

March 22, 2002

THE QUESTION

I am requesting an opinion from the MEAC regarding a serious and ongoing problem that mediators and judges alike experience during a large percentage of pretrial conference court ordered mediation hearings for County Court Small Claims actions in [a Southern Division] Judicial Circuit.

Florida Rules of Civil Procedure, Rule 1.750(e), concerning Appearance at Mediation in Small Claims actions, permits an attorney to appear on behalf of a party, providing the attorney has full authority to settle without further consultation. A non lawyer representative may appear on behalf of a party to a small claims mediation if the representative has the party's signed written authority to appear and has full authority to settle without further consultation.

In many cases these representatives, lawyer and non lawyer alike, may answer the judge's inquiry as to their full settlement authority affirmatively. Shortly thereafter, once mediation is underway, they will inform the mediator that they have no authority to settle, or that their authority has been limited by their non-appearing client or the person they represent. This is a clear violation of Small Claims Rules, frustrates the process itself and is unfair to the opposing party.

Question: Since a party's representative entered mediation without the full authority to settle, any possible resolution is preempted. It would then seem fitting to abort the hearing (not report an impasse), and to advise the judge of the party's violation of Rule 1.750, without any reference to case issues or discussions that may have taken place prior to the party's admission of non authority. Would simply informing the judge of a violation of Rule 1.750 constitute a violation of the confidentiality of mediation?

Sincerely,

County Mediator
Southern Division

AUTHORITY REFERENCED

Rules 10.330 and 10.360(b), Florida Rules for Certified and Court-Appointed Mediators
Rules 1.720(b) and 1.750(e), Florida Rules of Civil Procedure
Rule 7.090(f), Florida Small Claims Rules
MQAP Opinion 99-002

SUMMARY

If a party's representative reveals a lack of "full authority" in joint session and the other party decides to end the mediation, the mediator may report to the court such "non-appearance" without violating the confidentiality of mediation if the lack of authority was not revealed in caucus.

OPINION

The question you raise was previously addressed in MQAP 99-002 in relation to rule 1.720(b), Florida Rules of Civil Procedure, which is the corresponding "appearance" rule for civil cases above the small claims jurisdiction. In that Opinion, the Panel stated that when a mediation does not begin because one or more of the parties does not have full authority "the mediator may report to the court that one or more of the parties did not appear at the mediation" pursuant to the Florida Rules of Civil Procedure. On the other hand, if a mediation is concluded based on a revelation in caucus of an absence of full authority, the mediator may not report such absence to the court or to the other party because "information learned in caucus may not be revealed . . . without the consent of the revealing party." Finally, the Panel opined that if "the party makes the revelation [of a lack of authority] in front of the other party, it becomes a decision for that other party to determine whether to go forward with mediation... If they choose not to go forward with the mediation, the mediator may make a report to the court that one or more of the parties did not appear at the mediation, or a party may file an appropriate motion."

With regards to small claims mediation¹, the Committee reiterates its previous Opinion, that a mediator may not report to the party or the court that the other party's representative has revealed a lack of "full authority" in caucus, unless such representative consents to the disclosure. See rule 10.360(b). If a party's representative reveals a lack of "full authority" in joint session, the other party may decide to continue with the party's representative or may end the mediation and move for sanctions. If the mediation does not proceed, the mediator may report to the court the "non-appearance" without violating the confidentiality of mediation so long as the lack of authority was not revealed in caucus. It would not, however, be appropriate for the mediator to move for sanctions, since it would violate the mediator's requirement of impartiality. See rule 10.330.

Date

Charles M. Rieders, Committee Chair

¹ See rule 1.750(e), Florida Rules of Civil Procedure, and rule 7.090(f), Florida Small Claims Rules.