

June 1, 2001

THE QUESTION

On behalf of the Grievance Mediation Committee, I am requesting an opinion from the Mediator Advisory Ethics Committee regarding the responsibilities of a nonlawyer mediator as a result of the following hypothetical facts:

During the course of a Bar Grievance Mediation conference, in which a fee dispute is an issue, the Respondent member of The Florida Bar discloses the fact that he is in possession of a videotape depicting the Complainant engaged in activities that may be criminal in nature, and threatens or implies that, unless the fee dispute is resolved in a fashion favorable to the Respondent, he intends to turn the incriminating tape over to the State Attorney to consider prosecution of the Complainant.

Question: May, or should the mediator disclose the Respondent lawyer's apparent violation of Rule 4-3.4, Rules Regulating The Florida Bar, or is the mediator required to maintain the confidentiality of the mediation process?

This situation has arisen recently and our committee is requesting your guidance in this matter. Thank you for your assistance. Please note I am a certified mediator.

Sincerely,

Certified Circuit Mediator
Northern Division

AUTHORITY REFERENCED

Rule 3-8.1(i), Rules Regulating the Florida Bar
Rules 10.360(a) and 10.650, Florida Rules for Certified and Court-Appointed Mediators
Section 44.102(3), Florida Statutes
MEAC 2001-002, MQAP 96-005, MQAP 99-012

SUMMARY

A non-attorney Florida Supreme Court certified mediator should not disclose communications made during a Florida Bar Grievance Mediation session even if such testimony may be relevant in a subsequent disciplinary proceeding.

OPINION

The Committee notes that pursuant to rule 3-8.1(i), Rules Regulating the Florida Bar, the Florida Rules for Certified and Court-Appointed Mediators apply to proceedings under the Florida

Bar grievance mediation program unless in conflict with the Florida Bar rules. While other ethical standards to which a mediator may be professionally bound are not abrogated, the Florida Rules for Certified and Court-Appointed Mediators “prevail over any conflicting ethical standard to which a mediator may otherwise be bound.” See rule 10.650. This question¹ relates specifically to a nonlawyer mediator. Although subject to the Florida Rules for Certified and Court-Appointed Mediators, a nonlawyer mediator is not bound by the Rules Regulating the Florida Bar.

Therefore, pursuant to section 44.102(3), Florida Statutes, and rule 10.360(a), the mediator is required to maintain the confidentiality of the mediation process. See MEAC 2001-002, MQAP 96-005 and MQAP 99-012.

Date

Charles M. Rieders, Committee Chair

¹ Pursuant to rule 10.900(a), the MEAC provides written advisory opinions in response to questions posed by “mediators subject to these rules” and does not answer hypothetical questions. The Committee answers this question because, although the drafter states that the question contains “hypothetical facts,” s/he later states that “the situation has recently arisen” and therefore, is not a hypothetical situation. Additionally, while the question is posed on “behalf of” a committee, it was written by a certified circuit mediator who, by definition, is subject to the rules.