

# Mediation Strategies: Know the Rules!

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# Statutes and Rules that govern the mediation process

Fla. Stat. Chapter 44,  
esp. 44.401: Mediation  
Confidentiality and  
Privilege Act

Florida Rule of Civil  
Procedure 1.700

Florida Family Rules of  
Civil Procedure 12.740

Supreme Court Rule 10,  
esp. Part II: Ethical  
Standards for  
Mediators

Local Administrative  
Orders affecting Family  
mediation

Non-binding Opinions  
of the Mediator Ethics  
Advisory Committee  
(MEAC)

# 44.404(1): Duration of Court-Ordered Mediation

- (1) **A court-ordered mediation** begins when an order is issued by the court and ends when:
  - (a) A partial or complete **settlement** agreement, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
  - (b) The mediator declares an **impasse** by reporting to the court or the parties the lack of an agreement;
  - (c) The mediation is **terminated** by court order, court rule, or applicable law; or
  - (d) The mediation is terminated, after party compliance with the court order to appear at mediation, by:
    - (1) Agreement of the parties; or
    - (2) One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

# 44.404(2): Duration of non-Court- Ordered Mediation

- (2) **In all other mediations**, the mediation begins when the **parties agree to mediate or as required by agency rule, agency order, or statute, whichever occurs earlier, and ends when:**
  - (a) A **partial or complete settlement agreement**, intended to resolve the dispute and end the mediation, is signed by the parties and, if required by law, approved by the court;
  - (b) The mediator declares an **impasse** to the parties.
  - (c) The mediation is **terminated** by court order, court rule, or applicable law; or
  - (d) The mediation is terminated by:
    - (1) Agreement of the parties; or
    - (2) One party giving notice to all other parties in a multiparty mediation that the one party is terminating its participation in the mediation. Under this circumstance, the termination is effective only for the withdrawing party.

44.405:  
Confidentiality;  
privilege;  
exceptions

- **(1) Except as provided in this section, all mediation communications shall be confidential.**
- A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel.
- A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to costs, attorney's fees, and mediator's fees

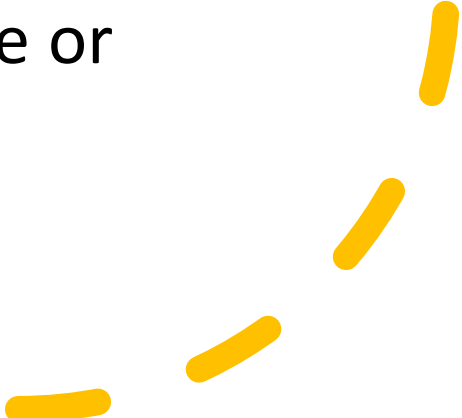
44.405:  
Confidentiality;  
privilege;  
exceptions

- (2) **A mediation party has a privilege** to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.
- (3) If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination of mediation to the other parties.

# 44.405: Confidentiality; privilege; exceptions

- (4)(a) Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication:
  - (1) For which the confidentiality or **privilege** against disclosure has been **waived** by all parties;
  - (2) That is **willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;**
  - (3) That **requires a mandatory report pursuant to chapter 39 or chapter 415** solely for the purpose of making the mandatory report to the entity requiring the report;
  - (4) Offered to **report, prove, or disprove professional malpractice** occurring during the mediation, **solely for the purpose of the professional malpractice proceeding;**
  - (5) Offered for the **limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation;** or
  - (6) Offered to **report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.**
- (b) A mediation communication disclosed under any provision of subparagraph (a)3., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

44.405:  
Confidentiality;  
privilege;  
exceptions

- (5) Information that is otherwise admissible or subject to discovery **does not** become inadmissible or protected from discovery by reason of its disclosure or use in mediation.
  - (6) A party that discloses or makes a representation about a privileged mediation communication **waives** that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.
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# Rule 10.360

## Confidentiality

- (a) Scope. A mediator shall maintain confidentiality of all information revealed during mediation except where disclosure is required or permitted by law or is agreed to by all parties.
- (b) Caucus. Information obtained during caucus may not be revealed by the mediator to any other mediation participant without the consent of the disclosing party.
- (c) Record Keeping. A mediator shall maintain confidentiality in the storage and disposal of records and shall not disclose any identifying information when materials are used for research, training, or statistical compilations.

# Rule 10.200

## Scope and Purpose of the Mediator's Code of Ethics

- “These Rules provide ethical standards of conduct for certified and court-appointed mediators. Court-appointed mediators are mediators selected by the parties or appointed by the court as the mediator in court-ordered mediations. These Rules are intended to both guide mediators in the performance of their services and instill public confidence in the mediation process. The public’s use, understanding, and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles. **Whether the parties involved in a mediation choose to resolve their dispute is secondary in importance to whether the mediator conducts the mediation in accordance with these ethical standards.”**

# What is a mediator's role?

§ 44.403(4): [A] neutral, impartial 3rd person who facilitates the mediation process. The mediator's role is:

- to reduce obstacles to communication,
- to assist in identifying issues,
- to explore alternatives, and
- to facilitate voluntary agreements to resolve disputes, without prescribing what the resolution must be.

Rule 10.220:

- The ultimate decision-making authority, however, rests solely with the parties.

# Rule 10.230

## Mediation

### Concepts

Mediation is based on concepts of communication, negotiation, facilitation, and problem-solving that emphasize:

(a) self-determination;

(b) the needs and interests of the parties;

(c) fairness;

(d) procedural flexibility;

(e) confidentiality; and

(f) full disclosure.

Does the  
attorney have  
to sign the  
Settlement  
Agreement?

**YES.**

Per Florida Family Rule of Civil Procedure  
12.740(f)(1)

“If agreement is reached as to any matter or issue, including legal or factual issues to be determined by the court, the agreement shall be reduced to writing, signed by the parties and their counsel, if any and if present, and submitted to the court unless the parties agree otherwise.”

# Rule 10.370 Advice, Opinions, or Information

- A mediator CAN provide information that the mediator is qualified by training or experience to provide as long as it's consistent with standards of impartiality and preserving party self-determination.
- A mediator SHALL advise the party of the right to seek independent legal counsel when they believe a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations.
- A mediator SHALL NOT offer a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issue.
- A mediator MAY point out possible outcomes of the case and discuss the merits of a claim or defense, consistent with standards of impartiality and preserving party self-determination.
- A mediator SHALL NOT offer a personal or professional opinion as to how the court in which the case has been filed will resolve the dispute.

# Mediator Ethics Advisory Committee (MEAC)

## MEAC Opinions by Subject Matter



- [Advertising/Marketing](#)
- [Advice Opinions or Information](#)
- [Business Practices](#)
- [Confidentiality](#)
- [Conflicts of Interest](#)
- [Procedures](#)

<https://www.flcourts.org/Resources-Services/Alternative-Dispute-Resolution/Mediator-Ethics-Advisory-Committee-Opinions-MEAC>

## MEAC Opinions - Full MEAC Opinions By Year



- [2020-001](#) 
- [2020-002](#) 
- [2019-001](#) 
- [2019-002](#) 

Thank you!

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