

**FLORIDA SUPREME COURT  
Mediator Ethics Advisory Committee**

Opinion Number: 2017-002

Date Issued: December 13, 2017

**The Question**

In Mediator Ethics Advisory Opinion 2011-017, the committee concluded that “a mediator is prohibited from taking on the dual role of mediator and interpreter or translator.” In MEAC 2014-004, the committee concluded that it was improper for a mediator to “memorialize any agreement reached in a language other than the one in which the mediation was conducted.”

Rule 10.220 states that the mediator’s role “is to reduce obstacles to communication” and decision-making authority rests solely with the parties. Rule 10.340(c) states that “After appropriate disclosure [of a potential conflict of interest], the mediator may serve if all parties agree.” Rule 10.370(a) states that a mediator is permitted to provide information that the mediator is qualified by training or experience to provide. Rule 10.400 requires the mediator to safeguard the mediation process. Rule 10.410 obligates the mediator to conduct a mediation in a balanced manner. Rule 10.420 states that a mediator is required to cause the terms of an agreement to be memorialized appropriately which permits, but does not obligate, the mediator to write the settlement agreement reached at mediation.

Question 1: Suppose the parties want the mediator to conduct the mediation in Spanish. If the mediator is able to speak Spanish, do the rules permit the mediator to conduct the entire mediation in Spanish, including reducing the agreement to writing in Spanish?

Question 2: Suppose one of the parties in a mediation is uncomfortable proceeding in English and prefers to communicate in Spanish. The mediator is able to speak Spanish. Both parties, consistent with the provisions of Rule 10.340(c) and Rule 10.220, ask the mediator to translate/interpret the mediation communications. Do the rules prohibit the mediator from translating/interpreting when the parties decide they want the mediator to translate/interpret and they waive any potential conflict caused by the mediator performing this function?

Question 3: Suppose the parties reach an agreement at mediation. The entire mediation was conducted in Spanish. Both parties, consistent with the provisions of Rule 10.340(c) and Rule 10.220, ask the mediator to reduce the terms of the agreement to writing and to write it in English. Do the rules prohibit the mediator from writing the agreement in English if both parties consent to the mediator writing the agreement in English?

Question 4: Suppose the parties reach an agreement at mediation and the agreement is reduced to writing in English by the English-speaking party. Before signing the document, the Spanish-speaking party asks his friend to translate/interpret the agreement into Spanish. Do the rules prohibit the mediator from including a statement in the agreement reflecting that the friend translated/interpreted the agreement into Spanish? Do the rules prohibit the mediator from including an additional signature line on the agreement for the friend to indicate that he/she performed the translation/interpretation function?

Question 5: Suppose one of the parties is able to speak English and Spanish. During the joint session, the mediator speaks to both parties in English. When the parties go to caucus, the party who speaks English and Spanish prefers to speak with the mediator in Spanish. The mediator is able to speak Spanish. Do the rules prohibit the mediator from conducting the caucus sessions with this party in Spanish?

Question 6: Suppose one of the parties brings a Spanish-speaking translator/interpreter to the mediation. The mediator is also able to speak Spanish. During one of the caucus sessions, the translator/interpreter erroneously translates/interprets the mediator's statements to the party. What obligation, if any, does the mediator have under the rules to correct the translator's/interpreter's errors?

Question 7: Suppose one of the parties brings a Spanish-speaking translator/interpreter to the mediation. At one point during the mediation, the party and the translator/interpreter engage in discussion in Spanish. It is clear to the English-speaking mediator that more is being discussed between them than strict translation/interpretation of the mediator's statements. In light of Rule 10.310, which indicates that decisions made during the mediation are to be made by the parties, what authority, if any, does the mediator have to dictate that the translator/interpreter limit their role or function to translating/interpreting?

Submitted by a FSC County, Circuit and Appellate Mediator  
Central Division

### **Authorities Referenced**

Rules 10.220; 10.310; 10.330(a) & (b); 10.340(d) and the Committee Note to rule 10.340; 10.370(a); 10.410; and 10.420(b), Florida Rules for Certified and Court-Appointed Mediators  
MEAC Opinions 2011-017 and 2014-004

### **Summary**

Consistent with MEAC Opinions 2011-017 and 2014-004, a mediator shall not perform the dual role of a mediator and translator or interpreter.

