

Advisory Opinion***MEAC 2012-001***

Mediator Ethics Advisory Committee

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

April 30, 2012

Question:

If a party to mediation indicates either directly or indirectly that he or she is suicidal during a mediation session, is the mediator permitted to disclose this information to an outside party like a law enforcement officer, etc. or is this information also considered to be confidential?

Submitted by Certified Family and Dependency Mediator
Southern Division

Authorities Referenced:

Rules 10.360, 10.400, 10.420(b)(2)-(4), Florida Rules for Certified and Court-Appointed Mediators
Section 405, (4)(a)(1)-(6), Chapter 44, Florida Statutes

Summary:

It is permissible for certified mediators to disclose mediation communications that are not confidential. In the example provided, the mediator may disclose information to an outside party, e.g., a law enforcement officer. However, the mediator must use his/her best efforts to explore the seriousness of the threat before triggering this extreme action.

Opinion:

It is permissible for certified mediators to disclose mediation communications that are not confidential. [See Rule 10.360 and Section 405, Chapter 44.405(4)(a)] Further, the mediator has a responsibility to the mediation process and “is responsible for confirming that mediation is an appropriate dispute resolution process under the circumstances of each case.” [See Florida Rules for Certified and Court Appointed Mediators 10.400]

Communications (verbal and/or nonverbal) that threaten violence are not confidential. [See Section 405, (4)(a)(1)-(6), Chapter 44] The MEAC makes no distinction between communications that threaten violence to oneself or another individual. In the example provided, the mediator may disclose the information to an outside party, e.g., a law enforcement officer. It is important to note that communications which threaten violence do not require a

mandatory report as is required for communications which reveal child or vulnerable adult abuse. A mediator should use discretion in disclosing this communication.

The MEAC cautions mediators to explore the state of mind of the party to determine if the mediator has a reasonable and credible belief that the party may cause harm. The mediator shall follow Rule 10.420(b) and assess whether the mediation can continue or whether the mediator has a duty to adjourn or terminate under Rule 10.420 (b)(2-4) which states:

“A mediator shall.....

- (2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;
- (3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;
- (4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and
- (5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.”

The MEAC concludes this opinion with a reminder to mediators that the safety of those involved in the mediation process is paramount.

Date

Beth Greenfield-Mandler, Committee Chair