

**Mediator Ethics Advisory Committee (MEAC) Opinions  
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Opinion	Subject Matter	Current Cites
<b>Advertising / Solicitation – 19 opinions</b>		
95-006	It is inappropriate for a certified mediator to use the State Seal or Seal of the Supreme Court of Florida on any advertisements without express permission.	Rule 10.520 Section 15.03, Florida Statutes
95-007	It is unethical to advertise that a mediator will provide a “dispassionate evaluation.”	Rule 10.610 Section 44.1011, Florida Statutes
96-004	A mediator is not prohibited from soliciting letters of reference from persons for whom s/he has served as a mediator. Evaluations are not categorically excluded from use in advertising so long as the advertising is truthful.	Rules 10.330(c), 10.360(c), 10.610, 10.690(c)
97-007	Using the mediation process to incur future business as a realtor is a violation of the rules.	Rule 10.330(c)
97-008	Producing a TV show with real parties in a live mediation in not a violation so long as the parties are informed of their right to confidentiality and waive it.	Rule 10.360 Section 44.405(2), Florida Statute <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
98-001	Sending follow-up letters with information on a mediator’s services sent after a mediator withdraws or report is filed with the court, does not violate the rules so long as it is done consistent with impartiality and advertising rule requirements.	Rule 10.330(c) <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
99-013	Letterhead which includes 2 names and the statement “Circuit Court Mediation” along with other designations where only one of the named persons are certified constitutes misleading advertising, and therefore, is violative of the rules.	Rule 10.610 <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
2001-006	Letters to attorneys and other parties advertising one’s services are permissible. Logo embossed items of minimal value are permissible forms of advertising. Items of greater value may create the appearance of mediator bias, and therefore, should be avoided. Lunches and golf outings paid for by the mediator for the purpose of developing goodwill and attracting future clients are inappropriate activities.	Rules 10.330(c), 10.340, 10.610 and 10.620 Committee Notes to rule 10.340
2002-003	The generic designation “certified mediator” is inherently misleading and therefore in violation of rule 10.610	Rule 10.610 MEAC 99-013

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2002-004	Sponsoring a sports tournament which is open to the public or holding a silent auction to raise monies for charitable causes for the purpose of advertising (incorporating the name of a mediation firm) are permissible if consistent with rules 10.330, 10.340, 10.610 and 10.620.	Rules 10.330, 10.340, 10.610 and 10.620 MEAC 2001-006
2004-001	In regard to a mediator advertisement with the reference to being a “judge”, the use of the term “judge” alone may confuse or mislead the public in violation of rule 10.610. The mediator may need to include clarifying information in order for such practice to be permissible.	Rule 10.610 MEAC 2002-003 and 99-013
2004-005	Providing a party, upon request, with information which could have been provided at an earlier point in the mediation process does not constitute solicitation of services and thus is not a violation of these rules.	Rules 10.330(a) and (c), 10.340, 10.610 MEAC 97-007
2006-001	If the quotation provided is the complete advertisement and the telephone number relates to a person (or company) that does provide mediation services[“Got Conflict... Mediate, Divorce through mediation contested or uncontested. Call 555-5555”], it does not violate the mediator’s ethical standard for advertising. However, if the advertising mediator is not competent to mediate the cases advertised, or if there were additional text which was false or misleading, the advertisement would violate rule 10.610.	Rules 10.100(e), 10.370, 10.610, and 10.640; 1.720(f), 8.290(e) & 12.741(b)(6) MEAC 99-013, 2000-004 and 2000-009
2007-006	A mediator who was a former judge may include the referenced information in marketing material if the information is accurate and honest and is not false or misleading.	Rule 10.610 MEAC Opinions 1999-013, 2002-003, and 2004-001
2008-003	A mediator is not prohibited from including accurate information in marketing material so long as it is not misleading; therefore, the mediator may use the information and/or logo, if it is clear that the rating relates to the attorney-mediator’s law practice (as opposed to his/her mediation practice).	Rule 10.610 MEAC Opinions 2004-001 and 2007-006
2008-005	A. A mediator may ethically engage in unsolicited direct marketing to the parties and/or attorneys in dissolution of marriage cases using information posted online by court clerks, but may do so only in strict compliance with Rule 10.610 governing mediator advertising. Any mediator engaging in this practice must also bear in mind the extent to which mishandling such communication may damage the	Rules 10.310(b), 10.330(a), 10.520, 10.610, 10.620, and 10.650 Rules 12.740 and 12.741 Rule 4-7.4(b)(2), Rules Regulating The Florida Bar MEAC Opinions 2001-006 and

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	<p>reputation of individual mediators and community acceptance of the profession at large.</p> <p>B. It is not ethical for a mediator to send out a notice of mediation directly to the parties in the manner suggested in the inquiry.</p>	2003-004
2009-001	It is not permissible to serve as a general magistrate and mediator for the same case.	Rules 10.310; 10.330; 10.340; 10.360; 10.900, Florida Rules for Certified and Court-Appointed Mediators MEAC Opinion 96-002
2009-005	Although the rules do not explicitly prohibit mediators from holding themselves out as “experts” in advertisements and web pages, communications regarding mediator qualifications or services must be both accurate and honest and may not contain false or misleading information.	Rule 10.610 MEAC Opinions 2004-001 and 2002-003
2009-006	A certified mediator may provide a curriculum vita, solicited or unsolicited, to a trial judge for the purpose of receiving case referrals from that judge.	Rules 10.510, 10.530, 10.610 Rule 1.720(f)(2), Florida Rules of Civil Procedure Rule 8.290(e)(1) , Florida Rules of Juvenile Procedure Rule 12.741(6)(B), Florida Family Law Rules of Procedure
<b>Advice, Opinions or Information – 10 opinions</b>		
95-002	It is improper for a mediator to provide legal advice even if framed as a question. Information on interest rates fall into the category of advice on legal options.	Rules 10.220, 10.230, 10.310(b), 10.330, 10.370(a) - (b) <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
95-005	A mediator who is informed in caucus of hidden assets should withdraw from the mediation unless disclosure is made. If a party “misses” a cause of action, a mediator is precluded from giving legal advice to point this out. The ethical rules apply to non-certified mediators who mediate court-ordered cases.	Rules 10.200, 10.310(c), 10.330, 10.360(b), 10.370(a) - (b), 10.420(b) <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
96-003	A mediator may not inform a party of a “right to make a claim” for loss of consortium. A mediator may not ask why a claim is not being made, but should determine competency of the party to enter into negotiations and proceed without counsel.	Rules 10.310(a) - (b), 10.340(d), 10.370(a) - (b), 10.420(b) <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
2000-009	Assisting pro se litigants with filling out forms approved by	Rules 10.330(c), 10.370,

