

Advisory Opinion

MEAC 2011-018

Mediator Ethics Advisory Committee

c/o Florida DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

March 16, 2012

The Question:

There has been a lot of discussion among our mediators in reference to the proper way to disclose and report any Child Abuse, Elder Abuse and Abuse of the Disabled. In light of all the abuse scandals in the sports programs of universities around the nation, we are concerned about the proper procedure for mediators to disclose this information discovered during a mediation. We know there are "Hot Lines" for reporting these abuses, but is that the extent of our ethical obligation as mediators?

Submitted by a Certified County and Family Mediator
Central Division

Authorities Referenced:

Rules 10.360 (a) and 10.650, Florida Rules for Certified and Court-Appointed Mediators
Florida Statutes 39.201, 44.405 (4)(a)(3) and 415.1034

Summary:

Certified mediators are required to follow the statutory requirements for reporting abuse in accordance with Florida Statutes and consistent with other professional licenses held by a certified mediator. [See Rule 10.650]

Opinion:

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Section 201(1)(a) Chapter 39 and Section 1034, Chapter 415 of the Florida Statutes govern the reporting requirements. The applicable portions of each section follow with emphasis on the mandatory nature of reporting by ***any person*** who knows or suspects such abuse.

Section 201(1)(a) Chapter 39, Florida Statutes states,

“any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of

*supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care **shall report** such knowledge or suspicion to the department in the manner prescribed in subsection (2). (2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care **shall be made immediately to the department's central abuse hotline.** [emphasis added]*

Section, 1034(1)(a), Chapter 415, Florida Statutes states,

*(a) **any person**.....who knows, or has reasonable cause to suspect, that a vulnerable adult has been or is being abused, neglected, or exploited **shall immediately report such knowledge or suspicion to the central abuse hotline.** [emphasis added]*

It is clear from the reading of these sections that the requirement to report abuse or neglect rests with every person.

The reporting of abuse against children, the elderly and vulnerable adults is not a violation of mediation communications under the Rules for Certified and Court-Appointed Mediators as Rule 10.360 (a) states, “a mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties.” In this instance, a report of abuse, neglect or abandonment is required by law. However, unless the mediator is a member of a profession which requires the mediator to report the abuse in any other way than outlined in the statutes, reporting by any other method than to the appropriate hotline would be a violation of the Act.

The reporting of abuse against children, the elderly and vulnerable adults is also not a violation of the statutory requirement for mediation confidentiality as Section 405(4)(a)(3), Chapter 44, outlines that there is no mediation confidentiality for communications that “requires a mandatory report pursuant to chapter 39 or chapter 415 solely for the purpose of making the mandatory report to the entity requiring the report.”

Date

Beth Greenfield-Mandler, Committee Chair