

THE QUESTION:

What about an opinion from the Advisor's Panel on the following:

Mediator is assigned a case involving a husband and wife suing the husband's ex wife. In the course of mediation ex wife jumps to feet and using a pencil (supplied by mediator) making stabbing motion and stated "I'll kill you." Mediator terminated mediation and had the case scheduled for trial.

Question. Should mediator report threat? Currently we do not report on threatening remarks.

Threatened party subsequently filed a complaint with the sheriff. Question. Should or may the mediator voluntarily testify as to the threat made? No actual physical violence took place, only verbal threat. In our interpretation this is communication and as such is protected.

What should the mediator do if subpoenaed? We would appreciate your advice on a recurring problem.

Sincerely,

County Certified Mediator
Northern Division

SUMMARY OF THE OPINION:

The mediator should neither voluntarily report this incident nor voluntarily testify about the incident.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.080(a).

Chapter 44, Florida Statutes - 44.102(3)

OPINION:

The panel is of the opinion that the mediator should not voluntarily report this incident because to do so would be a violation of rule 10.080(a), which requires the mediator to preserve and maintain the confidentiality of all mediation proceedings except where required by law to disclose information. Section 44.102(3), Florida Statutes, which requires a mediator not to divulge communications made during a mediation proceeding unless all the parties otherwise agree, would be applicable to such communication. The panel also believes that the mediator should not voluntarily testify, and, if subpoenaed, should either file a motion for a protective order, or notify the judge in accordance with local procedures, that the mediator is statutorily required to maintain the confidentiality of mediation proceedings.

In a case where a court, notwithstanding the statutory provision, issues an order for the mediator to testify, the panel believes that the better approach would be to follow the court order.

Date

Charles Rieders, MQAP Chair