

FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2015-002

Date of Issue: June 2, 2015

The Question

I am a Florida Certified Circuit Civil mediator.

Facts giving rise to this inquiry:

I appeared ready to conduct a personal injury mediation arising out of a motor vehicle accident.

Plaintiff's counsel, plaintiff, defense counsel and the insurance adjuster appeared. However, neither the defendant driver nor the defendant owner appeared. Plaintiff's counsel said they were court ordered to be present, and declined to go forward without them. I intentionally did not read the court order, and I intentionally did not ask why the defendants did not to attend.

Plaintiff's counsel declined to proceed in the absence of the defendants.

Plaintiff counsel instructed me to report the non-appearance of the defendants to the court and the fact that the mediation did not go forward.

Because of time requirements, I filed the following statement in the body of my Mediation Report:

The above styled case was scheduled for mediation on 4-1-2015 before [mediator's name]. The following people appeared: [the names of the two attorneys, the plaintiff and the adjuster].

The mediation did not go forward.

Comments:

Respectfully submitted,

I have combed through the MEAC opinions, including MEAC 2005-07, which seem to say a mediator may report non-appearance, but I am still uneasy. Clearly, my report may be used for a motion seeking sanctions. This issue will undoubtedly recur, so I am hoping you will guide me.

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Supreme Court of Florida
Dispute Resolution Center

Questions:

- 1) Was it appropriate to report the names of the people who appeared for the mediation (based upon my own observation) as instructed and state that the mediation did not go forward, without any editorial as to why or any statement as to who did *not* appear?
- 2) Was I required to do so?
- 3) Under these circumstances (i.e. when participants actually show up for mediation and then decide not to proceed because of a non-appearance, as opposed to a cancellation in advance) should a mediator even file a report?
- 4) What should a mediator do when faced with this circumstance?

I am not sure if it matters to your evaluation, but I am not going to charge the parties.

Submitted by a Certified Circuit Mediator
Southern Division

Authorities Referenced

Rules 10.500 and 10.520, Florida Rules for Certified and Court-Appointed Mediators
Rules 1.720(b)(1)-(3) and 1.730(a)-(b), Florida Rules of Civil Procedure
MEAC Opinions 2007-001, 2006-008, and 2005-007

Summary

Unless there is a local court rule, court order or administrative order **requiring** a mediator to identify the parties or participants who appeared for mediation, the mediator may, but is not required to do so.

Opinion

The responses to the questions asked refer solely to civil cases in circuit court.

Question 1: In a court-ordered circuit case, the mediator may, but is not required to identify the parties and participants who appeared for mediation based on physical observation. In any report filed, the mediator may state that mediation did not occur but should do so without any statement of explanation. See MEAC Opinions 2007-001, 2006-008, and 2005-007.

Question 2: Unless there is a local court rule, court order or administrative order **requiring** a mediator to identify the parties who appeared for mediation, the mediator may, but is not required to do so. See rules 10.500 and 10.520, Florida Rules for Certified and Court-Appointed Mediators. Further, rule 1.730, Florida Rules of Civil Procedure, requires a mediator to file a report with the court identifying the existence or lack of an agreement, **without comment**

or recommendation. The rule does not specifically require the mediator to identify the parties or participants who appeared for mediation. In addition, rule 1.720(b), Appearance at Mediation, Florida Rules of Civil Procedure, sets forth the conditions and notification requirements for party, party's counsel, and participant appearance at mediation. The rule is silent on the mechanism for documenting the appearance or nonappearance of any party, party's counsel, or participant.

Questions 3 and 4: The answers to Questions 3 and 4 are incorporated into the answers to Questions 1 and 2.

 6/2/15

Signed and Dated by Sue Dubow, MEAC Committee Chair