

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Opinion Number: 2017-006

Date Issued: September 20, 2017

The Question

I am the {title and circuit omitted} ADR program. MEAC 2014-002 which permits reporting of only the words “agreement” or “no agreement” has not served our program nor the court well.

Therefore, I am requesting that you review and reconsider opinion 2014-002 based on prior MEAC Opinions 2012-009, 2010-012, 2010-007, Florida Civil Rules 1.730(a) (b), Florida Rules of Juvenile Procedure 8.290 (o) (1), Florida Family Rules 12.740(f) (3) and the form established by the Supreme Court in AO10-57 which specifically incorporates rule 1.730 both by reference to the Rule and inclusion of the text. See Exhibit 9 of the AO for the Supreme Court promulgated Report Form. Surely the Florida Supreme Court would not have included “partial agreement” in the form promulgated by them if it were not permitted. In addition to the above I request that you consider the dissent to Opinion 2014-002 as the more reasoned and practical approach to the reporting issue.

The inability to differentiate between a final and partial agreement on the face of the report as permitted by the mediation procedural rules has created an ethical dilemma for the program mediators and the need to report to the court the actual outcome of the mediation and the status of the case. It is not only misleading to the court to report only “agreement” or “no agreement” it is also time consuming for the judges, judicial assistant’s or case managers to have to read every agreement to determine if it is final or partial agreement as opposed to being able to look at the report.

FSC Family and Circuit Mediator
Southwest Division

Authorities Referenced

Rule 1.730(a) and (b), Florida Rules of Civil Procedure

Rule 12.740(f)(3), Florida Family Law Rules of Procedure

MEAC Opinions 2014-002, 2013-006, 2012-009, 2010-012, and 2010-007

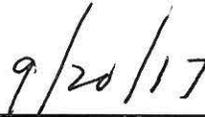
Summary

A mediator may report “agreement,” “no agreement,” or “partial agreement” to the court without comment or recommendation. No other descriptors or modifiers may be used in the mediator report unless the parties have consented to them in writing.

Opinion

After review of previous MEAC opinions and analysis of the various rules of procedure regarding reporting the outcome of a mediation, the MEAC retracts its 2014-002 opinion and any other opinion inconsistent with this opinion. The committee interprets the rules to allow a mediator to report “agreement,” “no agreement,” or “partial agreement” to the court, without comment or recommendation.

Further, as is stated in Florida Rule of Civil Procedure 1.730(a) and Family Law Rule of Procedure 12.740(f)(3), in civil and family law cases only, with the consent of the parties, the mediator’s report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement. To report anything additional without agreement of the parties, or add descriptors or modifiers to “agreement,” “no agreement,” or “partial agreement,” would be providing information to the court, an action which is prohibited by the Mediation Confidentiality and Privilege Act, sections 44.401-405, Florida Statutes. However, these rules do not restrict the parties from including in the written agreement their consent to the inclusion of additional language, descriptors, or modifiers in the mediator’s report.

Signed and Dated by Susan Dubow, MEAC Committee Chair