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Supreme Court of Florida  
Dispute Resolution

FLORIDA SUPREME COURT

Mediator Ethics Advisory Committee

Opinion Number: 2016-001

Date of Issue: April 12, 2016

### **The Question**

Circumstances - many times, especially in small claims consumer credit cases, there is an attorney representing the Plaintiff credit card company and the Defendant borrower who is Pro Se. During the mediation, or many times at the beginning of the mediation, the attorney begins to engage in 'discovery', asking the Defendant if he/she is employed and if so the name and address of the employer, and other questions that are NOT necessarily relevant to the mediation. In fact, it becomes obvious the information is being sought for 'collection' purposes if there is no Agreement.

What, if anything, is the Mediator's role in this obvious attempt at discovery? If the Mediator decides to Caucus, cutting off this discussion/questioning, is the Mediator being an Advocate for the Defendant? If the Mediator allows this to continue, and has no bearing on the mediation process, is the Mediator being an advocate for the Plaintiff, or is not doing his/her duty by allowing the mediation to get off-course?

Submitted by a Florida Supreme Court Certified County, Family Circuit, and Appellate Mediator from the Southern Division

### **Authorities Referenced**

Rules 10.310, 10.400, 10.410, 10.420(a), Florida Rules for Certified and Court-Appointed Mediators

### **Summary**

A mediator is responsible for safeguarding the mediation process. In the scenario described by the inquirer, if the mediator decides that the process is best served by using caucus as a procedural tool, there is no rule which prohibits the mediator from doing so.

### **Opinion**

Answer to Question One: Paramount to the mediator's role, as set forth in rule 10.400, Florida Rules for Certified and Court-Appointed Mediators, is to safeguard the mediation process. As part of the process, and in furtherance of the mediator's responsibility, at the commencement of every mediation the mediator provides an opening statement outlining the essential elements of mediation participation. Rule 10.420(a), Florida Rules for Certified and Court-Appointed Mediators. One of those essential elements is ensuring that the process is balanced, rule 10.410, and each party's right of self-determination is protected, rule 10.310.

Answers to Questions Two and Three: If the mediator decides that the process is best served by using caucus as a procedural tool, there is no rule which prohibits the mediator from doing so. Fundamental to safeguarding the process, is ensuring the mediation session is conducted in a balanced manner and the parties are allowed self-determination by providing both parties with opportunities to speak, promoting mutual respect, and encouraging them to be “collaborative, non-coercive, and non-adversarial,” rule 10.410. If the mediator perceives that the best means of safeguarding the process is to caucus, the mediator may caucus with parties in order to maintain a balanced process.

 April 12, 2014

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*Signed and Dated by Susan Dubow, MEAC Committee Chair*