

FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2015-001

Date of Issue: April 7, 2015

The Question

I am a dependency mediator in the (name omitted) circuit. My question concerns technology in mediation.

As a mediator, my role is to protect the mediation process and to ensure confidentiality, among other responsibilities. Many attorneys and case managers must now open laptops and tablets to access online case plans, etc. I don't find issue with that.

However, I have asked two professional participants to not TYPE on their laptops or tablets during mediation. Parents have come to me telling me they feel intimidated by the constant clacking of keys and the uncertainty of what may actually be documented about them.

I explain confidentiality at the beginning of each mediation, ensuring the parents that what happens in mediation is confidential (excluding the exceptions.) The two offenders refuse to cooperate, stating they are entitled to take notes.

May I have your opinion on how to address this issue?

Authorities Referenced

Rules 10.220, 10.230, 10.310, 10.360(a), 10.400, 10.410, 10.420, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 2011-012

Summary

Certified mediators do not have the authority to ban use of laptop devices or tablets during mediation. Decisions regarding the reason for and the use of these devices are decisions for the parties to make unless there is a court order to the contrary.

Opinion

The Florida Rules for Certified and Court-Appointed Mediators and various procedural rules pertaining to court-ordered mediation do not prohibit the use of electronic equipment including laptop computers or tablets at mediation, unless there is a court order or agreement by the parties which provides otherwise.

Mediation involves communication, negotiation, facilitation, and problem-solving that emphasizes self-determination, the needs and interests of the parties, fairness, and confidentiality. It is the mediator's responsibility to safeguard the mediation process by conducting the mediation in a balanced fashion while reducing obstacles to communication which the parties encounter. See rules 10.410, 10.400, 10.220, 10.230 and 10.310, Florida Rules for Certified and Court-Appointed Mediators.

A mediator is required to comply with rule 10.420 when delivering the orientation session and inform the parties that mediation is a consensual process, that the mediator is without the authority to impose a resolution or adjudicate an aspect of the dispute, and communications made during the process are confidential, except where disclosure is required or permitted by law, rule 10.360(a).

If parties cannot resolve their differences regarding the reasons for and the use of laptops or tablets during mediation, the mediator has the authority to adjourn or terminate the mediation in accordance with the above rule.

The MEAC refers the questioner to MEAC 2011-012 which addresses the use of electronic communication devices in mediation.

April 7, 2015

Signed and Dated by Beth Greenfield-Mandler, MEAC Committee Chair

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Supreme Court of Florida
Dispute Resolution Center

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Revised

Opinion Number: 2015-001

Date of Issue: September 9, 2015

The Question

I am a dependency mediator in the (name omitted) circuit. My question concerns technology in mediation.

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A mediator is required to comply with rule 10.420(a) when delivering the orientation session and inform the parties that mediation is a consensual process, that the mediator is without the authority to impose a resolution or adjudicate an aspect of the dispute, and communications made during the process are confidential, except where disclosure is required or permitted by law.

If parties cannot resolve their differences regarding the reasons for and the use of laptops or tablets during mediation, the mediator has the authority to adjourn or terminate the mediation in accordance with the above rule.

The MEAC refers the questioner to MEAC 2011-012 which addresses the use of electronic communication devices in mediation.

 

Signed and Dated by Susan Dubow, MEAC Committee Chair