

Advisory Opinion***MEAC 2011-017***

Mediator Ethics Advisory Committee

c/o Florida DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

February 1, 2012

The Question:

RE: Ethics Opinion 2010-04: A Mediator is prohibited from serving the dual role of mediator and notary; affirmed in 2011-004

This is a parallel question on this opinion. That is, is a Certified Circuit Civil Mediator prohibited under Rule 10.340(d) from serving in the dual role of mediator and interpreter/translator?

As a specific background, this practice is occurring frequently in the RMFMP foreclosure mediations. In repeated instances, Spanish speaking mediators are being routinely given assignment preference over English-only speakers in these mediations.

Although notary services could be considered relatively innocuous, interpreter/translator services are very intimate in nature and may border on a perception of the interpreter/translator actually being an advocate and not a neutral. In all cases it would be the defendants (those being foreclosed on by the lenders) who may be Spanish-only speaking. Would this carry with it the specter of other ethics problems?

If interpreter/translator services are necessary for communication, should it be the responsibility of the Mediator Manager to provide such services separately and not the mediator's? Most Mediation Manager's have Spanish speakers on staff or can arrange for one inexpensively so there should not be any resulting financial hardship. Obviously, as available to them, lenders also have the capacity of seeing to it that their attorney or representative be Spanish speaking.

Therefore, should mediators be prohibited from interpreting/translating and should the RMFMP programs give any preference to Spanish speaking mediators?

Thank-you for your consideration and opinion.

Submitted by Certified Circuit Civil Mediator
Central Division

Authorities Referenced:

Rule 10.340(d), Rules for Certified and Court-Appointed Mediators
Committee Note to Rule 10.340, Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2011-004, 2010-004, 2007-005 and 2004-004

Summary:

A mediator is prohibited from taking on the dual role of mediator and interpreter or translator.

The responsibilities of a Residential Mortgage Foreclosure Mediation Program (RMFMP) and the actions of a RMFMP manager are outside the jurisdiction of the MEAC. Therefore, the MEAC declines to answer questions concerning specifics regarding RMFMP management.

Opinion:

Rule 10.340(d), Conflict During Mediation, Florida Rules for Certified and Court-Appointed Mediator, states in part that “During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.” The Committee Note to rule 10.340 continues in part, “To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator’s professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement.” Further, under rule 10.330, Impartiality, it is the mediator’s obligation to remain impartial and “assist all parties, as opposed to any one individual”. By taking on the role not only of mediator but also of translator or interpreter may create, if not the actuality, the perception of bias.

All individuals have biases and prejudices. Impartiality, in rule 10.330, is defined as “freedom from favoritism or bias in word, action or appearance”. [emphasis added] What is not mentioned is a freedom from “thought”. Regardless of how impartial the mediator may think s/he is, in attempting to interpret the language or thoughts of others, the mediator’s own subconscious biases or favoritism may seep in or be perceived to have entered into how the mediator is performing this service. It is the opinion of the MEAC that performing such dual roles would be a violation of the letter and spirit of rule 10.330. (See also MEAC Opinions 2011-004, 2010-004, 2007-005 and 2004-004).

Whether or not the RMFMP program should provide interpreter or translator services is a legal and contractual question and beyond the jurisdiction of the MEAC.*

Date

Beth Greenfield-Mandler, Committee Chair

*The MEAC notes, without providing any opinion on whose responsibility it is to provide the service, that interpreters may at times be required under the Americans with Disabilities Act.