

FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2014-011

Date of Issue: April 7, 2015

The Question

In MEAC 2014-006, the Committee indicated that “A mediator may not file a Notice of Mediation unless there is a court order referring the parties to mediation and the parties have selected their mediator or the parties have stipulated in writing to mediation and to that mediator in their case.” The MEAC Opinion, however, only cited Rule 10.520, Compliance with Authority, Florida Rules for Certified & Court-Appointed Mediators (hereinafter referred to as the Florida Mediator Rules), as the support for the Committee’s opinion. The question presented in MEAC Opinion 2014-006 was specifically limited to county, family, or circuit mediations, and did not mention appellate or dependency mediations.

I am aware of instances where a mediator may be asked to file a Notice of Mediation by the parties or their counsel or the mediator may offer to do so for the parties/counsel, but the circumstances indicated in the previous paragraph do not apply.

Rule 10.520 of the Mediator Rules does not expressly forbid a mediator from filing a Notice of Mediation. I have found no other provisions in the Florida Mediator Rules expressly forbidding a mediator from filing a Notice of Mediation.

Rule 9.710 of the Florida Rules of Appellate Procedure expressly authorizes a mediator in appellate mediations to notify the parties in writing of the date, time, and place of any mediation conference (the rule does not use the words “Notice of Mediation”).

Rule 1.700(a) of the Florida Rules of Civil Procedure also includes a provision authorizing a mediator to notify the parties in writing of the date, time, and location of the mediation, but could be construed to limit the mediator’s authority to one of the following circumstances: (1) the court orders the parties to mediation and the parties have selected that mediator; or (2) the parties have stipulated in writing to mediation and to that mediator in their case.

Nothing in the Family Law Rules of Procedure or the Juvenile Rules of Procedure (applicable to Dependency Mediation) specifically addresses the manner in which parties and counsel should be notified of the date, time, and location for the family mediation.

There appears to be no Mediator Rule or Rule of Procedure (Appellate, Circuit, Family, Dependency, County) prohibiting a mediator from filing a Notice of Mediation. Is MEAC taking the position in MEAC 2014-006 that unless a rule expressly authorizes a mediator to file a Notice of Mediation, the mediator is prohibited from doing it?

Would MEAC be willing to explain the authority relied upon in MEAC 2014-006 to conclude that an “A mediator may not file a Notice of Mediation” except in the very narrow circumstances briefly mentioned in that opinion?¹

Suppose the parties agree to voluntarily participate in mediation (no court order), but they haven’t strictly complied with the requirements of Rule 1.700 (they didn’t stipulate in writing). Is a mediator prohibited from filing a Notice of Mediation in this situation?

Rule 10.430, Scheduling Mediation, of the Mediator Rules states that a mediator “shall schedule a mediation . . .,” and Rule 10.510, Information to the Court, states that a mediator shall be “candid, accurate and fully responsive to the court concerning the mediator’s qualifications, availability, and other administrative matters.” [emphasis added]. Does Rule 10.430 or 10.510 provide the mediator with authority to file a Notice of Mediation?

Does Rule 9.720(c), Florida Rules of Appellate Procedure, authorize the mediator to file a Notice of Mediation in appellate mediations?

Can MEAC elaborate on what harm or potential harm, if any, is caused to the parties, the mediation process, or the court if a mediator files a Notice of Mediation that simply indicates the date, time, and location for the mediation? More importantly, can MEAC provide mediators with information about the specific Mediator Rule that would be violated if a mediator filed a Notice of Mediation?

Does the opinion in MEAC 2014-006 mean that a Residential Mortgage Foreclosure Program (or other similar programs) would also be prohibited from filing a Notice of Mediation on behalf of the program’s mediators?

