

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