

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Opinion Number: 2017-014

Date Issued: February 13, 2018

The Question

Dear MEAC:

I have encountered a situation in which a judge of County Court issued an order for mediation that specified designation of a mediator and providing a 10 day window for the parties to agree to stipulation of an alternative mediator.

The parties in this case apparently selected an alternative mediator outside of the 10 day window for a stipulation of a change. Here the alternative mediator was aware of the original court order and accepted the assignment without determining if there was an approval of the change by the court.

- 1) Is it ethical to take the work designated for a colleague without determining if that would be within compliance of an existing court order?

The alternate mediator (a retired judge/attorney) advised the parties that it was not a problem to have him conduct the mediation without the judge's approval of a change stipulation to the original mediation order.

- 2) Is it ethical to advise parties to a judge's order that they may disregard stipulations of the order as long as the ordered mediation is conducted timely?

Thank you for your consideration. I look forward to the results of your review of these questions.

Sincerely,

Certified County and Family Mediator

Southern Division

Authorities Referenced

Rules 10.500 and 10.600, Florida Rules for Certified and Court Appointed Mediators

Summary

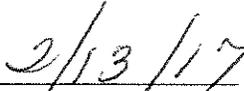
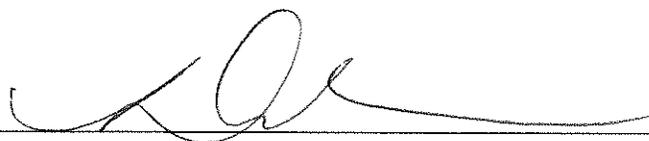
A mediator is accountable to the referring court with the ultimate authority over the case. A mediator is responsible for forthright business practices and fostering good relationships.

Opinion

Answers to Questions One and Two:

Overall, pursuant to rule 10.500, Florida Rules for Certified and Court-Appointed Mediators, a mediator is “accountable to the referring court with ultimate authority over the case.” From the description provided, it appears the court named a mediator in the order, but allowed the parties to choose an alternate mediator if they did so within 10 days of the order. As the time period in the court order for the parties to choose a mediator had expired, under rule 10.500, the alternate mediator should inform the parties that they must obtain a new order if they want to use the mediator’s service.

If the parties want to use the alternate mediator, as a common courtesy the parties or the alternate mediator should notify the mediator named in the court order of the parties’ desire to use the alternate mediator and the existence of a new court order. Rule 10.600, Florida Rules for Certified and Court-Appointed Mediators, states, “A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.”



Signed and Dated by Susan Dubow, MEAC Committee Chair