Authorities Referenced

Florida Rules for Certified and Court-Appointed Mediators
 Florida Rules of Appellate Procedure 9.720, Florida Rules of Civil Procedure 1.700, Florida Family Law Rules of Procedure 12.010 and 12.740 – 12.742, and Florida Rule of Juvenile Procedure 8.290

Summary

MEAC notes a distinction between the filing of a notice of mediation with the court and notifying the parties in writing of the date, time, and specifics of a mediation. The Florida Rules for Certified and Court-Appointed Mediators and Florida procedural rules regarding mediation make mention of a mediator notifying parties but are silent as to whether a mediator may or may not file a notice of mediation with the court. The Committee is of the opinion that a mediator may not file a notice of mediation with the court unless the parties have agreed to use the

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mediator; the court has designated a mediation program which selects that mediator; or the court selects that mediator directly.

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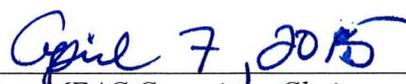
MEAC notes a distinction between filing a notice of mediation with the court and sending a written notice to the parties of the date, time, and specifics of a mediation. Filing documents with the court should be done only in limited and authorized circumstances.

The Florida Rules for Certified and Court-Appointed Mediators and the Florida procedural rules are silent as to whether a mediator may or may not file a notice of mediation with the court. See Fla. R. App. P. 9.720, Fla. R. Civ. P. 1.700, Fla. Fam. L. R. P. 12.741, and Fla. R. Juv. P. 8.290.

The Florida procedural rules pertaining to mediation include provisions regarding notifying the parties of mediation conference details with the exception of the Family Law Rules of Procedure and the Juvenile Rules of Procedure. See Fla. R. App. P. 9.720(c), Fla. R. Civ. P. 1.700, Fla. Fam. L. R. P. 12.010 and 12.740 – 12.742, and Fla. R. Juv. P. 8.290.

MEAC's overriding concern is the protection of the parties' right to self-determination in choosing and agreeing upon a mediator. This right of self-determination would be violated by a mediator who files a notice with the court unless the parties have agreed to use the mediator; the court has designated a mediation program which selects that mediator; or the court selects that mediator directly.

The MEAC declines to answer the inquiry regarding mortgage foreclosure mediation because it is too general in nature.

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

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee**Revised**

Opinion Number: 2014-011

Date of Issue: September 9, 2015

The Question

In MEAC 2014-006, the Committee indicated that “A mediator may not file a Notice of Mediation unless there is a court order referring the parties to mediation and the parties have selected their mediator or the parties have stipulated in writing to mediation and to that mediator in their case.” The MEAC Opinion, however, only cited Rule 10.520, Compliance with Authority, Florida Rules for Certified & Court-Appointed Mediators (hereinafter referred to as the Florida Mediator Rules), as the support for the Committee’s opinion. The question presented in MEAC Opinion 2014-006 was specifically limited to county, family, or circuit mediations, and did not mention appellate or dependency mediations.

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Nothing in the Family Law Rules of Procedure or the Juvenile Rules of Procedure (applicable to Dependency Mediation) specifically addresses the manner in which parties and counsel should be notified of the date, time, and location for the family mediation.

There appears to be no Mediator Rule or Rule of Procedure (Appellate, Circuit, Family, Dependency, County) prohibiting a mediator from filing a Notice Mediation. Is MEAC taking

the position in MEAC 2014-006 that unless a rule expressly authorizes a mediator to file a Notice of Mediation, the mediator is prohibited from doing it?

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not file a notice of mediation with the court. The Committee is of the opinion that a mediator may not file a notice of mediation with the court unless the parties have agreed to use the mediator; the court has designated a mediation program which selects that mediator; or the court selects that mediator directly.

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The Florida procedural rules pertaining to mediation include provisions regarding notifying the parties of mediation conference details with the exception of the Juvenile Rules of Procedure. See Fla. R. App. P. 9.720(c), Fla. R. Civ. P. 1.700, Fla. Fam. L. R. P. 12.010, 12.020, and 12.740 – 12.742, and Fla. R. Juv. P. 8.290.

MEAC's overriding concern is the protection of the parties' right to self-determination in choosing and agreeing upon a mediator. This right of self-determination would be violated by a mediator who files a notice with the court unless the parties have agreed to use the mediator; the court has designated a mediation program which selects that mediator; or the court selects that mediator directly.

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 9/9/15
Signed and Dated by Susan Dubow, MEAC Committee Chair