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	the Supreme Court of Florida after a mediated settlement agreement is not a per se violation of the mediation rules; however, caution should be exercised to ensure compliance with mediation rules and other professions' standards of conduct.	10.380(c) and 10.650 Opinion 86-8, Fl Bar Ethics Opinions Rule 10-2.1, Rules Regulating the Florida Bar
2001-003	Assisting pro se litigants with filling out forms approved by the Supreme Court of Florida after a mediated settlement agreement is not a per se violation of the mediation rules; however, caution should be exercised to ensure compliance with mediation rules and other professions' standards of conduct.	MEAC 2000-009
2003-002	A certified mediator does not have an ethical obligation to <i>advise</i> a party without an attorney in a family mediation where an agreement is signed to take the signed agreement to an attorney.	Rules 10.310(a), 10.330(a), 10.370(b), 10.410 and 10.520 Kalof v. Kalof, 28 Fla. L. Weekly D678 (Fla. 3d DCA March 12, 2003)
2003-011	All of the Standards of Professional Conduct for Mediators found in Part II, Florida Rules for Certified and Court-Appointed Mediators, are applicable to all types of certified and court-appointed mediators. There is no exception for county mediators in relation to the provision prohibiting mediators from predicting how the court will decide a case.	Rules 10.200, 10.310. 10.330 and 10.370(c)
2006-006	A mediator is obligated to advise a party of the <i>right</i> to seek counsel, if the mediator believes that the party does not understand or appreciate how an agreement may adversely affect the party's legal rights or obligations, but is prohibited from giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues."	Rules 10.330, 10.310(a), and 10.370
2008-002	Although the rules do not explicitly contain a prohibition against asking the question you pose, a mediator should not engage in such conduct. A representative of a credit card company overhearing a mediator telling an opposing party to contact a member of Congress regarding interest rates may have some (legitimate) concerns regarding the mediator's impartiality in the mediation which just concluded. These concerns would also extend to any subsequent mediations that the mediator may conduct with that representative.	Rules 10.330, 10.340(a), Committee Notes to rule 10.330
2008-004	While the MEAC is unable to state that the described impasse avoidance techniques are per se ethical, it acknowledges that	Rules 10.210, 10.220, 10.310(a), 10.330(a), 10.370(a) and (c),

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	the techniques may at times be ethically utilized by a mediator. Any mediator choosing to proceed with either approach must do so only after first considering the various limiting provisions in the rules and the totality of the circumstances.	10.420(b) Committee Notes to Rule 10.370
<b>Business Practices – 14 opinions</b>		
95-001	If a mediator is not paid for services, the mediator may seek payment in any lawful manner.	Rules 10.380, 1.720(g)
95-004	Records retention/disposal requirements are not ethical in nature and therefore not within the jurisdiction of the MEAC.	Rules 10.360(c) and 10.380(d)
95-008	A mediator who agrees to perform services for a specified fee via court-order, must do so unless relieved of that duty by the court.	Rules 10.200, 10.340(d), 10.380, 10.520, 10.620; 1.720(g) <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
96-001	Case referral service involvement.	Rules 10.330, 10.340(b), 10.380(e), 10.610, 10.620
97-005	Notification of the terms of payment must be furnished to the parties within a reasonable period of time prior to the mediation.	Rules 10.310(b)-(c), 10.380(c).
98-002	Retention of mediation records is not an ethical issue.	MEAC 95-004
98-003	There are no licensure requirements for mediators, the court may not appoint a corporation as a mediator, but may appoint an individual who is associated with a group.	Rules 10.100(b), 10.200, 10.520, 10.620; 1.720(f)
98-006	Pre-suit mediation agreements which name a specific individual as the exclusive mediator are suspect.	Rules 10.330, 10.340(a) - (b), 10.620 MEAC 96-001
99-005	The rules imply that any gift to court personnel is prohibited.	Rules 10.330(c), 10.530; Section 112.148(6)(d), Florida Statutes <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
99-011	From the information provided, the panel finds nothing which would preclude a mediator from participating as mediator with the mediation services corporation referenced.	Rules 10.340, 10.380, 10.620 <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
2001-001	A mediator may not compensate another for merely making a referral, but may compensate a colleague or mediation service for actual work performed by that colleague or mediation service.	Rules 10.380(c)(3), 10.380(e)

