

Advisory Opinion***MEAC 2011-004***

Mediator Ethics Advisory Committee

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

March 14, 2011

The Question:

RE: Ethics Opinion 2010-04: A Mediator is prohibited from serving the dual role of mediator and notary.

I am the only Court-based mediator currently serving in our County (name omitted) for Family and Dependency Mediations. I was completely amazed to read the MEAC decisions that it is unethical for me to notarize documents signed in my presence while I am serving as Mediator. I am completely unable to make any sort of sense out of this decision.

As a Notary, I check the person's ID and attest that they have signed the document without duress. I simply cannot see anything in the least unethical in that.

In fact, for Dependency and TPR mediations, notarizing Consents and Surrenders has been one of my most important functions over the last seven years.

We regularly have parents brought to Court from jail or prison for Dependency or TPR mediations. If the parent chooses to sign a Consent or a Surrender, it must be notarized. Because I am now prohibited from notarizing, it appears these cases may have to go to trial rather than be taken off the docket; the parent might want to Consent or Surrender but they will have to come to trial to do so. This will incur much additional cost in bringing the prisoners back for trial, and will further backlog the trial docket.

I have advised Court Administration of the need to replace my services as Notary. It may be that the Clerk's office will be willing to take one of their employees away from her duties to provide this service. I do not believe we can scour the halls looking for itinerate notaries for this purpose, as these cases are confidential and I believe that bringing in another unrelated person to notarize would compromise the confidentiality of both the case and the mediation.

For Family Law mediations, one of our judges (name omitted) has indicated a preference that I notarize the mediation agreements. Naturally, due to the MEAC opinion, I will no longer do so. But I have notarized these agreements because notarization added to their validity and helped the parties to recognize the solemnity of what they had signed. I will now note that they provided an ID and signed without duress, but I will not do so in the role of Notary. I believe the only difference may be in the perception of the parties; people feel more bound by a paper that is notarized. I think it is unfortunate if the mediation agreements appear less binding due to this misguided MEAC decision.

I have been an attorney since 1992 and a certified mediator since 2000; I have never had a bar complaint or mediation grievance. I believe I have a good sense of ethical conduct. I think

this MEAC decision makes no sense and will cause unnecessary hardship on parties and the Court, and should be reconsidered.

Certified County, Family, Dependency Mediator
Central Division

Authorities Referenced

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

Summary

The Committee remains confident in the continuing correctness of MEAC 2010-004 which states in part, “a mediator is prohibited from taking on the dual role of mediator and notary.”

Opinion

MEAC Opinion 2010-004 posed the question as to the appropriateness of a certified mediator offering his services as a notary during the mediation process. The Committee retains confidence in its conclusion and affirms its position that a mediator is prohibited from taking on the dual role of mediator and notary.

In MEAC Opinion 2010-004, the Committee stated:

Rule 10.340(d), Conflict during Mediation, the Rules for Certified and Court-Appointed Mediators states, “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. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself. By way of example, a mediator would therefore be prohibited from providing accounting, psychiatric or legal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process.”

See MEAC Opinions 2004-004 and 2007-005 as additional resources.

Date

Beth Greenfield-Mandler, Committee Chair