

**FLORIDA SUPREME COURT  
Mediator Ethics Advisory Committee**

Opinion Number: 2017-011  
Date Issued: December 6, 2017

**The Question**

I am a family court mediator and it has been brought to my attention by a few attorneys that asking what the parties want to do about claiming the children on taxes for child support calculation purposes is raising an issue that should not be raised in mediation if the parties have not brought it up.

My issue is, if I am calculating child support, I need to know who wants to claim the child because it affects the child support calculation. The attorneys say if neither party brings up the tax exemption issue and child support needs to be calculated, I should give the tax exemption to the parent who has the majority of the timesharing with the child, but that does not speak to parties wanting equal timesharing.

1. Therefore, my question is, if neither party brings up the tax exemption as an issue and child support needs to be calculated, should I ask about the tax exemption?
2. Another question that has come up is, if the parties do not bring up the issue of child support in a divorce with children or a paternity case, should I bring it up?

I know the family judges in my circuit expect the discussion of child support to be a part of mediation if there are minor children involved, and something in the agreement that speaks to whether or not the parties agreed on child support.

I believe these issues impact Rule 10.310 (a), Self-Determination, Decision Making, Rule 10.370 (c), Personal or Professional Opinion and Rule 10.520, Compliance with Authority.

Florida Supreme Court Certified County, Dependency and Family Mediator  
Central Division

**Authorities Referenced**

Sections 44.1011(2) and 44.403(4), Florida Statutes  
Rules 10.220, 10.310, 10.330, 10.370, Florida Rules for Certified and Court-Appointed Mediators  
MEAC Opinions 2013-006 and 2010-004

## Summary

Consistent with MEAC Opinions 2013-006 and 2010-004 and rule 10.220, Florida Rules for Certified and Court-Appointed Mediators, one of the roles of the mediator is to assist the parties in the identification of issues.

## Opinion

Answer to Question 1:

Mediation rules contemplate that a mediator will assist parties with issue identification. The role of a mediator is defined in sections 44.1011(2) and 44.403(4), Florida Statutes, and rule 10.220, Florida Rules for Certified and Court-Appointed Mediators. Consistent in all of the references is that one of the roles of the mediator is to “assist in the identification of issues and the exploration of alternatives,” rule 10.220. Additionally, “consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide” according to rule 10.370(a), Florida Rules for Certified and Court-Appointed Mediators.

In this specific instance, child support needs to be calculated and the tax exemption is one of the elements in computing child support. As mentioned in MEAC 2013-006, the mediator may go through each element of computing child support and allow the parties to make any necessary decisions, thereby exercising their self-determination as provided by rule 10.310, Florida Rules for Certified and Court-Appointed Mediators. The mediator may not “give the tax exemption to the parent who has the majority of the timesharing with the child,” as stated by the inquirer, as that would violate the parties’ self-determination by making a decision they are entitled to make.

Answer to Question 2:

If the parties do not raise the issue of child support in a divorce with children or a paternity case, the mediator should raise the issue for the reasons stated above. It is important that the mediator communicate with both parties when accomplishing this task so as to “maintain impartiality throughout the mediation process” in word, action and appearance and assist “all parties, as opposed to any one individual” as required by rule 10.330, Florida Rules for Certified and Court-Appointed Mediators.

The MEAC also reminds mediators that ethical guidelines are crossed when a mediator offers “**a personal or professional opinion** intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue” and prompts mediators to use

caution in facilitating the parties' discussion of child support. See rule 10.370(c), Florida Rules for Certified and Court-Appointed Mediators.

 12/6/17

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