

## **Advisory Opinion**

**MEAC 2010-014**

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

March 14, 2011

### **The Question**

Does a mediator have a right to compel attendance at subsequent mediation conferences, when the parties and/or counsel have made it clear that they wish to end their participation in mediation with an impasse and clearly object to an adjournment and the scheduling of an additional mediation session?

Background: In my circuit's Residential Mortgage Foreclosure Program, the program manager and administrative judge are encouraging mediators to adjourn mediations for a period of up to 45 days without the consent of the parties purportedly under Rule 1.720(c), Florida Rules of Civil Procedure, which states, "The mediator may adjourn the mediation conference at any time and may set times for reconvening the adjourned conference notwithstanding rule 1.710(a). No further notification is required for parties present at the adjourned conference."

This dynamic is causing conflicts between counsel for parties and panel mediators.

Certified Family and Circuit Mediator  
Northern Division

### **Authorities Referenced**

Rules 10.310 (a) and (b) and 10.520, Florida Rules for Certified and Court-Appointed Mediators  
Rule 1.720(c), Florida Rules of Civil Procedure  
MEAC Opinion 2004-006

### **Summary**

No, a mediator does not have the authority to compel attendance at subsequent mediation conferences against the wishes of the parties and/or their counsel.

### **Opinion**

A mediator does not have the authority to compel attendance at subsequent mediation conferences when the parties and/or counsel have made it clear that they wish to end their further participation in mediation and clearly object to an adjournment and scheduling of an additional mediation session. While rule 1.720(c), Florida Rules of Civil Procedure, grants a mediator the procedural flexibility to adjourn and continue mediation, the rule does not bestow upon the mediator the unilateral authority to compel attendance.

The Rules for Certified and Court-Appointed Mediators require that decisions made during the mediation are to be made by the parties and a mediator shall not coerce any party to make a decision or *unwillingly participate in mediation*. [See Rules 10.310 (a) and (b)]

In the question posed, the parties clearly object to the scheduling of a subsequent (emphasis added by submitter) mediation session. It would therefore be inappropriate for the mediator to substitute his/her judgment for that of the parties and/or their counsel.

In addition, the MEAC directs practitioners to MEAC Opinion 2004-006 which concludes, “When a mediator receives a court order in advance of a mediation, which contains provisions which are contrary to the mediator’s role and requires the mediator to act in a manner that is inconsistent with the mediator’s ethical rules, the mediator should decline participation in the mediation.”

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Date

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Beth Greenfield-Mandler, Committee Chair