

## FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2014-009  
Date of Issue: November 12, 2014

### The Question

In MEAC Opinion 2011-017, the Committee concluded that performing the dual role of mediator and interpreter/translator violated the letter and spirit of rule 10.330, which defines Impartiality as “freedom from favoritism or bias in word, action or appearance”. [Emphasis added]. Rule 10.330 does not address the role or functions of an observer who attends a mediation for the purpose of completing the mentoring requirements for initial certification.

Suppose one of the parties at a mediation conference speaks Spanish, but does not speak English. The parties and mediator are unable to locate anyone who can perform the translation or interpretation needed to conduct the mediation. An observer who is fulfilling the mentoring requirements for initial certification and who is able to speak Spanish is present at the mediation.

May the mediator permit the Spanish-speaking observer to translate or interpret for the Spanish-speaking party? Is the answer different if both parties consent to allowing the observer to perform this function?

### Authorities Referenced

Section 44.403(2), Florida Statutes

In re: Procedures Governing Certification of Mediators, Fla. Admin. Order No. AOSC11-1 (January 10, 2011)

MEAC Opinion 2011-017

### Summary

A trainee observing a mediation to fulfill mentoring requirements for initial mediator certification may not serve in the dual capacities of trainee and language translator or interpreter.

### Opinion

A trainee attending a mediation to fulfill mentoring requirements for initial mediator certification may not serve in the dual capacities of trainee and language interpreter or translator. An individual who serves as a translator or interpreter at a mediation is a mediation participant under section 44.403(2), Florida Statutes. In Florida Supreme Court Administrative Order In re: Procedures Governing Certification of Mediators, Fla. Admin. Order No. AOSC11-1 (January

10, 2011), p. 6, the court states, "The observation requirement shall not be satisfied by any individual who is a party, participant, or representative in the mediation."

The answer to the question above is not affected by party consent.



11/12/14

---

*Signed and Dated by Beth Greenfield-Mandler, MEAC Committee Chair*

## Dissent Opinion MEAC 2014-009

MEAC Opinion 2014-009 states "a trainee attending a mediation to fulfill mentoring requirements for initial mediator certification may not serve in the dual capacities of trainee and language translator or interpreter." This categorical prohibition is based on Section 44.403(2), Florida Statutes, and Administrative Order AOSC11-1. We dissent.

The Majority Opinion contradicts the spirit and educational intent of the Florida Statutes and Administrative Order, which permits a bilingual co-mediation trainee to participate and substantially contribute to the mediation process, and receive mentorship credit. The Majority Opinion also raises the issue of the role of bilingual mediators.

The Question posed does not contain the necessary facts to render an advisory opinion. It does not identify the mediation type and include essential information regarding the conduct of the mediation. The Majority Opinion, based upon the very limited facts presented in the Question, has denied the parties the opportunity to request, consent to, and participate in the mediation process.

The Majority Opinion enlarges the confusing precedent in MEAC Opinion 2011-017 which states "a certified mediator is prohibited from taking on the dual role of mediator and interpreter or translator" and opines that a mediator acting in this dual role creates a perception of "bias" or "favoritism." However, this MEAC Opinion fully recognized that bilingual mediations are frequently taking place for very good reason in Florida court authorized foreclosure mediation programs.

Without qualification, the Florida Rules for Certified and Court Appointed Mediators empower non-English speaking and limited English proficient parties to exercise the right of self-determination, to act with informed consent, and to select bilingual mediators possessing sound judgment and the ability to maintain an appearance of impartiality [notwithstanding the human condition]. We need to step into the shoes of less English proficient parties.

This Majority Opinion and MEAC Opinion 2011-017 have a chilling effect upon the role of bilingual persons with special talent in the multi-faceted field of mediation. It ignores the daily need for bilingual mediation services in high volume cases, such as debt collection and marital dissolution. By way of background, Florida is home to the fourth largest limited English proficiency population in the nation. For decades, the Florida judicial system has embraced efforts to improve the capacity of the courts to provide meaningful access to court related services (including mediation), to remove linguistic barriers, and to increase the availability and effectiveness of the mediation process.



Signed and Dated by Meah R. Tell, Esq., MEAC Committee Member Dated: 11/17/2014



Signed and Dated by Patrick J. Mastronardo, Esq. [New York], MEAC Committee Member  
Dated: 11/17/2014