

PROBATE AND GUARDIANSHIP COMMITTEE LUNCH

DATE:

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PROGRAM TITLE:

*Conflict Resolution and Ethics
A Summary of Mediator Ethics Advisory Committee (MEAC)
Opinions for 2015 and 2014*



SPEAKER:

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OUTLINE:

The Florida Supreme Court's Mediator Ethics Advisory Committee (MEAC) has been issuing formal advisory ethics opinions to certified and court-appointed mediators since 1994. MEAC opinions deal with mediation-related ethics questions governed primarily by Florida's Rules for Certified and Court-Appointed Mediators. Links to the MEAC opinions summarized below are available on the author's blog at www.flprobatelitigation.com in the sidebar box entitled "MEDIATOR ETHICS ADVISORY COMMITTEE (MEAC) OPINIONS."

2015 MEAC OPINIONS:

2015-001

Certified mediators do not have the authority to ban use of laptop devices or tablets during mediation. Decisions regarding the reason for and the use of these devices are decisions for the parties to make unless there is a court order to the contrary.

2015-002

Unless there is a local court rule, court order or administrative order requiring a mediator to identify the parties or participants who appeared for mediation, the mediator may, but is not required to do so.

2015-003

The Florida Rules for Certified and Court-Appointed Mediators do not contain a prohibition against a mediator serving as an arbitrator in a case the mediator previously mediated. The mediator must ensure the parties have a complete understanding of how the mediator’s role will change and they must waive the conflict of interest and confidentiality of the mediation.

2015-005

The verbal discussion in the scenario presented satisfies the requirements of rule 10.420(c), Florida Rules for Certified and Court-Appointed Mediators. The rule does not require the mediator to write something regarding the terms of the agreement prior to the close of the mediation session if the parties have agreed who will memorialize the agreement and the process for its formalization.

“Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser in fees, expenses, and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good man. There will still be enough business.”

– Abraham Lincoln

2014 MEAC OPINIONS:

2014-002

As is clearly stated in the civil, family, juvenile and appellate rules, a mediator may report only “agreement” or “no agreement” to the court without comment or recommendation. No descriptors or modifiers may be used in the mediator report.

2014-004

In the scenario presented, if conducting mediation in a language common to all parties and the mediator, it is inappropriate for a mediator to then memorialize any agreement reached in a language other than the one in which the mediation was conducted.

2014-005

A mediator’s fee may never be based on the outcome of the mediation.

2014-006

A mediator may not file a Notice of Mediation unless there is a court order referring the parties to mediation and the parties have selected that mediator or the parties have stipulated in writing to mediation and to that mediator in their case.

2014-007

This opinion contains multiple questions regarding the confidentiality provisions of a Residential Mortgage Foreclosure Mediation Program (“RMFM Program”). The confidentiality of a court-ordered mediation begins when the order is issued by the court referring the parties to mediation. Whether subornation of perjury constitutes an exception to confidentiality under section 44.405, Florida Statutes, is a legal question and therefore the MEAC will refrain from responding to this inquiry. If one of the conditions for termination of the mediation set forth in rule 10.420(b) is present, a mediator is required to terminate the mediation. A mediator shall not report to the court or the RMFM Program Administrator directly, or indirectly, as to the cause for termination.

“For every complex problem
there is an answer that is clear,
simple, and wrong.”

– H. L. Mencken

2014-008

Rule 10.420(a), Florida Rules for Certified and Court-Appointed Mediators, by use of the term “shall,” makes delivering an opening statement (orientation session), by a mediator, mandatory.

2014-009

A trainee observing a mediation conference to fulfill mentoring requirements for initial mediator certification may not serve in the dual capacities of trainee and language translator or interpreter.

2014-0010

If a mediator mediates a case pursuant to or governed by local rule 9019-2(C)(4)1 of the U.S. Bankruptcy Court for the Southern District of Florida, the mediator is accountable to the court in a manner consistent with the Florida Rules for Certified and Court-Appointed Mediators (see rules 10.500 and 10.520). If the parties wish to proceed after having being advised by the mediator in the orientation session of this federal court’s requirements regarding mediator disclosure to the court, there is no violation of mediator ethics.

2014-0011

MEAC notes a distinction between the filing of a notice of mediation with the court and notifying the parties in writing of the date, time, and specifics of the mediation conference. The Florida Rules for Certified and Court-Appointed Mediators and Florida procedural rules regarding mediation make mention of a mediator notifying parties but are silent as to whether a mediator may or may not file a notice of mediation with the court. The Committee is of the opinion that a mediator may not file a notice of mediation with the court unless the parties have agreed to use the mediator; the court has designated a mediation program which selects that mediator; or the court selects that mediator directly.

A MEDIATOR'S PLEDGE:

I'm committed to the process of mediation and the goal of self-determined resolution. I will work hard to gain an unbiased understanding of your case. I will explore all the evidentiary, legal and practical issues driving your particular dispute to spark meaningful dialogue and negotiations. I will foster a joint problem-solving mentality. I will ask hard questions: *What do you aspire to? What would you be content with? What could you live with?* I will work collaboratively with all sides to identify and develop creative options and solutions. I am personally invested in your success.

"You don't have to attend every argument you're invited to."

– Unknown

SPEAKER BIOGRAPHY:

Juan C. Antúñez is a partner with Stokes McMillan Antúñez P.A., a boutique trusts and estates law firm located in Miami, Florida, is the author of the *Florida Probate & Trust Litigation Blog* since 2005, and is certified by the Florida Supreme Court as a Circuit Civil Mediator. Mr. Antúñez was voted the 2016 lawyer of the year in *Best Lawyers* for trusts and estates litigation in Miami, Florida, and has been rated a "top lawyer" by *Super Lawyers* since 2013. Mr. Antúñez co-authored the Florida probate chapter of *International Succession*, published by Oxford University Press, and was the sole author of the Florida chapter of *ADR and Trusts: an international guide to arbitration and mediation of trust disputes*, published by Spiramus Press. Mr. Antúñez is a 1996 graduate of the New York University School of Law (J.D.), and a 2003 graduate of the University of Miami School of Law (LL.M. in Estate Planning). Prior to law school Mr. Antúñez volunteered for service with the United States Marine Corps Reserve from 1987 to 1993 (4th ANGLICO, West Palm Beach, Florida), including combat duty during the first Gulf War.