

Advisory Opinion

MEAC 2011-012

Mediator Ethics Advisory Committee

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

October 19, 2011

The Question:

Re: Use of Cell Phones

I am the (title omitted) for the (number omitted) judicial circuit and I have received reports from the mediators that there is an *increasing use of cell phones* during the mediation process, especially during client caucusing. My concern is the confidentiality that is required for the process. Our mediators are finding that the parties are calling family, friends, pastors, etc., to discuss what is happening in mediation.

Is it possible that this issue can be addressed by the committee? Should we [certified mediators] ban the use of cell phones during the mediation process to ensure confidentiality?

Certified County, Family & Dependency Mediator
Central Division

Authorities Referenced

Rules 10.220, 10.300, 10.310(a) and 10.360(a), Florida Rules for Certified and Court-Appointed Mediators

Sections 401-405, Florida Statutes Chapter 44, the Mediation Confidentiality and Privilege Act

Summary

Certified mediators do not have the authority to unilaterally ban the use of cellular communication during the mediation process.

Opinion

Certified mediators do not have the authority to unilaterally ban the use of cellular communication during the mediation process. Decisions regarding the use of communication devices and participant participation in the mediation via electronic methods are decisions for the parties to make. Certified mediators cannot make unilateral decisions or set unilateral policies for mediation parties that deprive them of their right to self-determination.

Sections 401-406, Chapter 44, Mediation Confidentiality and Privilege Act, govern mediations communications including exceptions, privilege and civil remedies. Certified mediators are required to abide by the parameters of the statute and, along with Rule 10.360, (a), “maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties”. Ultimately, all parties to a mediation have the ability to jointly and unanimously decide whether it is acceptable for anyone participating in the mediation to communicate with someone who is not present at the mediation.

Mediators may wish to consider addressing the use of cell phones or texting devices in their opening orientation by obtaining agreement as to the use of such devices and further reminding parties that mediation confidentiality applies to all mediation participants, whether present in person or by electronic means. (See Sections 401-406, Chapter 44)

Date

Beth Greenfield-Mandler, Committee Chair