The Question

Rule 10.430 states “a mediator shall schedule a mediation in a manner that provides [a]dequate time for the parties to fully exercise their right of self-determination.” [Emphasis added]

Rule 10.310 (d) states “If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.

The Committee Notes for Rule 10.310 emphasizes “It is critical that the parties’ right to self-determination is preserved during all phases of mediation.” [Emphasis added]

Rule 10.620 states “a mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator’s integrity or impartiality.”

Rule 10.400 states “a mediator is responsible for safeguarding the mediation process.”

The Committee Notes for Rule 10.400 refers to “a mandate for adequate time for mediation sessions, and the process for adjournment.” [Emphasis added]

A mediator is employed by a State Mediation Unit. That unit utilizes two hour sessions for family mediations. Frequently, this amount of time is not sufficient for the parties to adequately mediate the case and the mediation can’t continue because the mediator has another mediation scheduled immediately or shortly thereafter. The situation results in the parties not having adequate time to exercise self-determination, and/or the mediator rushing or working through his lunch, which causes great stress on the parties and the mediator. This process also compromises the quality of the work as the mediator is often unable to thoroughly review the agreement.

Does Rule 10.430 require that the State Mediation Unit allow sufficient time for a mediation and a process for adjournment and the reconvening? Is it the parties in their exercise of their right to self-determination that ultimately determines the time necessary to complete the mediation?

Rule 10.370 (a) states “consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.”
The Committee Notes to Rules 10.370 states “the primary role of the mediator is to facilitate a process which will provide the parties an opportunity to resolve all or part of a dispute by agreement if they choose to do so. A mediator may assist in that endeavor by providing relevant information or helping the parties obtain such information from other sources.

Frequently, pro se parties appear at a family mediation without financial affidavits and the mediator is often requested to assist the parties in completing the affidavits because they are necessary to calculate child-support. Sometimes questions may arise as to what is information and what is legal advice. One example is what is considered a contingent asset or other requests for information that may require a legal interpretation.

In MEAC Opinions 2000-009 and 2001-003, the Mediator Ethics Advisory Committee concluded that “assisting pro se litigants 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’ standard of conduct.”

Question 1: Whether it violates mediator’s ethics to set cases so close that they cannot adequately mediate the previous case when the mediator has no participation in scheduling the cases and is required to mediate the case with insufficient time to complete it?

Question 2: Whether the mediator can ethically assist the parties in completing financial affidavits which ask questions that often require interpretation by the attorney-mediator? An example of which is “what is a contingent asset”?

Submitted by a FSC County, Circuit, Family, Dependency and Appellate Mediator
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Authorities Referenced

Rules 10.430, 10.310(d), 10.370(a), 10.400, and 10.620, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2000-009, 2001-003, and 2009-007

Summary

A mediator shall not schedule a mediation in a manner that does not provide adequate time for the parties to fully exercise their right of self-determination. The process must allow for the mediation to be adjourned and reconvened to complete the mediation if the parties so choose. A mediator must respond in a manner consistent with the Rules for Certified and Court-Appointed Mediators when asked by pro se parties to provide information. A mediator may assist the party in filling out Florida Supreme Court approved forms, but must ensure that the information provided for the forms is from the party whom they are assisting.

Mediator Ethics Advisory Committee Opinion 2017-003
Answer to Question 1:

Rule 10.400 states that a mediator is responsible for safeguarding the mediation process and the Committee Notes to the rule describe rules 10.400 – 10.430, pertaining to the mediator’s responsibilities to the mediation process, as containing a mandate for adequate time for mediation sessions, and the process for adjournment.

A party’s right to self-determination is essential to the mediation process and must be maintained throughout the entire process. Rule 10.430, Florida Rules for Certified and Court-Appointed Mediators, states:

“A mediator shall schedule a mediation in a manner that provides adequate time for the parties to exercise their right of self-determination.”

Under rule 10.420(b)(1), one of the mediator’s responsibilities is to offer the parties the option of adjourning the mediation to return on another day for an additional session if they so choose. This choice is part of the parties’ right of self-determination and would apply to the scenario described herein.

There is no rule that states a specific amount of time must be delegated for a mediation session. Some mediations take longer than others due to any number of factors, including the complexity of the issues and the parties to the case. It would not be correct to say that a mediation cannot be completed in two hours, or any specific amount of time, and conversely it would not be correct to say a mediation must be completed in two hours, or any specific amount of time. Rule 10.430 requires that the parties be provided adequate time to exercise their right of self-determination; therefore, it must be the party’s exercise of self-determination that dictates the time required to mediate and not the mediator or a person/entity responsible for scheduling the mediation.

Answer to Question 2:

Rule 10.370(a) provides that “a mediator may provide information that the mediator is qualified by training or experience to provide.” The mediator is constrained by rule 10.370(c) which states “a mediator shall not offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct resolution of any issue.” Consistent with MEAC Opinions 2000-009, 2001-003, and 2009-007, a mediator may assist pro se litigants with filling out forms approved by the Florida Supreme Court, however, the information submitted on the forms must come from the party whom the mediator is assisting. In the example provided, it would be appropriate for the mediator to provide a source for the definition of a contingent asset, which in this case would be the Florida Supreme Court Long Form Financial Affidavit’s instructions, Step 4, the definition of “possible assets.” However, it
would not be appropriate under the rules for the mediator to determine or advise the party whether an asset is a contingent asset.

Signed and Dated by Susan Dubow, MEAC Committee Chair

6/23/17