

FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2016-006

Date Issued: February 10, 2017

The Question

In Mediator Ethics Advisory Opinions 2014-008, the committee concluded that Rule 10.420(a) of the Florida Rules for Certified and Court-Appointed Mediators unambiguously requires a mediator to conduct an orientation session at the commencement of the mediation session. The orientation session must, at a minimum, include a description of the mediation process and the role of the mediator, and shall inform participants that mediation is a consensual process, the mediator is impartial, and communications are confidential except where disclosure is required or permitted by law. The opinion states that there are no exceptions to this requirement and “[r]egardless of party negotiations, the mediator must deliver the orientation session.” [Emphasis added].

A mediator is scheduled to mediate several back-to-back cases with the same plaintiff (credit card company). Each case has a different defendant (debtor). Suppose the mediator calls all of the defendants into the mediation room, delivers a single opening statement covering the required elements set forth in Rule 10.420(a), and then asks all but one of the defendants to step outside while the mediator conducts a mediation with the first defendant. The mediator then contacts the plaintiff’s counsel by phone to begin the mediation, informs the attorney that the mediator has delivered an opening statement to the defendant(s), and asks the attorney if they want the mediator to deliver an opening statement.

Does Rule 10.420(a) permit a mediator to conserve time by conducting a single joint orientation session (one opening statement) with multiple defendants present, or is a mediator required to conduct an orientation session at the commencement of each defendant’s mediation session?

Does Rule 10.420(a) allow a mediator to ask a party or counsel if they want to waive or dispense with the mediator’s opening statement?

Suppose numerous parties appear in a courtroom for small claims pretrial conferences. The trial judge (or other court personnel) begins the morning session by describing the mediation process and covers the elements set forth in Rule 10.420(a). Does Rule 10.420(a) excuse a mediator from conducting an orientation session (opening statement) at the commencement of each mediation if the trial judge (or other court personnel) discussed the same elements set forth in Rule 10.420(a)?

Submitted by
Florida Supreme Court Certified County, Circuit, and Appellate Mediator
Central Division

Authorities Referenced

Rule 10.420(a), Florida Rules for Certified and Court-Appointed Mediators
Mediation Confidentiality and Privilege Act, sections 44.401-406, Florida Statutes
MEAC Opinion 2014-008

Summary

A mediator is required to fulfill the requirements of rule 10.420(a), Florida Rules for Certified and Court-Appointed Mediators, prior to each mediation session. The mediator's ethical requirements under this rule cannot be waived by mediation parties or participants. See MEAC 2014-008.

Opinion

Answer to Question One:

No, a mediator is not permitted nor may suggest or offer the option of conducting a single orientation session for multiple plaintiffs and defendants in different cases.

Rule 10.420(a), Florida Rules for Certified and Court-Appointed Mediators, provides that, "upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that (1) mediation is a consensual process; (2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and (3) communications made during the process are confidential except where disclosure is required or permitted by law." The rule expressly states "mediation session," which indicates one set of parties involved in one particular case.

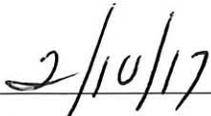
MEAC further opines that, if the orientation session (or any part of a mediation session) occurs with other parties from unrelated cases, confidentiality is compromised. See Mediation Confidentiality and Privilege Act, sections 44.401-406, Florida Statutes.

Answer to Question Two:

No, rule 10.420(a) does not give the mediator authority to ask parties or counsel if they wish to waive a mediator's orientation session. See MEAC Opinion 2014-008.

Answer to Question Three:

No, rule 10.420(a) does not permit a mediator to refrain from delivering an orientation session at the commencement of each mediation session, even if all the elements of rule 10.420(a) were covered by court personnel or anyone else prior to the mediation. See MEAC Opinion 2014-008.

Signed and Dated by Susan Dubow, MEAC Committee Chair