

FLORIDA SUPREME COURT  
Mediator Ethics Advisory Committee

Opinion Number: 2014-002  
Date of Issue: September 8, 2014

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Supreme Court of Florida  
Dispute Resolution Center

**The Question**

I have reviewed the Committee's Opinion 2013-006, and would respectfully bring to your attention that it is in conflict with previously entered Opinions regarding reporting a "full" agreement to the Court.

MEAC Opinion 2010-007 specifically provides "A mediator may report if the agreement is "full" or "partial" and whether it was "signed" or "transcribed".

In addition, MEAC Opinion 2010-012 specifically references with approval the Mediator's Report attached as an exhibit to AOSC10-57 as substantially following the format considered in MEAC 2010-007. That form does indicate that it is appropriate to report a full agreement. I would also point out that since this form ends with the following,

**"For Residential Mortgage Foreclosure Mediation Programs ONLY:**

A copy of the most recently filed Form A is attached to this report for the Court's use."

then it was presumably intended by the Supreme Court that the balance of the form was appropriate for use in other mediations. (If the legend was intended to apply to the entire form it would not be followed by a semi-colon, and it would have appeared either at the top or the bottom of the page and not in the body of the form itself.)

I assume the reference to a "Full Agreement" was added because, although it would have no probative effect and discloses nothing about the substance of the agreement itself, the information may be of assistance to case management personnel for scheduling purposes.

Finally, MEAC Opinion 2012-009, provides that a "report form which has the outcomes "agreement", "partial agreement", "no agreement" or "continuance" (adjournment) meets the requirements of the Florida Rules of Civil Procedure and the Florida Family Law Rules of Procedure."

Although the form cited with approval in MEAC 2012-009 references "agreement" and not "full agreement", I respectfully submit that since an agreement can only be "full" or "partial", use of the term "full" would be superfluous and is present by implication. By not checking the "partial" outcome, the mediator is reporting that this was in fact a full agreement.

I respectfully request that the committee revisit the issue in light of its previous 3 opinions.

Certified County and Circuit Mediator  
Southern Division

### Authorities Referenced

Florida Rules of Civil Procedure 1.730(a) – (b)  
Florida Rules of Juvenile Procedure 8.290(o)(2)  
Florida Rules of Appellate Procedure 9.740(a)  
Family Law Rules of Procedure 12.740(f)(3)  
Mediation Confidentiality and Privilege Act, sections 44.401-405, Florida Statutes  
MEAC Opinions 2013-006, 2012-009, 2010-012 and 2010-007

### Summary

As is clearly stated in the civil, family, juvenile and appellate rules, a mediator may report only “agreement” or “no agreement” to the court without comment or recommendation. No descriptors or modifiers may be used in the mediator report.

### Opinion

After review of previous MEAC opinions, and, after analysis of the various rules of procedure regarding reporting the results of mediation, MEAC retracts its 2012-009 opinion and any other opinion(s) inconsistent with this opinion. This committee interprets the rules to allow a mediator to report only “agreement” or “no agreement” to the court, without comment or recommendation. Florida Rule of Civil Procedure 1.730(a)-(b); Florida Rules of Appellate Procedure 9.740(a); Family Law Rule of Procedure 12.740(f)(3); Florida Rules of Juvenile Procedure 8.290(o)(2).

Further, as is stated in Florida Rule of Civil Procedure 1.730(a) and Family Law Rule of Procedure 12.740(f)(3), in those two instances only, with the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement. To report anything additional, without the agreement of the parties, or to add descriptors or modifiers to “agreement” or “no agreement” would be sending information to the court, an action which is prohibited by the Mediation Confidentiality and Privilege Act, sections 44.401-405, Florida Statutes.

These rules do not restrict the parties from agreeing on additional language, descriptors, or modifiers in the *written agreement*.

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

## Dissenting Opinion MEAC 2014-002

### Summary

We disagree with the majority opinion in MEAC 2014-002 which states that a Mediator can only report "Agreement" or "No Agreement" to the court, and no descriptor before the word "Agreement," such as "Partial Agreement," can be used. A mediator can ethically report that the parties reached a "Partial Agreement" when the outcome of mediation is that some but not all of the issues and matters at mediation were resolved. We do not agree that MEAC Opinion 2012-009 which permits a report of "Partial Agreement" should be retracted.