## Opinion

Initially, the MEAC maintains confidence in its previous opinions regarding a mediator serving in the dual roles of mediator and interpreter or translator, MEAC 2014-004 and 2011-017. Any particular question of a mediator serving in such dual roles should be filtered using rules 10.330(a), 10.340(d), and 10.410. Rule 10.330(a), Florida Rules for Certified and Court-Appointed Mediators, serves as the first filter and provides that “a mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.” Thus, a mediator’s impartiality is essential to the mediation process and must be maintained throughout the entire process.

Rule 10.340(d) serves as the second filter and provides that “a mediator shall not create a conflict of interest during the mediation” and “shall not provide services that are not directly related to the mediation process.” In MEAC Opinion 2011-017, it was opined that a mediator cannot serve in the dual roles of mediator and translator or interpreter. The MEAC referred to the Committee Note to rule 10.340, which reflects: “To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a mediator’s professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself.”

It continues to be the opinion of the MEAC that performing dual roles would be a violation of rules 10.340(d) and 10.330(a). Therefore, the mediator may not “reduce obstacles to communication,” rule 10.220, by serving in the dual role of mediator and interpreter/translator, or provide interpreter/translator services even if the “mediator is qualified by training or experience,” rule 10.370(a), to provide such services. Nor may the parties use self-determination, rule 10.310, to agree to the mediator serving in dual roles when to do so would be a clear conflict of interest under rule 10.340(d).

In some instances, the third filter of rule 10.410 applies. Rule 10.410 requires a mediator to “conduct mediation sessions in an even-handed, balanced manner.”

The MEAC applies these filters to answer the inquirer’s specific questions.

Answer to Question One:

The mediator may conduct the mediation in Spanish as long as doing so does not involve any interpreting. If the mediation is conducted in Spanish, then the agreement must be written in

Spanish. See MEAC Opinion 2014-004. The mediator should advise the parties that the agreement filed with the court must be in English and that the parties will be responsible for having someone other than the mediator translate the agreement, and for complying with any applicable statutory or administrative rules pertaining to such translation.

Answer to Question Two:

The rules prohibit the mediator from serving in dual roles as the mediator and interpreter or translator pursuant to rules 10.330(a) and 10.340(d) as explained above.

Answer to Question Three:

It is inappropriate for the mediator to memorialize an agreement in any language other than the one in which the mediation was conducted under rule 10.340(d) as explained above.

Answer to Question Four:

The inquirer did not provide enough information for the MEAC to render an opinion. The information provided does not indicate who did the interpreting during the mediation.

Answer to Question Five:

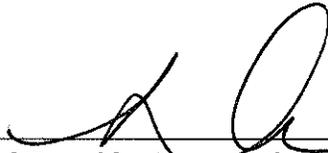
As long as the mediator is able to remain impartial, avoid the appearance of partiality, and maintain a balanced process, the rules do not prohibit the mediator from conducting the caucus sessions with the party who prefers to speak Spanish in Spanish. The mediator should conduct the joint session in the language that is common to both parties and write the agreement, if any, in the language used during joint session, thereby avoiding doing any interpreting or translating. The MEAC believes this answer is consistent with MEAC 2014-004.

Answer to Question Six:

The mediator may caucus with the interpreter to discuss the perceived misinterpretation. If the mediator believes the misinterpretation affects the party's self-determination under rule 10.310 and the mediator's ability to maintain a balanced process under rule 10.410, and the interpreter does not agree there has been a misinterpretation and agree to correct it, the mediator has an ethical duty to adjourn or terminate the mediation under rule 10.420(b).

Answer to Question Seven:

The mediator must caucus with the party and the interpreter to confirm with the interpreter whether communications are being made with the party other than interpretation. If the interpreter is providing anything other than interpretation, the mediator must explain to both the party and the interpreter that the mediator will need to ask the other party to the mediation if they have any objection. In the event that approach does not work, the mediator could withdraw under rule 10.330(b) if they are no longer able to be impartial, or adjourn or terminate the mediation under rule 10.420(b).



12/13/17

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*Signed and Dated by Susan Dubow, MEAC Committee Chair*