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2004-012	Ethically, a certified mediator is required to preserve the quality of the profession, to maintain forthright business practices, Rule 10.600, not provide any service that would compromise the mediator’s integrity or impartiality, Rule 10.620, and should support the advancement of mediation by participating in public education, Rule 10.690(c). Consistent with those provisions, it is permissive for the charges for CME to be set by competitive market forces.	Rules 10.600, 10.620, 10.690(c), 10.900(a) AOSC06-9 (Administrative Order Governing Certification of Mediators) <i>Note: Changes to the Administrative Order in 2006 may impact this opinion.</i>
2005-001	The HOA Program billing procedures do not present any <i>per se</i> ethical concerns related to fees, expenses, or impartiality for a Florida Supreme Court certified mediator who participates in this program so long as the fees and their allocation between the parties are disclosed in advance of the mediation to the parties or their counsel, and the parties are given the option of agreeing to that arrangement or negotiating a different one.	Rules 10.330, 10.380, and 10.520; Section 720.311, Florida Statutes 61B-82.004, Florida Administrative Code.
2006-004	A certified mediator is subject to a good moral character requirement and is prohibited from performing any act which would compromise the mediator’s integrity; however, there is no general prohibition regarding a mediator exhibiting behavior “unbecoming” a mediator. In addition, the actions of an attorney or a party in a mediation, cannot be judged as if they were those of a mediator.	Rules 10.110, 10.310(d), 10.420(b) and 10.620
<b>Confidentiality – 26 opinions</b>		
95-003	If a party wishes to make a phone call to aid decision- making or agreement, the mediator should remind the party of the confidentiality privilege.	Rules 10.360(a), 10.520; 1.720(b); Sections 44.405(2), 90.507, Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
95-010	A mediator may not disclose information to a party’s attorney who does not attend mediation.	Rules 10.360(a), 10.370(b); Section 44.405(2), Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
96-005	A mediator should not voluntarily report nor testify about threats made during mediation.	Rule 10.360(a); Section 44.405(2), Florida Statute <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this</i>

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97-006	A psychologist mediator has no duty to warn an individual of a threat which becomes known during a mediation.	Rule 10.650; Sections 44.405(2), 455.2415, 490.0147, 491.0147, Florida Statutes <i>Note: Changes to rules in 2000 and the statute in 2004 may impact this opinion.</i>
97-009	Information obtained from parties prior to the commencement of mediation which would be confidential if obtained during mediation, is confidential.	Rules 10.230(e), 10.360(a); Statute 44.405(2); MEAC 96-005 <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
99-002	A mediator may not report to the court information regarding authority if learned in caucus. A mediator may report to the court that one or more parties did not appear at mediation if learned outside of caucus. A mediator is not prohibited from contact with a party over objection of counsel, but should consider the impact of such decision.  <b><i>Note: Read MEAC Opinion 2006-003 as it has rescinded portions of MEAC 1999-002</i></b>	Rules 10.310, 10.330, 10.360(a) - (b), 10.370, 10.420(b); 1.720(b) and (e); Section 44.405(2), Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2000 &amp; 2006 may impact this opinion.</i>
99-010	There is no statutory or rule requirement that a mediator's notes taken during a family mediation be kept in the file. Any notes which relate to confidential information cannot be part of a public file.	Rules 2.051(c)(7) (Rules of Judicial Administration); 10.360; 12.740(f)(3); Section 44.405(2), Florida Statute Ch. 119, Florida Statutes <i>Note: Changes to the statute in 2004 may impact this opinion.</i>
99-012	(a) At the conclusion of a family mediation, upon request from an attorney, a mediator may, under certain conditions disclose to the party's attorney(s) the factual circumstances surrounding a mediation agreement; however, under no circumstances would it be appropriate for a mediator to offer his/her personal opinion about the case. (b) A mediator should not voluntarily testify in court regarding information learned in mediation. The mediator may testify if all parties waive their privilege or the court orders the	Rules 10.330, 10.360(a), 10.360(b), 10.520 Section 44.405(2), Florida Statutes MEAC 96-005 <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>

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	mediator to testify.	
2000-002	A mediator is not ethically prohibited from signing an agreement to mediate which states that for mediations conducted under the program, the mediator agrees not to voluntarily testify “unless one of the participants makes a genuine threat of physical harm, reports criminal activity... reports fraud or abuse of postal property or suspected child or elder abuse.” If an issue listed in the statement is revealed during a mediation, the mediator may report the activity without committing an ethical violation.	Rules 10.200; 1.700 - 1.750; 8.290; 12.740, 12.741; Section 44.405(2), Florida Statutes; MEAC 96-005, 99-012 <i>Note: Changes to the statute in 2004 may impact this opinion.</i>
2000-010	Rule 10.420(a)(3) requires a mediator to inform mediation participants that mediation communications are confidential, except where disclosure is required by law. There is no requirement to go into detail as to any specific statutory provisions.	Rules 10.420(a)(3) and 10.900(a); Sections 39.201, 44.405(2) and 415.1034, Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
2001-002	A mediator should not voluntarily agree to testify in a bar grievance proceeding in order to preserve the statutory and court rule confidentiality provisions, unless ordered by a court to do so.	Rule 10.360(a); Section 44.405(2), Florida Statutes; MEAC 96-005, 99-012 <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
2001-005	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.	Rule 3-8.1(i), Rules Regulating the Florida Bar; Rules 10.360(a), 10.650; Section 44.405(2), Florida Statutes MEAC 96-005, 99-012, 2001-002 <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
2001-008	A mediator should not voluntarily prepare an affidavit or voluntarily testify regarding the papers which were brought to mediation based on rules governing impartiality and confidentiality.	Rules 10.330 and 10.360(a); Sections 44.405(2), 44.201(5), Florida Statutes MEAC 96-005, 99-012, 2001-002, 2001-005; <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>

