepare a confidentiality agreement to be signed by their spouses. The complainants also alleged that the mediator had violated their self-determination in violation of rule 10.310(b).

The complaint committee found facial sufficiency with regards to rules 10.300, Mediator's Responsibility to the Parties; 10.310, Self-Determination; 10.350, Demeanor; 10.420(a), Orientation Session, and 10.520, Compliance with Authority, and requested a response from the mediator. After reviewing the mediator's response, the complaint committee authorized the hiring of an investigator to talk with the mediator, the complainants, the opposing party in the underlying case, his attorney, and anyone else deemed necessary to complete the investigation. After reviewing the investigator's report, the complaint committee continued to have concerns with regards to rules 10.420(a) and 10.520 and requested a meeting with the mediator and the complainants. At that in person meeting, the complaint committee found no probable cause and dismissed the grievance, finding that although the complainants were confused regarding the confidentiality requirements, the mediator had not violated any of the ethical standards.

Case Dismissed After Mediator's Response

- This grievance was filed against a certified family and circuit mediator in relation to a mediator advertisement which ran in a legal periodical. The complaint alleged that the mediator violated rule 10.610, Advertising, because the advertisement stated that the mediator was "Board Certified by the Florida Supreme Court in all areas of mediation and arbitration," when there is no "Board Certification," the mediator is not certified in county or dependency, and the Florida Supreme Court does not "certify" arbitrators.

The complaint committee found facial sufficiency and requested a response from the mediator in relation to rule 10.610, Advertising. The mediator provided a comprehensive response. Based on the mediator's response, the Complaint Committee found probable cause that the mediator violated rule 10.610 by engaging in marketing practices which were misleading, but dismissed the complaint pursuant to rule 10.810(m) because the violation was of an isolated nature and was recognized and understood by the mediator. In addition, the mediator represented to the Committee that he had already modified all of his advertising and marketing to comply with a strict reading of rule 10.610 and will comply with all rules and regulations in the future.

Updated: 05/08/07 (MQB 07-06)

Florida Dispute Resolution Center

THE RESOLUTION REPORT ONLINE

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News on Dispute Resolution trends, laws and ethics

A **Schedule of Certified Mediation Training Programs** and **Mediator Searches** (*Verify Certification Status*) can both be found on DRC's website (www.flcourts.org, Alternative Dispute Resolution).