

Advisory Opinion**MEAC 2011-002**

Mediator Ethics Advisory Committee

c/o Florida DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

March 14, 2011

The Question:

Re: Reporting for the Department of Financial Services, Division of Consumer Services – Insurance Mediation Program

I am a certified mediator. I recently began mediating under the above referenced program. They have a form for me to fill out at the conclusion of mediation. Among other things, it calls for the initial offer and the amount of settlement. The form states that F.S. section 627.7015 and Department Rule 69J-166.031 require me to submit the form. I have tried to submit the form without that information, but the system (it is electronic) won't accept it that way. Perhaps the cited statute obviates the general confidentiality obligations to the extent needed for the form? I have attached a copy of the aforementioned statute and rule for your convenient reference. I have also attached a copy of the form with any potential confidential information redacted.

Can I complete and submit this form without violating my confidentiality or other obligations?

Florida Supreme Certified County, Family and Circuit Court Mediator
Southern Division

Authorities Referenced

Rules 10.360 (a) and 10.520, Florida Rules for Certified and Court-Appointed Mediators
F.S. sections 44.401-405 and 627.7015
DFS Form "Disposition of Property Insurance Mediation Conference."
DFS Department Rule 69J-166.031

Summary

Yes, a mediator can complete and submit the Department of Financial Services Disposition of Property Insurance Mediation Conference form referencing a "first offer" if this information is not a mediation communication protected from disclosure by Florida Statute Chapter 44, sections 401-405, Mediation Confidentiality and Privilege Act.

Opinion

A Florida Supreme Court certified mediator serving as a mediator for the Department of Financial Services (DFS) may report a “first offer” on his or her outcome form if this information is not a mediation communication protected from disclosure by Chapter 44, sections 401-405, Mediation Confidentiality and Privilege Act. It is worthy to note, that the requirement to report a “first offer” is not contained in the statute referenced in the question, Fla. Stat. 627.7015; but rather in a department regulation, DFS Rule 69J-166.031.

The term “first offer” in and of itself is ambiguous. It may refer to an offer made by the insurance company after the claim was made, but before mediation confidentiality attached to the mediation. Or, it could have occurred during the mediation session itself. In order to avoid violating confidentiality, a mediator conducting a DFS insurance mediation may report the “first offer” made by the insurance company prior to mediation confidentiality attaching to those communications. However, if mediation confidentiality has already attached to the parties’ communications, the mediator would need to obtain the consent of the parties to report mediation communications.

Mediators are required to comply with all statutes, court rules, local court rules and administrative orders relevant to the practice of mediation and at the same time adhere to the Florida Rules for Certified and Court-Appointed Mediators. (See Rules 10.500 and 10.520) If compliance with a departmental regulation compromises a mediator’s ethical obligations, the mediator shall decline to do so. (See MEAC 2010-012)

Date

Beth Greenfield-Mandler, Committee Chair