

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Opinion Number: 2017-0016

Date Issued: April 11, 2018

The Question

A mediator is required to report reasonable suspicion of abuse or neglect involving a “vulnerable adult” as defined in Florida Statute 415.1034. See also, MEAC Opinion 2011-018, “a report of abuse, neglect or abandonment is required by law.” There is no confidentiality for mediation communications that require a mandatory report pursuant to Chapter 415 solely for the purpose of making the mandatory report to the Florida Abuse Hotline. See Florida Statute 44.405(4)(a)3.

In MEAC 2012-007, MEAC issued the following opinion: “If a mediator decides, during the mediation process, to report a party’s mediation communications to an appropriate body, the mediator must thereafter withdraw from the mediation to avoid the appearance of bias and/or partiality.”

Scenario 1: The mediator is asked to mediate a lawsuit involving nursing home abuse/neglect. Prior to the mediation, counsel for each of the parties provides the mediator with detailed confidential pre-mediation summaries and learns: plaintiff in the lawsuit is suing the nursing home and nursing personnel for alleged failure to provide the care necessary for the well-being of an elderly person, that the plaintiff’s experts will testify the nursing home and its personnel failed to provide the level of care appropriate for the well-being of the elderly person, and there is no dispute that the plaintiff suffered serious injuries while in the nursing home.

Scenario 2: The mediator is asked to mediate a lawsuit involving nursing home abuse/neglect. During the course of the mediation, the mediator learns: plaintiff in the lawsuit is suing the nursing home and nursing personnel for alleged failure to provide the care necessary for the well-being of an elderly person, that the plaintiff’s experts will testify the nursing home and its personnel failed to provide the level of care appropriate for the well-being of the elderly person, and there is no dispute that the plaintiff suffered serious injuries while in the nursing home.

I would appreciate the Committee’s opinions on the following questions.

Questions:

1. When a mediator learns about possible abuse or neglect involving a vulnerable adult prior to the mediation as described in Scenario 1, and believes he/she has a mandatory

Mediator Ethics Advisory Committee Opinion 2017-016

obligation to report abuse or neglect to the Florida Abuse Hotline, can the mediator mediate this case?

2. If the answer to question 1 is no, a situation would be created where the case could never be mediated since the information revealed in the lawyer's pre-mediation summaries would trigger a mandatory report to the hotline for every mediator. Are there any options for the mediator in this instance that might allow for him/her to mediate the case?

3. If the mediator learns about the possible abuse or neglect during the mediation as described in Scenario 2, and believes he/she has a mandatory obligation to report abuse or neglect to the Florida Abuse Hotline, can the mediator proceed with the mediation and wait to report to the Florida Abuse Hotline until after the mediation concludes (i.e. settles or impasse)?

4. If the answer to question 3 is no, a situation would be created where mediators could never finish mediating the case since the essential facts that will be discussed at every mediation involving this case would trigger a mandatory report to the hotline for every mediator. Are there any options for the mediator in this instance that might allow for him/her to mediate the case?

5. Are the answers to the questions above any different if the mediator has not reached any conclusions as to whether the defendant's conduct actually rises to the level of abuse or neglect, but is only fulfilling his/her obligation to make a mandatory report of reasonable suspicion to the Florida Abuse Hotline?

Supreme Court Certified County, Circuit, Appellate Mediator

Southern Division

Authorities Referenced

Rule 10.330(a) and (b), Florida Rules for Certified and Court-Appointed Mediators
Sections 39.201(1)(f), 415.1034(1)(a), and 415.107, Florida Statutes
MEAC Opinion 2012-007


Summary

As required of any person, a mediator has a statutory obligation to immediately report a reasonable suspicion of abuse or neglect involving a vulnerable adult to the central abuse hotline under section 415.1034(1)(a), Florida Statutes. In some circumstances, after making a mandatory report, the mediator should decline a case or withdraw from a case being mediated.

Opinion

As required of any person, a mediator has a statutory obligation to immediately report a reasonable suspicion of abuse or neglect involving a vulnerable adult to the central abuse hotline under section 415.1034(1)(a), Florida Statutes. In the scenario presented, the mediator is being asked to mediate a lawsuit regarding nursing home abuse or neglect – the very subject matter of a mandatory report to the central abuse hotline. Pursuant to the statute, upon being contacted to mediate the case, the mediator should inquire separately of the parties if they have knowledge, and, if so, would like to disclose to the mediator such knowledge, regarding whether suspicion of abuse, neglect, or exploitation of a vulnerable adult has been reported to the Florida Abuse Hotline. See section 415.107, Florida Statutes (providing for confidentiality of “reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline). In the event the mediator is unable to confirm that the incident has been reported prior to the mediation, or new allegations of abuse or neglect are disclosed to the mediator during mediation, the mediator must immediately report the allegations to the hotline. Then, as stated in MEAC 2012-007, the mediator must decline or withdraw from the case to avoid the appearance of bias or partiality which results from making the report. See rule 10.330(a) & (b), Florida Rules for Certified and Court-Appointed Mediators.

In the event the mediator is told by one or both of the parties that the abuse or neglect has been previously reported to the hotline, the mediator must still make a report to the hotline as there is no exception to mandatory reporting under section 415.1034(1)(a), for abuse and neglect which a person is told has been previously reported. See section 39.201(1)(f), Florida Statutes, for a limited exception to reporting child abuse. The mediator should communicate to the parties that the mediator made a report due to the statutory obligation. If the mediator is not the initial reporter and the mediator believes they can be neutral and impartial despite making the report, the MEAC believes the appearance of bias or partiality under rule 10.330 may not exist and the mediator may mediate the case with the parties’ consent; however, the mediator shall not disclose the identity of a party who has made a prior abuse report. See section 415.107.



April 11, 2018

Signed and Dated by Susan Dubow, MEAC Committee Chair