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2001-010	<p>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.</p> <p><b><i>Note: Read MEAC Opinion 2006-003 as it has rescinded portions of MEAC 2001-010</i></b></p>	<p>Rules 10.330, 10.360, 1.720(b), 1.750(e), 7.090(f) MEAC 99-002 <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i></p>
2002-002	<p>The Committee retains confidence in the continuing correctness of MEAC 2001-005.</p>	<p>Rule 10.360(a) Section 44.405(2), Florida Statutes Chapter 90-188, Laws of Florida MEAC 2001-005 <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i></p>
2003-003	<p>There is no requirement that a mediator go into detail as to any specific statutory provisions.</p>	<p>Rules 10.370(a) and 10.420(a)(3), MEAC 2000-010 <i>Note: Changes to the rules in 2006 may impact this opinion.</i></p>
2003-005	<p>A mediator may establish a ground rule for the mediation that nothing in caucus will be deemed confidential unless a party specifically indicates that it should be confidential, if the party has expressly consented to such a procedure.</p>	<p>Rules 10.360(a) – (b) and 10.420(a)(3) <i>Note: Changes to the rules in 2006 may impact this opinion.</i></p>
2003-007	<p>A mediator does not commit an ethical violation by merely distributing, at the request of a judge, a form to parties requiring them to describe the basis for contesting the claim or counterclaim so long as the mediator plays no role in assisting the parties in completing the form, and there is a clear distinction between the end of the mediation and the completion of the form.</p>	<p>Rules 10.520; 1.730(a); 7.090 Section 44.405(2), Florida Statutes MEAC 2001-007 <i>Note: Changes to the statute in 2004 may impact this opinion.</i></p>
2003-008	<p>There is no ethical violation for a mediator to complete statistical forms so long as the mediator does not reveal any confidential communications from the mediation. A county court mediator may sign a statistical form since a mediator has an ethical duty to assist the court in maintaining these types of records.</p>	<p>Rules 10.360(a) and (c), 10.510, 10.520; 1.730(a) and (b) Section 44.405(2), Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i></p>

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2004-010	The written apology you reference falls within the definition of a “mediation communication” and, therefore, it is confidential, since it is not included in the written agreement, has not been waived by the parties, and does not fall within any of the enumerated exceptions under section 44.405(4)(a), Florida Statutes.	Rule 10.360(a) Sections 44.401 – 44.106, Florida Statutes Section 69.081(8) and Chapter 688, Florida Statutes <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
2004-011	A. Absent either waiver by the parties or a requirement to report imposed by law, a certified or court-appointed mediator shall not reveal information communicated during a mediation. B. The Florida Bar would be the appropriate body to provide guidance in relation to attorney ethical questions. With regards to the mediator standards, Rule 10.620 states that a mediator “shall not . . . perform any act that would compromise the mediator’s integrity or impartiality,” both of which appear to be brought into question in the scenario described.	Rules 10.360, 10.520, and 10.620 Sections 44.401-44.406, Florida Statutes MQB 2003-002 <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
2005-003	The Committee lacks the jurisdiction to determine whether a mediation should be treated as a negotiation for purposes of sections 447.605(2) and 286.011(3), Florida Statutes. However, if a mediation falls within the scope of the Mediation and Confidentiality and Privilege Act, then all mediation participants are obligated to adhere to its provisions.	Sections 44.401 – 44.406, Florida Statutes
2005-005	1. While a mediation unit is not a mediator per se, many of the communications made to the mediation unit would be included under the umbrella of confidentiality. Each co-mediator is to be treated as a mediator subject to the Florida Mediation Confidentiality and Privilege Act. The Committee declines to answer the question whether the party breached confidentiality as being beyond its jurisdiction. 2 and 3. Assuming the party has affirmatively requested that the complaint be handled at the trial court level, the mediator may reveal mediation communications to the mediation office charged with investigating the conduct. 4. Revelations made by a mediator in furtherance of a grievance investigation should be kept in a separate file independent from the court file. 5. The relationship described in the question would not necessarily be a “clear conflict” requiring the withdrawal of the mediator regardless of the express agreement of the parties.	Rules 10.230(f), 10.300, 10.330, 10.340(b) and (c), 10.410, 10.810(b) and (c), 10.900(a), Committee Notes to Rule 10.340 Sections 44.401 – 44.406, Florida Statutes

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	<p>However, if the mediator is no longer impartial or the parties request that the mediator no longer continue, the mediator is required to withdraw from the mediation.</p> <p>6. A different mediator within the mediation unit may mediate if all parties, being aware of the relationship, are agreeable to proceeding.</p> <p>7, 8, and 9. The Committee declines to answer these questions because they are outside the Committee’s jurisdiction.</p>	
2006-003	<p>A) Yes, it would be an ethical violation to report to the court that a party did not have full settlement authority. Under the circumstances presented, the mediator is limited to reporting that no agreement was reached.</p> <p>B) No, the parties’ signatures on the stipulation form are insufficient to authorize a mediator to disclose otherwise confidential information.</p>	<p>Rules 10.360, 10.500; 1.720(b) and 1.730(a) Sections 44.401 – 44.406, Florida Statutes MEAC 95-009, 99-002, 2001-010 and 2004-006</p>
2006-005	<p>The filing of a grievance with The Florida Bar is not necessarily precluded by statutory and rule confidentiality requirements. However, based on the facts of this question, the filing of a grievance with The Florida Bar is prohibited. Whether any other persons may report the attorney litigant’s action to The Florida Bar is beyond the scope of the Committee’s function since it would involve an interpretation of the attorney ethics code.</p>	<p>Rules 10.330, 10.360, 10.400, 10.600 Sections 44.403(1) and 44.405(4)(a) Florida Statutes Rules Regulating The Florida Bar 4-8.3 and Comments to 4-1.12</p>
2006-008	<p>A. A mediator may report to the court that a party or counsel has failed to attend a mediation if this conclusion is based on observation by the mediator and is not dependent on a “mediation communication” as defined in 44.403, Florida Statutes.</p> <p>B. The mediator may report the fact of nonpayment of mediation fees to the court.</p>	<p>Rule 10.520, Section 44.403, Florida Statutes MEAC Opinions: 95-001 and 2006-003</p>
2007-001	<p>A mediator may report a party’s failure to appear at mediation so long as it is based on the physical fact of a failure to appear and not on a mediation communication or assertion.</p>	<p>Rules 10.360 and 10.510, Section 44.403(1), Florida Statutes Merriam-Webster Online MEAC 2005-007 <i>Areizaga v. Board of County Commissioners of Hillsborough County</i>, 935 So. 2d 640 (Fla. 2<sup>nd</sup> DCA 2006)</p>
Conflicts of Interest - 28 opinions		

