

Charles N. Castagna Mediation, Inc.
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**MEDIATOR ETHICS ADVISORY COMMITTEE (MEAC) OPINION UPDATE –
SUMMER 2017**

In MEAC Opinion Number 2016-006, the questions posed to the MEAC were:

- Does Rule 10.420(a) of the Florida Rules for Certified and Court-Appointed Mediators permit a mediator to conserve time by conducting a single joint orientation session (one opening statement) with multiple defendants present, or is a mediator required to conduct an orientation session at the commencement of each defendant’s mediation session?
- Does Rule 10.420(a) allow a mediator to ask a party or counsel if they want to waive or dispense with the mediator’s opening statement?
- Suppose numerous parties appear in a courtroom for small claims pretrial conferences. The trial judge (or other court personnel) begins the morning session by describing the mediation process and covers the elements set for the in Rule 10.420(a). Does Rule 10.420(a) excuse a mediator from conducting an orientation session (opening statement) at the commencement of each mediation if the trial judge (or other court personnel) discussed the same elements set forth in Rule 10.420(a)?

Before I share with you the answers provided by the MEAC, I make the following observations: the requirements of Rule 10.420(a) are simple, straightforward, and not in any manner burdensome or particularly time consuming. The rule provides, in essence, that in beginning a mediation session, “. . . a mediator shall describe the mediation process and the role of the mediator, and shall inform the mediation participants that:

- (1) mediation is a consensual process;
- (2) the mediator is an impartial facilitator without authority to impose a resolution or adjudicate any aspect of the dispute; and
- (3) communications made during the mediation are confidential except where disclosure is required or permitted by law.”

In appropriate cases, a brief and simple description of the mediation process together with covering the required three items listed above, is all that needs to be said. More detail would certainly be helpful and appropriate when dealing with a party or parties who are unfamiliar with the mediation process. When making an opening statement, the mediator certainly has some discretion as to how much, beyond the bare-bones requirements of the Rule, needs to be said about the process and the role of the mediator. In

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the context of mediation, the less experienced and sophisticated the party, the more comprehensive and detailed your opening statement. Enough said about that!

As pointed out by the MEAC, the Rule specifically refers to “mediation session,” which indicates one set of parties involved in one particular case.

The MEAC, referring to the Mediation Confidentiality and Privilege Act, sections 44.401 – 406, Florida Statutes, also points out that “. . . if the orientation session (or any part of a mediation session) occurs with other parties from unrelated cases, confidentiality is compromised.”

And so, the MEAC opines: As to Question One, no, a mediator is not permitted nor may suggest or offer the option of conducting a single orientation session for multiple plaintiffs and defendants in different cases; As to Question Two, no, Rule 10.420(a) does not give the mediator authority to ask parties or counsel if they wish to waive a mediator’s orientation session; and As to Question Three, no, Rule 10.420(a) does not permit a mediator to refrain from delivering an orientation session at the commencement of each mediation session, even if all the elements of Rule 10.420(a) were covered by court personnel or anyone else prior to the mediation.

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