

Mediation: Request for Mediator to “Reiterate the Negotiations” (Florida Mediator Ethics Advisory Opinion 2024-001)

Video clip: https://open.mitchellhamline.edu/dri_mclvideo/53/

Overview of the Scenario

A mediator conducted a successful family law mediation that ended with a signed settlement agreement. Four months later, the attorney for one party asked the mediator to meet with them and "reiterate" what had happened during the negotiation, hoping to persuade the client that they had made a good deal compared to possible litigation outcomes. The mediator requested an ethics advisory opinion from the Florida Supreme Court’s Mediator Ethics Advisory Committee regarding the request.

Classroom/Training Objectives

- Explore post-mediation ethical dilemmas involving self-determination, impartiality, confidentiality, and process quality.
- Critique an ethics advisory opinion to explore the distinction between minimal ethics requirements and best practices.
- Understand application of the 2005 Revised Model Standards of Conduct for Mediators to a post-mediation reporting request.

Key Teaching Points

- Minimal ethics requirements are the baseline professional standards that practitioners must meet to remain in compliance with law or professional codes. These standards are necessary, but often represent the floor, not the ceiling for ethical practice. Best practices, in contrast, go beyond compliance.
- As a technical matter, as explicated in Florida Mediator Ethics Advisory Opinion 2024-001, a post-mediation request to “reiterate the negotiations” might be ethically permissible provided that the mediator does not reveal confidential communications (especially those made in caucus) and does not opine on the quality of the agreement reached. But such reporting has the potential to significantly compromise mediator integrity and perception of mediator impartiality.

Analysis (Florida Mediator Ethics Advisory Opinion 2024-001)

Would meeting with the attorney and her client who attended mediation be appropriate?

Florida Family Law Rules of Procedure does not prohibit a mediator from meeting with either party before or after a mediation.

When meeting with the attorney and client may the mediator reiterate the prior negotiations?

There is no specific rule prohibiting the mediator from reiterating the negotiations in this family law case. However, it is the obligation of the mediator to ensure no confidential communications, including confidential caucus communications, are disclosed during the meeting. If the mediator elects to participate in this meeting, the mediator must ensure the mediator's integrity or impartiality is not compromised by these discussions.

Would this meeting create a conflict in any way?

If the mediator only reiterates negotiations and no confidential information is disclosed, the proposed meeting will not create a prohibited conflict. The mediator may reiterate the negotiations, and the *lawyer* may assure the client that a valuable agreement was reached versus the potential outcome if the client took the matter to court. However, the mediator may not reiterate the negotiations in a way that creates a conflict of interest. The mediator may remind the party of the self-determination exercised during the mediation that resulted in the agreement. The mediator is prohibited from offering any opinion as to how great a “deal” the client received, what the outcome may have been, or offer any opinion as to how a judge may have ruled if the case was taken to court.

If the parties are required to attend another mediation post judgment could the mediator serve again as the mediator?

Based on the facts presented, the MEAC has not identified any rule that would prohibit the mediator from serving in a post-judgment mediation with the same parties, presuming the mediator maintains the requisite neutrality and impartiality.

Analysis (2005 Revised Model Standards of Conduct for Mediators)**1. Standard I: Self-Determination**

- **Principle:** Mediators must support parties making voluntary, informed, and uncoerced decisions.
- **Application:** If the mediator seems to support one party's evaluation of the deal, it could undermine that party's autonomy in making their own judgment. Mediators have a duty to preserve the party's ability to reflect on their own decision, even after mediation ends.

2. Standard II: Impartiality

- **Principle:** Mediators must avoid both actual and apparent partiality.
- **Application:** Meeting privately with one side post-mediation may create the appearance of favoritism. Even after mediation concludes, mediators must consider how their actions may affect perceptions of neutrality.

3. Standard V: Confidentiality

- **Principle:** Mediators must preserve confidentiality, including information from private meetings during mediation.
- **Application:** Reiterating negotiations could inadvertently reveal confidential information.

4. Standard VI: Quality of the Process

- **Principle:** Mediators are responsible for ensuring fairness, respect, and party competency throughout the process.
- **Application:** Ask students to consider whether the mediator's participation helps or risks harming the integrity of the mediation process.

Discussion Questions

1. Why might the party's attorney want the mediator to reiterate the negotiation? What are the ethical dangers of agreeing to this request?
2. What distinguishes "reiterating negotiations" from "evaluating the agreement"?
3. How does the principle of self-determination apply here even after the mediation has concluded?
4. Should a mediator ever meet with one party post-mediation? Under what conditions, if any?
5. How might a mediator explain to the requesting attorney why it may not be appropriate to meet?

Resources

- Download PowerPoint Slides from Mitchell Hamline Open Access: [PowerPoint Slides for Classroom Use](#) (with embedded video clip).
- [Florida Mediator Ethics Advisory Opinion 2024-001](#)
- [2005 Revised Model Standards of Conduct for Mediators](#)