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94-002	Serving as co-counsel following service as mediator for the same case is not permitted.	Rules 10.200, 10.330, 10.340, 10.360, 10.620 <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
94-003	Serving as counsel following service as mediator for the same case is not permitted.	Rules 10.340(d), 10.420(c), and 10.620; 1.730(b) and 12.740(f)(1)
96-002	Mediator should decline serving as a Special Master following mediating a case.	Rules 10.360, 10.620; Section 44.405(2), Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>
97-002	An attorney-mediator may represent a party in a subsequent dissolution of marriage.	Rules 10.330(c), 10.340(d), 10.620 <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
97-003	Mediating for parties who have been marriage counseling clients is permissible, if both request.	Rules 10.330, 10.340(b), 10.610, 10.620, 10.650 <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
98-004	A mediator may disclose that s/he has mediated with an attorney, claims representatives, or other parties previously, but is not required to do so unless there is a “close personal relationship” or other circumstance specifically referenced in the rules.	Rules 10.330(b), 10.340(a)-(b)
99-001	It is permissible for an attorney mediator to subsequently serve as an attorney for an individual in an unrelated case against a party who participated in a mediation with this mediator.	Rules 10.330(c), 10.620 MEAC 97-002
99-006	A mediator’s employment as a Deputy Clerk do not inherently cause ethical concerns.	Rules 10.330(a), 10.340, 10.620
99-007	A GAL is not expressly prohibited from becoming certified or serving as a mediator in dependency cases.	Rules: 10.340(a) - (c)
99-008	Providing training to persons who are later parties to a mediation does not preclude a mediator from mediating so long as disclosure is made and parties request the mediator to serve.	Rules 10.340(a) - (c)
99-009	The mediation rules do not prohibit a full-time mediator employed by the county from mediating privately on his/her own time.	Rules 10.330, 10.340, 10.500, 10.620 Chapter 112, Part III, Florida

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		Statutes <i>Note: Changes to the rules in 2000 may impact this opinion.</i>
2000-006	A mediator is not precluded from mediating as case in which one of the parties who previously attended a parenting course taught by the mediator.	Rules 10.330, 10.340(a), 10.340(c) MEAC 97-003 and 99-008
2000-008	A GAL is not expressly prohibited from becoming certified or serving as a mediator in dependency cases.	Rules 10.340(a)-(c) MEAC 99-007
2001-009	A. Referring cases to and receiving referrals from a firm for a fee may constitute a conflict necessitating the mediator's withdrawal. B. A mediator must disclose former associations, such as previous employment, but is not be required to withdraw unless such past relationship constitutes a clear conflict.	Rules 10.330(a), 10.340(a)-(c), Committee Note to rule 10.340
2001-011	It would be ethically inappropriate to become counsel of record for either party in their pending divorce when the first contact was a joint meeting to discuss mediation.	Rules 10.310, 10.330(a) - (c), 10.360(a), 10.370(b) - (c) MEAC 94-003, 97-009 <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
2002-005	Serving as the mediator for a case involving a party to mediation against whom your law firm has cases pending creates a clear conflict necessitating the withdrawal of the mediator, regardless of the express agreement of the parties	Rule 10.340 MEAC 2001-009
2003-006	Having once acted as an advocate for one party, it would be unethical for a mediator to subsequently conduct a mediation, irrespective of waivers from all parties, since there would be a clear conflict of interest pursuant to rule 10.340(a).	Rule 10.340(a) and Committee Notes MEAC 94-002, 94-003 and 99-001
2004-004	A. A mediator may record or memorialize the parties' agreement but, it is not the mediator's role to make substantive decisions for the parties. In recording the parties' agreement, a mediator must observe the ethical rules regarding impartiality, professional advice, and other professions' standards, such as the unauthorized practice of law. B. While a mediator may assist the parties in completing authorized forms, a mediator should stop short of "drafting" the Petition for Dissolution, Answer, or other pleadings. C. Drafting pleadings and providing advice on how to file them would be an inappropriate additional service not directly related to the mediation process.	Rules 10.330(a); 10.340(d); 10.420(c); 10.620; 10.650; 12.740(f)(1) Section 44.404(1), Florida Statutes MEAC 94-003, 2000-009, 2001-003