### Opinion

I. The Florida Supreme Court Rules of Procedure applicable to Civil, Family, Juvenile and Appellate mediations all state that the parties may reach a "partial" agreement at mediation. Florida Rule of Civil Procedure 1.730 (b); Florida Family Law Rule of Procedure 12.740 (f)(1); Florida Rule of Juvenile Procedure 8.290 (o)(1); and, Florida Rule of Appellate Procedure 9.740 (b). There is nothing in these Florida Supreme Court Rules or in the Mediation Confidentiality and Privilege Act, cited by the majority which states that a Mediator cannot use the words "Partial Agreement" in a report to the court. The term "Partial Agreement" is not a confidential mediation communication and the prohibition on making a "comment" or "recommendation" in the Florida Supreme Court Rules relates solely to a Mediator report of "No Agreement." See Florida Rule of Civil Procedure 1.730 (a); Florida Family Law Rule of Procedure 12.740 (f)(3); Florida Rule of Juvenile Procedure 8.290 (o)(2); and, Florida Rule of Appellate Procedure 9.740 (a).

A review of the history of the 1996 Amendment to Rule 1.730 (b), adding the word "partial", makes it clear that the Florida Supreme Court wanted the Mediator to report "Partial Agreement" if that was the actual outcome. This clarifies for the Court that the parties did not resolve all issues and matters at mediation. Reporting "Agreement" can mislead the court into concluding that all of the issues and matters were resolved at the mediation conference.

The majority opinion states that an appellate mediator cannot use a descriptor before the term "Agreement." Appellate Mediation Rule 9.740 (b) requires the appellate mediator when a partial or final agreement has been reached to use the form of report approved by the Appellate court in which the appeal is pending. If the approved form includes a descriptor, the mediator must use the descriptor. For example, in the Fifth District Court of Appeal a mediator must report that a "Settlement Agreement" was reached on the "New" reporting form recently adopted by the Court.

2. The majority opinion in MEAC 2014-002 contains confusing language which seems to suggest that with the parties' consent, a mediator can include any information in the mediator's report to the court so long as the parties agree. This is misleading. If the report to the

Court is "No Agreement," then a mediator can report no additional information to the Court. There is an exception in circuit and family cases, where limited information can be provided to the court, only with the consent of the parties.

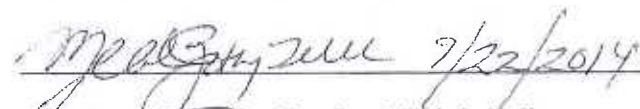
A. Florida Rule of Civil Procedure 1.730 (a) mandates a report of "No Agreement" shall contain no "comment" or "recommendation;" except, with the consent of the parties, the mediator's report may "identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement."

B. Florida Family Law Rule of Procedure 12.740 (f) ((3) mandates a report of "No Agreement" shall contain no "comment" or "recommendation;" except, with the consent of the parties, the mediator's report may also "identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement."

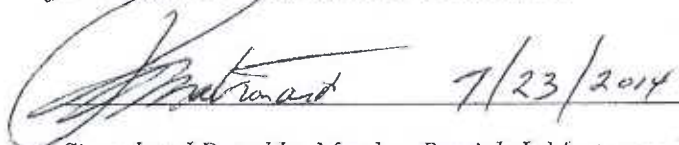
C. Florida Rule of Juvenile Procedure 8.290 (o)(2) mandates a report of "No Agreement" without "comment" or "recommendation." Nothing else can be reported to the Court in the event the parties reach "No Agreement" at mediation.

D. Florida Rule of Appellate Procedure 9.740 (a) mandates a report of "No Agreement" without "comment or "recommendation." Nothing else can be reported to the Court in the event the parties reach "No Agreement" at mediation.

The rationale behind a Mediator's report of "No Agreement" containing no additional "comment" or "recommendation," is that the report of "Non Agreement" should not contain any language which might cause the Court to draw any negative inferences against either or both of the parties regarding why the case did not settle or what happened at mediation. Even when the parties agree in civil or family mediations that the Mediator's Report of "No Agreement" can contain additional information, this additional information is specifically limited to the permissible matters set forth in the respective rules, as quoted above.

 7/22/2014

Signed and Dated by Member Meah R. Tell

 7/23/2014

Signed and Dated by Member Patrick J. Mastronardo