

FLORIDA SUPREME COURT  
Mediator Ethics Advisory Committee

Opinion Number: 2017-021  
Date Issued: June 13, 2018

### The Question

The plaintiff's attorney participated in the mediation via telephone on behalf of the plaintiff. Plaintiff did not appear at the mediation pursuant to Florida Small Claims Rule 7.090(f) which permits an attorney to appear on behalf of a party at mediation if the attorney has full authority to settle without further consultation. The *pro se* defendant appeared in person at the mediation.

At the outset of the mediation, the mediator learned that the defendant was deaf, but was able to read lips. The defendant asked the mediator to restate the information stated by the plaintiff's attorney so they could participate meaningfully in the process. The plaintiff's attorney consents to the mediator restating their comments so the defendant could read the mediator's lips and understand what is being stated during the mediation.

The mediator was mindful of Rule 10.220 of the Rules for Certified and Court-Appointed Mediators which states: "The role of the mediator is to reduce obstacles to communication . . ." The mediator was also aware of their role under Rule 10.210 to "encourage and facilitate the resolution of a dispute . . ." and the need for "procedural flexibility" as mentioned in Rule 10.230.

When the plaintiff's attorney spoke to the mediator and the defendant, the mediator restated the attorney's comments so the defendant could read the mediator's lips and understand what the attorney said. The mediator made sure to restate the attorney's comments as accurately as possible to make sure no information was misrepresented (see Rule 10.310 - "A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation."). The mediator also made sure to remain impartial throughout the mediation process and remained committed to assisting all parties, as opposed to one individual consistent with their understanding of Rule 10.330.

Questions:

1. Is it a clear conflict of interest under Rule 10.340 for a mediator to restate one person's statements so a deaf participant can read the mediator's lips and understand what the person said?
2. Do any other rules ethically prohibit the mediator from restating one person's statements so a deaf participant can read the mediator's lips and understand what the person said?
3. If the answer to question 1 or 2 is yes, please identify the rule(s) that specifically prohibits the mediator's efforts to reduce obstacles to communication, act impartially throughout the mediation process, assist the parties equally, and respect their right of self-determination to consent to such a procedure.
4. If the answer to question 1 or 2 is no, please discuss how this scenario differs from MEAC 2011-017 where the MEAC opined that "A mediator is prohibited from taking on the dual role of mediator and interpreter or translator."

Supreme Court Certified County, Circuit and Appellate Mediator  
Southern Division

### **Authorities Referenced**

Rules 10.330(a), 10.340(d), and 10.410, Florida Rules for Certified and Court-Appointed Mediators  
MEAC Opinion 2017-002

### **Summary**

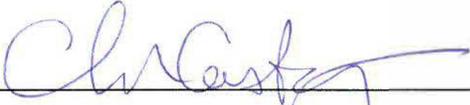
Consistent with MEAC Opinion 2017-002, a mediator shall not perform the dual roles of mediator and oral interpreter for a deaf party.

### **Opinion**

The inquirer describes a scenario in a county court small claims case in which the mediator is asked to serve in the dual roles of mediator and an oral interpreter for a deaf pro se defendant who reads lips (also known as speech reading). The questions posed here may be

answered by referring to MEAC 2017-002, in which the MEAC explained that any question of a mediator serving in dual roles such as those of mediator and spoken language interpreter or translator should be filtered using rules 10.330(a), 10.340(d), and 10.410, Florida Rules for Certified and Court-Appointed Mediators.

Applying rules 10.330(a) and 10.340(d) as mentioned in MEAC 2017-002, a mediator is prohibited from serving in the dual roles of mediator and an oral interpreter for a deaf pro se defendant who reads lips.

 6/13/18

*Signed and Dated by Charles Castagna, MEAC Committee Chair*