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	<p>D. It is inappropriate for a mediator to represent either party in a dissolution proceeding or in any matter arising out of the subject mediation.</p> <p>E. The Committee declines to answer the question of whether appearing at a final hearing and eliciting “basic information” is the practice of law. However, such activity is inappropriate for a mediator.</p>	
2004-007	MEAC Opinions are based on the facts presented in the question. Prior representation of a party to a mediation, which involved different parties, a different case or different subject matter would be subject to disclosure and <i>may</i> be waivable based on a case by case determination.	Rule 10.340 MEAC 2003-006
2004-008	Mediating a case your daughter is personally handling would be a nonwaivable, clear conflict, while her firm’s case with which she had no involvement, is a conflict of interest which may be waivable after disclosure.	Rules 10.330(a) and 10.340(a)-(c)
2005-002	While your position as a judicial assistant does not automatically prohibit you from mediating, you are still obligated not to mediate a matter that “presents a clear or undisclosed conflict of interest,” Rule 10.340(a). You are required to make this determination on a case by case basis.	Rule 10.340(a) MEAC 99-006
2005-004	It is inappropriate for a mediator to represent either one party or both parties in any dissolution proceeding or in any matter arising out of the subject mediation. There is no ethical obligation under the Florida Rules for Certified and Court-Appointed Mediators for a mediator to report allegations of ethical violations by another mediator.	Rule 10.340(d) MEAC 94-003 and 2004-004
2005-006	A mediator (who is also an attorney) engaged in an ongoing legal relationship with a third party administrator must not serve as a mediator in cases involving the third party administrator because it is a clear, nonwaivable conflict of interest. A mediator (who is also an attorney) may serve in cases involving a reinsurer, even if some of the mediator’s legal clients utilize the same re-insurer, if the relationship is disclosed and the parties waive any potential conflict because such a relationship is not a clear conflict of interest.	Rules 10.330, 10.340, and 10.620 MEAC 2003-006 and 2004-007
2007-005	It is not ethically proper to prepare retirement orders after having served as mediator for the case regardless of whether the parties have waived any conflict of interest.	Rules 10.340(d) and 10.620 MEAC Opinions 2004-004, and 2005-004

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2008-007	A clear conflict of interest exists whenever a law firm in which a mediator is a partner is part of an adversary process involving a party to the mediation regardless of the size of the law firm, the location of other cases, or the mediator's lack of personal involvement.	Rule 10.340 MEAC Opinion 2002-005
2008-008	There is a clear conflict of interest when a mediator, having mediated a dispute, subsequently represents or otherwise takes a position for or against a former party in a related matter.	Rules 10.340 (a)-(c), 10.620, and 10.650 MEAC Opinions 94-002, 94-003, 96-002, and 2005-004 Rules 4-1.12 and 4-2.4, Rules Regulating the Florida Bar
2009-003	A mediator's permissible marketing efforts depend on fact-specific circumstances such as cost and whether intended to cultivate favor with particular potential future clients.	Rules 10.330; 10.340; 10.610, 10.620, Florida Rules for Certified and Court-Appointed Mediators MEAC Opinions 2001-006 and 2002-004
2009-004	<p>A mediator's impartiality is not necessarily compromised nor is a conflict created simply because a mediator agrees to serve for a reduced fee as a "preferred" provider; however, any mediator who has an ongoing relationship for the provision of mediation services needs to determine whether that relationship affects impartiality or creates a conflict of interest.</p> <p>Agreeing to the terms described and mediating cases scheduled as a result of that agreement does not appear to compromise a mediator's integrity or impartiality nor violate the requirement that mediators respect the professional relationships of other mediators.</p>	Fla. Stat. § 440.25(3)(b) (2008) Rules 10.330, 10.340, 10.380(a) and (e), 10.620, and 10.660 MEAC Opinions 96-001 and 98-006
<b>Procedures – 31 opinions</b>		
94-001	With consent of counsel and parties and stipulation of confidentiality, contact with parties after mediation in an additional effort to resolve case permissible.	Rules 10.200, 10.220, 10.360(a); Sections 44.405(2) and 90.408, Florida Statutes <i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i>

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95-009	<p>When mediation is court-ordered, the parties are required to appear at mediation. If they leave prior to the mediator completing an opening statement, the mediator may report non-appearance. After completion of the opening statement, if the parties choose not to stay at mediation, the mediator may only report impasse to the court. No rule exists which requires a party to negotiate in “good faith.”</p> <p><b><i>Note: Read MEAC Opinion 2006-003 as it has rescinded portions of MEAC 1995-009</i></b></p>	<p>Rules 10.420(a) - (b); 1.720(b) and (d), 1.730(a), 1.750(e); 8.290(l) and (o)(2); 12.740(d) and (f)</p> <p><i>Note: Changes to the rules in 2006 may impact this opinion.</i></p>
97-001	<p>A mediator is not prohibited from having contact with either party before or during mediation.</p>	<p>Rules 10.330(a), 1.720(e), 12.741(b)(5),</p> <p><i>Opinion applicable for county, family and circuit. May not be applicable to dependency.</i></p>
97-004	<p>A mediator should not mediate if an armed deputy is necessary.</p>	<p>Rules 10.360(a), 10.420(b); Section 44.405(2), Florida Statutes</p> <p><i>Note: Changes to the statute in 2004 and rules in 2006 may impact this opinion.</i></p>
98-005	<p>When a meeting take place without the presence of the mediator, it is not a mediation.</p>	<p>Rules 10.420(b); 1.720(c), 1.720(d)</p>
98-007	<p>In a Bar Grievance Mediation conducted by a certified mediator, the resolution of a representative’s authority is necessary prior to proceeding with a mediation. Mediation may continue if a valid durable power of attorney is in place, if not, the mediation should be canceled.</p>	<p>Rules 10.420(b); 1.720(b); MEAC 95-002; Rules Regulating the Florida Bar 3-8.1(i)</p> <p><i>Note: Changes to the rules in 2000 may impact this opinion.</i></p>
99-003	<p>A mediator has discretion regarding providing his/her notes upon request of a party.</p>	<p>Rule 10.330(a)</p>
99-004	<p>With agreement of the parties, a non-lawyer may assist at a court-ordered mediation and participate in the negotiations.</p>	<p>Rules - none cited</p>
2000-001	<p>A mediator has an ethical obligation to allow a minimum of 2 observations of their mediations per year, even if certified in more than one area. With regards to the mentorship requirements, the term “observe” does not refer to co-mediation.</p>	<p>Rules 10.520, 10.690(b); AOSC06-9 (Administrative Order Governing Certification of Mediators)</p> <p><i>Note: Changes to the Administrative Order in 2006 may impact this opinion.</i></p>

