

May 1, 2007

The Question:

I am a certified circuit mediator. After a mediation conference in a civil case when a partial or final agreement is reached, the settlement agreement is reduced to writing and signed by all the parties and their counsel, if any, in accordance with Rule 1.730, Florida Rules of Civil Procedure. A Mediation Disposition Report is then filed with the court advising it that the case was resolved. Generally, I do not attach a copy of the mediated settlement agreement to the Mediation Disposition Report. In a recent case, an attorney inquired as to whether or not the mediated settlement agreement might be furnished to the employer for one of the parties. He referred me to Section 44.405(4)(a), Florida Statutes.

Under Rule 12.740(f), Florida Family Rules, a mediated settlement agreement is submitted to the court unless the parties agree otherwise.

I would appreciate a response to the following questions:

A. Would it be appropriate in a civil case to routinely attach a mediated settlement agreement (whether partial or final) to the Mediation Disposition Report which is submitted to the court after a mediation conference?

B. If one party in a civil case requests that the mediated settlement agreement be attached to the Mediation Disposition Report but the other objects, should I attach the mediated settlement agreement to the Mediation Disposition Report filed with the court?

C. If the mediated settlement agreement in a civil case is not attached to the Mediation Disposition Report filed with the court, may either of the parties furnish a copy of the mediated settlement agreement to his or her employer, a friend, acquaintance or other non-interested party?

Certified Circuit Civil Mediator
Northern Division

Authority Referenced

Rule 10.520, Florida Rules for Certified and Court-Appointed Mediators
Section 44.405(4)(a), Florida Statutes
Rule 1.730(b), Florida Rules of Civil Procedure

Summary

A. No, it would not be appropriate to routinely attach the mediated settlement agreement to a circuit civil case in light of the requirements of rule 1.730(b), Florida Rules of Civil Procedure.

B. No, see above.

C. The Committee declines to answer this question since it asks for an opinion on the behavior of someone other than a certified or court-appointed mediator.

Opinion

A. No, it would not be appropriate. “A mediator shall comply with all ... court rules ... relevant to the practice of mediation.” Rule 10.520. Rule 1.730(b), Florida Rules of Civil Procedure, the rule applicable to circuit civil mediation, states in relevant part:

If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties’ consent. A report of the agreement shall be submitted to the court or a stipulation of dismissal shall be filed. . . . No agreement under this rule shall be reported to the court except as provided herein.

The plain language of the rule makes it clear that, unless the parties agree to file the agreement or the law otherwise requires its filing, the agreement must not be attached to the Mediation Disposition Report. You may *only* attach the mediated settlement agreement when required by law or upon agreement of all parties.

B. In light of the foregoing, it would be inappropriate to attach the mediated agreement to the report if any party objects, because, necessarily, you would not have the consent of all parties.

C. The Committee declines to answer this question since it asks for an opinion on the behavior of someone other than a certified or court-appointed mediator.¹

Date

Fran Tetunic, Committee Chair

¹ However, the Committee would note that section 44.405(4)(a), Florida Statutes, provides that “there is no confidentiality or privilege attached to a signed written settlement agreement reached during a mediation, unless the parties agree otherwise....”