

Advisory Opinion

MEAC 2011-001

Mediator Ethics Advisory Committee

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

March 14, 2011

The Question:

The undersigned is a Certified Circuit Mediator. Recently I have had several discussions with similar mediators about whether the mediator should sign a settlement agreement at mediation. Some say the rules do not require the mediator to sign a settlement agreement, rather, the rules only require counsel and the parties to sign. Therefore, they believe the lack of such a provision in the rules means mediators should not sign. Others say they sometimes sign it if a party asks, otherwise they don't. When mediation first began to get rolling, most mediators had a signature line for the mediator to sign.

Have you taken a position on this issue, i.e., should a mediator sign a mediation settlement agreement, should a mediator not sign a settlement agreement, or if not required, is it acceptable to sign a mediation settlement agreement?

If I sign a mediation agreement it means to me that I have witnessed the parties and attorneys signing it as a business record. By signing, it is my notation of a work habit that I do not sign unless I have either seen people sign or they have confirmed/affirmed that is their signature on the agreement. It also signifies that I have given copies of the signed agreement to the parties or to their counsel.

I would appreciate your input on the issue of mediators signing mediation settlement agreements; I appreciate your courtesy and your good work ethics in responding to my prior inquiries from time to time.

Florida Supreme Certified Circuit Court Mediator
Northern Division

Authorities Cited

Rules 1.730(b) and 1.750, Rules of Civil Procedure
Rule 7.090, Florida Small Claims Rules
Rule 8.290, Florida Rules of Juvenile Procedure
Rule 9.740, Florida Rules of Appellate Procedure
Rule 12.740, Florida Family Law Rules of Procedure
Rule 10.520, Florida Rules for Certified and Court-Appointed Mediators

Summary

It is neither a requirement nor a violation of the Florida Rules of Civil Procedure or the Rules for Certified and Court-Appointed Mediators for a certified mediator to sign a written settlement agreement in the capacity of mediator.

Opinion

It is neither a requirement nor a violation of the Florida Rules of Civil Procedure or the Rules for Certified and Court-Appointed Mediators for a certified mediator to sign a written settlement agreement in the capacity of mediator. Specifically, rule 1.730 (b), Agreement, Completion of Mediation, Florida Rules of Civil Procedure, states in part, “If a partial or final agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any.”

There is no delineated requirement or prohibition that certified mediators sign written settlement agreements. However it should be clear that if the mediator does sign the agreement, it is done solely in the capacity of mediator and not in any other capacity such as notary, witness or party. [emphasis added]

In addition, the appellate, small claims, county, family and juvenile procedural rules governing court referred mediations do not require or prohibit a certified mediator from signing written settlement agreements. (See Rule 9.740, Florida Rules of Appellate Procedure Rule 1.750, Rules of Civil Procedure, Rule 7.090, Florida Small Claims Rules, Rule 8.290, Florida Rules of Juvenile Procedure and Rule 12.740, Florida Family Law Rules of Procedure.) Many small claims and county courts throughout Florida have local procedures requiring the mediator to sign any written agreement reached between the parties. This practice would not be prohibited by procedural or ethical rules but a mediator should ensure that their signature signifies nothing more than that they mediated the case. In so doing a certified mediator would be in compliance with local rules, procedures and orders pursuant to rule 10.520, Florida Rules for Certified and Court-Appointed Mediators.

Date

Beth Greenfield-Mandler, Committee Chair