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2000-003	Pursuant to the rules, the reason for cancellation or postponement should not be explained in the mediator's report.	Rules 10.310(d), 10.360(a); 1.730(a); 8.290(o)(2), 12.740(f)(3) <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
2000-004	The rules adopted in April 2000 do not impose any additional requirements upon the mediator with regard to self-determination, since the addition of the word "protect" to the rule 10.310(a) does not constitute a substantive change.	Rules 10.310, 10.060(a) - (b)
2000-005	A mediator should not continue to mediate when a party objects to that mediator. However, if all parties agree and it is feasible, such mediation may continue, under certain circumstances, as a co-mediation, a bifurcated proceeding, or in some other acceptable format.	Rules 10.300, 10.330(a), 10.340, 10.620; 1.720(b); MEAC 95-009, 99-008
2000-007	The appointment of a non-certified mediator violates procedural rules.	Rules 10.200, 10.330(a), 10.340(a) and (c), 10.620; 1.720(f)(1)(B); 8.290(e)(2)(B); 12.741(b)(6)(A)(ii)
2001-004	(a) and (b) A mediator should declare an impasse upon request of a party, but need not immediately cancel a mediation because a party calls an attorney or other "extra-mediation source or advisor." (c) A mediator should not report to the court that a party was not mediating in good faith since there is no requirement that a party mediate in good faith. A mediator's report should be limited to only those matters authorized by applicable court rule. (d) The actions of an attorney to a party to mediation are subject to the ethical jurisdiction of the Florida Bar not the MEAC. In addition, a mediator should not voluntarily testify or disclose confidential communications absent a waiver.	Rules 10.220, 10.310, 10.420(b)(3); 1.720(b) and 1.730(a), 8.290(l) and 8.290(o)(2), 12.740(d) and (f), MEAC 95-003, 95-009, 96-005, 99-012 <i>Note: Changes to the statute in 2004 and to the rules and MEAC 96-005 &amp; 99-01 in 2006 may impact this opinion.</i>
2001-007	It is not appropriate for an arbitrary time limit to be imposed for mediation services. While a judge may interrupt the mediation and request that it be concluded, impasse should not be declared if the parties have not reached impasse.	Rules 10.230, 10.310(a), 10.420(b), 10.430, 10.500
2002-001	The requirements of 1.720(b)(1), Florida Rules of Civil Procedure, regarding appearances cannot be satisfied by the physical presence of the party's attorney or in-house counsel of an entity without the named party.	Rules 10.420(b)(3), 10.420(b)(4), 1.720(b) MEAC 99-002 (a) Carbino v. Ward, 801 So. 2d 1028 (Fla. 5th DCA 2001)

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2003-001	A mediator shall adjourn or terminate a workers' compensation mediation where there is a complete absence of bargaining ability. This determination must be made on a case by case basis. Telephonic mediation does not automatically render a mediation inappropriate. A mediator should be mindful of the extent of the relationship between the mediator and a particular carrier or adjuster which must, at a minimum, be disclosed and may become a clear conflict of interest which is not waivable.	Rules 10.200, 10.310, 10.410, 10.420(b)(3) - (b)(4), 10.330(b), 10.340(b) - (c), 10.520 and 10.650; 1.720, Sections 440.25(3)(a)2 and 44.106, Florida Statutes Rules 4.300(b) and 4.361(d), Florida Rules of Workers' Compensation Procedure Rule 60Q-6.110(3), Florida Administrative Code
2003-004	A. By contracting with only one party in a dispute, the mediator may have violated the general impartiality requirement contained in rule 10.330(a). B. Initiating the mediation process without the required judicial involvement is a violation of the ethical rules. C. Referencing sanctions for failure to participate in a mediation in a case which has not yet been court-ordered to mediation, is a violation of the ethical rules. D. A mediator must comply with ethical and procedural rules in relation to charging fees for mediation. Failure to do so would be an ethical violation.	Rules 10.310(b), 10.330(a), 10.380, 10.520, 10.610 and 10.620, 12.740 and 12.741 MEAC 96-001 and 98-006
2003-009	A mediator has no affirmative duty at the beginning of a mediation to inquire about a representative's authority.	Rule 10.420(a) MEAC 99-002 <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
2003-010	A. Pursuant to family court rules, a mediator is obligated to see that a mediated agreement is reduced to writing, but is not obligated to write the agreement. This rule does not conflict with the statutory provision requiring the mediator to prepare a consent order, since this provision merely requires such agreement to be incorporated into a consent order prepared by the mediator. B. While a mediator cannot compel parties who have reached an agreement to put such agreement in writing and sign it immediately, the mediator does have the obligation to "discuss with the parties and counsel the process for formalization and implementation of the agreement," and to see that the agreement is "memorialized appropriately."	Rules 10.420, 10.520; 12.740 Section 61.183, Florida Statutes MEAC 95-009
2004-006	When a mediator receives a court order in advance of a mediation, which contains provisions which are contrary to	Rules 10.200, 10.220, 10.310, 10.360(a), 10.500, 10.510, and

