

## FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2013-005

Date of Issue: December 3, 2013

### The Question

I am a certified family mediator working on staff in [a] court mediation program. My questions relate directly to agreements in court-ordered family mediations conducted and written by court staff.

I received a request to file a “Notice of Confidential Information” pursuant to Florida Rule of Judicial Administration 2.420. The mediated agreement between the parties contained specific bank account information required by the bank in the agreement to split the account. Rule 2.420 rule states that the “filer” of a court record at the time of filing shall indicate whether any confidential information is included within the document being filed.

Question One: Is it ethically appropriate for a mediator to complete and file a “Notice of Confidential Information” pursuant to Rule 2.420, Florida Rule of Judicial Administration, upon the request of a party or party’s attorney?

Question Two: If it is appropriate, would the mediator be considered the “filer” of the information?

Question Three: If it is appropriate, would the mediator be considered a *designee of a judge*? Amendments to Rule 2.420 exclude “the clerk of court or designee of the clerk, a judge, magistrate hearing officer, or designee of a judge, magistrate, or hearing officer” from the definition of filer.

Submitted by a Certified County, Family & Dependency Mediator  
Southern Division

### Authorities Referenced

Rules 10.220, 10.300, 10.340 (d), 10.330(a), and 10.420(c), Florida Rules for Certified and Court-Appointed Mediators  
Committee Note to Rule 10.340 (d), Florida Rules for Certified and Court-Appointed Mediators  
Rule 2.420(d)(2), Florida Rules of Judicial Administration  
MEAC Opinions 2011-017 and 2011-004

## Summary

Answer to Question 1: It is beyond the scope of a mediator's role and responsibilities to complete and file a "Notice of Confidential Information within Court Filing" pursuant to rule 2.420(d)(2), Florida Rules of Judicial Administration.

Answers to Questions 2 and 3: The court is the appropriate body to determine who is considered a "filer" and a "designee of a judge" under rule 2.420(d)(2), Florida Rules of Judicial Administration; therefore, the MEAC declines to answer these questions.

## Opinion

Answer to Question 1:


It is beyond the scope of a mediator's role and responsibilities to complete and file a "Notice of Confidential Information within Court Filing" ("Notice") pursuant to rule 2.420(d)(2), Florida Rules of Judicial Administration. The role and responsibilities of the mediator are described in rules 10.220 and 10.300, Florida Rules for Certified and Court-Appointed Mediators. These include, but are not limited to: reducing obstacles to communication, assisting in the identification of issues, exploring alternatives to resolution, facilitating voluntary agreements, providing a forum for consensual dispute resolution, avoiding coercion, maintain impartiality and protecting the self-determination of the parties.

Moreover, rule 10.420(c), when outlining the closing of the mediation, indicates a mediator shall "discuss with the parties and counsel the process for formalization and implementation of the agreement." In such a discussion, the parties and their attorneys could address who among them (parties or attorneys) will file the "Notice of Confidential Information within Court Filing" and include that provision in the mediation agreement if they so desire. The MEAC believes the responsibility lies outside the realm of the mediator's role and duties.

Additionally, and perhaps most importantly, rule 10.340(d) states: "During a mediation, a mediator shall not provide any services that are not directly related to the mediation process." The Committee Note to rule 10.340(d) advises: "to maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator's professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement."

Answers to Questions 2 and 3:

The court is the appropriate body to determine who is considered a "filer" and a "designee of a judge" under rule 2.420(d)(2), Florida Rules of Judicial Administration; therefore, the MEAC declines to answer these questions.

 December 3, 2013  
 Signed and Dated by Beth Greenfield-Mandler, MEAC Committee Chair