Opinion Number: 2016-003
Date Issued: February 10, 2017

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

The Question

Facts Question One:

Rule 10.360(a) of the Rules for Certified & Court Appointed Mediators states that a mediator shall maintain confidentiality of all information revealed during a mediation except where disclosure is required or permitted by law or is agreed to by all parties. Florida Statute Section 44.405(1) provides that all mediation communications shall be confidential except for disclosures permitted by Section 44.405. That same statute states that a mediation participant may not disclose a mediation communication to anyone other than another mediation participant or a participant’s counsel.

During the course of a mediation, a mediator may need to make copies of documents or drafts of settlement agreements exchanged between the parties. These documents are mediation communications as defined in Florida Statute Section 44.403(1). None of the confidentiality exceptions set forth in Florida Statute 44.405 specifically authorize disclosure of these records to the mediator’s support staff.

Question One: Is a mediator permitted to deliver those documents to their office staff so they can make copies necessary for the mediation session?

More Background Question Two:

Rule 10.360(c) states that the mediator shall maintain confidentiality in the storage and disposal of mediation records. Suppose the mediator concludes the mediation and delivers their notes, the signed settlement agreement (assume the parties wanted the agreement to be maintained as confidential), and any documents exchanged during the course of the mediation to the office staff for filing. Like the situation referenced above, nothing in the statute specifically authorizes disclosure of these mediation communications to the mediator’s support staff.

Question Two: Is the mediator permitted to share these items, all of which are considered mediation communications, with the office staff?

Certified County, Circuit & Appellate Mediator, Central Division

Authorities Referenced:

Rules 10.310 and 10.360(a)-(c), Florida Rules for Certified and Court-Appointed Mediators
Mediation Confidentiality and Privilege Act, sections 44.401-406, Florida Statutes

Mediator Ethics Advisory Opinion 2016-003
Summary

A mediator may ask office staff to copy confidential documents obtained by the mediator during the course of the mediation and to place the mediator’s notes, the signed agreement, and any other confidential materials exchanged during the mediation into an office file. The mediator has an affirmative obligation to advise office staff performing such clerical tasks in furtherance of the mediator’s rendition of services to the mediation participants that the documents are confidential pursuant to rule 10.360(a), Florida Rules of Certified and Court-Appointed Mediators, and sections 44.401-44.406, Florida Statutes.

Opinion

Answer to Question One:

Yes, a mediator may ask office staff to perform the administrative duty of copying confidential documents obtained by the mediator during the course of the mediation. The mediator has an affirmative obligation to advise office staff performing such clerical tasks in furtherance of the mediator’s rendition of services to the mediation participants that these documents are confidential pursuant to rule 10.360(a), Florida Rules of Certified and Court-Appointed Mediators, and sections 44.401-44.406, Florida Statutes, and further to ensure that staff fully understands the intent and practical implications of maintaining confidentiality. In MEAC Opinion 1997-009, MEAC opines that a mediator is required to maintain confidentiality and such obligation “extends to any administrative matter which may have been handled by program staff.”

Answer to Question Two:

Yes, a mediator may direct office staff to place the mediator’s notes, the signed agreement, and any other confidential materials exchanged during the mediation into an office file. As in Question One, the mediator has an affirmative obligation to advise staff performing such clerical tasks in furtherance of the mediator’s rendition of services to the mediation participants that these documents are confidential pursuant to rule 10.360(a) and sections 44.401-44.406, and further to ensure that staff fully understands the intent and practical implications of maintaining confidentiality.

Signed and Dated by Susan Dubow, MEAC Committee Chair

Mediator Ethics Advisory Opinion 2016-003