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	<p>the mediator’s role and requires the mediator to act in a manner that is inconsistent with the mediator’s ethical rules, the mediator should decline participation in the mediation.</p>	<p>10.520; 1.730(a), 8.290(o)(2), 12.740(f)(3); Sections 44.401 – 44.406, Florida Statutes MEAC 95-009, 96-005, 99-012, 2001-004 <i>Avril v. Civilmar</i>, 605 So 2d 988 (Fla. 4<sup>th</sup> DCA 1992) <i>Evans v. State</i>, 603 So 2d 15 (Fla. 5<sup>th</sup> DCA 1992) <i>Chabotte v. Chabotte</i>, 707 So 2d 923 (Fla. 4<sup>th</sup> DCA 1998) <i>Note: Changes to the rules in 2006 may impact this opinion.</i></p>
2004-009	<p>While the Committee does not have jurisdiction to apply the Workers’ Compensation statute to the specific facts in your question, the Florida Rules for Certified and Court-Appointed Mediators, to which all certified mediators must adhere, makes clear that if the mediator believes that the mediation entails fraud, duress, the absence of bargaining ability or unconscionability, the mediator is required to terminate the mediation.</p>	<p>Rules 10.200, 10.410, and 10.420(b)(4), In Re: Florida Rules of Workers’ Compensation Procedure, 891 So2d 474 (Fla. 2004) Rule 4.361(d), Florida Rules of Workers’ Compensation Procedure (repealed December 2, 2004)</p>
2005-007	<p>A and C: If a party is requesting that the mediation be rescheduled for “good cause,” the mediation should be rescheduled to a mutually convenient time consistent with rule 10.330(a). If the party is objecting to attending mediation, the mediator cannot compel attendance, however, the party should be advised that pursuant to rule 12.741(b)(2), the party may be subject to sanctions by the court for “nonappearance.” B: A report to the court regarding nonappearance should not include any reason for the nonappearance. D: A date for mediation may be set without the advance agreement of all parties, but then any party would be permitted to request that it be rescheduled. E: A mediator may report non-appearance at a mediation if the mediator gave the non-appearing party due notice of the date and time for the mediation session and good cause was not shown for rescheduling.</p>	<p>Rules 10.310, 10.330(a) and 10.520; 1.720(f), 12.740(f) and 12.741(b)(6), 8.290(e) MEAC 2000-003</p>
2006-002	<p>Given the judge’s intervention, the mediator must carefully monitor the parties’ participation in the mediation to ascertain the parties’ ability to exercise self-determination and must be</p>	<p>Rules 10.220, 10.230, 10.300, 10.310(d), 10.420 (a) &amp; (b), 10.900</p>

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	prepared to terminate the mediation if any party is unable or unwilling to participate meaningfully in the process. A mediator is not relieved of ethical responsibilities by writing the “agreement” up as a “scrivener.”	Section 44.404(1)(b), Florida Statutes <i>Chabotte v. Chabotte</i> , 707 So.2d 923 (Fla. 4th DCA 1998) <i>Note: Changes to the rules in 2006 may impact this opinion.</i>
2006-007	A. While a mediator may facilitate discussion on the subject between the parties, the mediator may not “dictate” to the parties who attends their mediation. B. The appropriate procedure would be for the nonparty participants to be told that they are also bound by the confidentiality requirements in statute and rule. C. Although a mediator would not commit a direct violation of confidentiality by suggesting that a party, without the consent of all parties, discuss mediation communications with someone who does not attend the mediation, it is nonetheless unethical to do so because it could lead to a breach of confidentiality by another.	Rules 10.230, 10.310(a), 10.360(a), and 10.520, Sections 44.403(1) and (2), 44.405(1) and 44.405(4)(a), Florida Statutes
2007-002	A. 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. If one party objects, the agreement can not be attached. 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.	Rules 1.730(b) and 10.520, Section 44.405(4)(a), Florida Statutes
2007-003	Conducting a second mediation with only three of the original four parties to a prior mediation agreement (the fourth party is not aware of the second mediation), which was based on the occurrence of a contingent event, prior to the deadline for the contingency to have occurred, would be inconsistent with your ethical obligations.	Rules 10.310, 10.330(a), and 10.620, Florida Rules for Certified and Court-Appointed Mediators Committee Note to Rule 10.330
2007-004	Following a judicial requirement limiting the participants in the mediation would not require the mediator to commit an ethical violation and therefore may be complied with without conflicting with the opinion rendered in MEAC 2006-007.	Rules 10.310(a), 10.500 and 10.520 MEAC Opinions 2001-007, 2003-007, 2003-008, 2004-006, 2006-002 and 2006-007
2008-001	A. It is ethically inappropriate for a mediator to make the determination as to whether a party has complied with a judge’s discovery order. B. It would be inappropriate for a mediator to cancel mediation merely because of the assertion that one party has	Rules 10.230, 10.310, 10.330(a), 10.360, 10.370(c), 10.420(b), 10.500, 10.620, and 10.900, Committee Note to rule 10.310, Rule 1.730(a), Rule 8.290(o)(2),

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	<p>not complied with a discovery order.</p> <p>C. Since it is not appropriate for the mediator to make the determination to cancel the mediation, the mediator would not be in a position of filing a report with the judge stating that the mediator did so.</p> <p>D. This question is beyond the jurisdiction of the MEAC; however, care should be taken to ensure that the unit does not provide any service that would cause mediators to compromise their integrity or impartiality.</p>	<p>Rule 12.740(f)(3), Section 44.401- Section 44.406, Florida Statutes MEAC Opinions 2000-003 and 2006-003</p>
2008-006	<p>A. It is not permissible for a mediator to dictate, over the parties' objections, who participates in a mediation caucus.</p> <p>B. If someone participates in a mediation, either a full session or just a caucus, that person is a mediation participant subject to the confidentiality requirements under Florida's Mediation Confidentiality and Privilege Act. Under the statute, there is no violation of confidentiality associated with disclosing mediation communications to another mediation participant.</p>	<p>Rules 10.310(a) and 10.420, Sections 44.403(2) and 44.405(1), Florida Statutes MEAC Opinion 2006-007</p>

June 23, 2009

Rule Cite Key:

1.700 et. seq. is found in the Florida Rules of Civil Procedure

8.290 et. seq. is found in the Florida Rules of Juvenile Procedure

10.100 et. seq. is found in the Florida Rules for Certified and Court-Appointed Mediators

12.000 et. seq. is found in the Florida Family Law Rules of Procedure