

**THE QUESTION:**

Frequently at the end of a mediation, when the mediator inquires as to each parties ability to pay the mediator's fee, one or both parties indicate that they do not have all of the funds to pay the fee, or failed to bring their checkbook. I have drafted the following paragraph for inclusion in the Mediation Agreement when the parties indicate that they are not paying the mediation fee in full at the conclusion of the mediation. Does the panel see any ethical violations or rules violations by the inclusion of said language in the actual Mediation Agreement when one or both parties are pro se? Please note that all parties and/or counsel are advised in advance of the mediation in writing, that the mediation fee is due and payable in full at the conclusion of the mediation, and of the increased hourly rate for any potential collection efforts by the mediator.

*Mediator's Fees:* The mediators fees are due and payable upon execution of this Agreement, however one or both parties did not bring the necessary funds to pay their share of the mediation fee. The parties agree to pay their share of the mediators fee within three (3) days of the execution of this Agreement; failing which, the parties agree that the mediator may file a Motion for Sanctions with the Court seeking an award of not only the balance owed by each party, but for any additional work required by the mediator in collecting his fee and/or enforcing this Agreement. The parties have been advised that in such event, the mediator will be compensated at his normal hourly rate of \$200.00 per hour, and that any Judgement or Court Order obtained may be enforced through any legal means, including but not limited to an Income Deduction Order, and/or an imposition of an Equitable Lien on any and all real or personal property of the defaulting party within the jurisdiction of this Court. Counsel for both parties have reviewed and discussed the language of this paragraph with their respective clients and counsel has advised them of its significance, and both parties and their counsel have agreed to the aforesaid language.

Certified Family Mediator,

Southern Division

**SUMMARY OF THE OPINION:**

Notification of the terms of payment must be furnished to the parties within a reasonable period of time prior to the mediation.

**AUTHORITY REFERENCED:**

**Rules:** Florida Rules for Certified and Court-Appointed Mediators -  
10.060(b), 10.060(c), 10.100(a).

**OPINION:**

The panel declines to determine the legality of such an agreement (e.g. whether a mediator would in fact be entitled to an equitable lien or an income deduction order), but it finds that the proposed paragraph raises ethical issues.

Rule 10.100(a) provides, in relevant part, that “if fees are charged, a mediator shall give a written explanation of the fees and related costs, including time and manner of payment, to the parties prior to the mediation.” The panel believes that this notification must be furnished within a reasonable period of time prior to the parties’ arrival at the mediation conference. The panel is of the opinion that the appropriate location for such a paragraph is in the agreement to mediate (between the mediator and the party) rather than in the parties’ settlement agreement at the conclusion of mediation for two reasons. First, the mediator may sign a settlement agreement as mediator but should not become an “interested party” to the agreement; second, pursuant to rule 10.060(b), the mediator is prohibited from coercing or unfairly influencing a party into a settlement agreement or making substantive decisions for any party to a mediation process. The parties may feel coerced if they are asked to include the paragraph in the agreement after they have concluded the mediation.

The panel believes, however, that the parties may include such language when they are represented by counsel and agree in advance to such a fee arrangement. However, the final sentence of the suggested paragraph would be inappropriate when parties are unrepresented. See rule 10.060(c).

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Date

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Charles Rieders, Panel Chair