

31 August 2000

THE QUESTION

As a certified circuit and county mediator in the Central Division, I would like to elicit the opinion of the Mediator Ethics Advisory Committee concerning the following:

In its most recently revised form, Rule 10.310(a) appears mainly to reorganize ethical standards contained in prior versions of the Rules. For, example, the first sentence of “new” 10.310(a) is taken verbatim from “old” Rule 10.060(a) (second sentence). Similarly, the second sentence of the new Rule is taken verbatim from the second clause of old Rule 10.060(b). And, the first clause of the last sentence of new 10.310(a) is taken verbatim from the first sentence of old Rule 10.060(a).

My question centers on the language of the second clause of the last sentence of new Rule 10.310(a). Specifically, what is the scope of the mediator’s ethical obligation to *protect* the parties’ right of self-determination? The rest of the Rules contain a host of specific and general mediator obligations designed to promote party self-determination. Does this new language, which has no explicit counterpart (that I could find) in the old rules, impose any new duties upon mediators? Put another way, does the new language require mediators to take any specific affirmative action in order to *protect* parties’ right to self-determination? If so, what is the scope of this new duty?

Sincerely,

Certified County & Circuit Mediator
Central Division

AUTHORITY REFERENCED

Rule 10.310, Florida Rules for Certified and Court-Appointed Mediators

SUMMARY

The rules adopted in April 2000 do not impose any additional requirements upon the mediator, since the addition of the word “protect” to the rule on self-determination does not constitute a substantive change.

OPINION

Your question involves the exact meaning of the word “protecting” within the context of rule 10.310, which provides that “a mediator is responsible for assisting the parties in reaching informed

and voluntary decisions while *protecting* their right to self-determination.” (emphasis supplied) You ask whether the addition of this word to the self-determination provision in the newly-enacted rules places an affirmative duty on the mediator beyond that specifically covered elsewhere in the rules.

The verb “protect” is defined in *The New Shorter Oxford English Dictionary* as “to defend or guard against injury or danger; shield from attack or assault; support, assist . . . keep safe, take care of . . .” Methods of “protecting” the parties’ rights to self-determination include caucusing (meeting separately) and allowing for periods of reflection by the parties. The committee opines that the new rules do not impose any additional requirements upon the mediator and that the addition of the word protect to the rule on self-determination does not constitute a substantive change.¹

Date

Charles M. Rieders, Panel Chair

¹ It has come to the attention of the Mediator Ethics Advisory Committee that the Supreme Court Committee on Mediation and Arbitration Rules, in drafting the new rules, rejected the notion that the use of the term “protect” creates a duty on behalf of the mediator to intervene between a lawyer and client if the mediator thinks the lawyer is interfering with the right of the client to make a decision.