

Bankruptcy Mediation A New Trend

DRC Annual Conference

August 9, 2013



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BANKRUPTCY MEDIATION: A NEW TREND

August 9, 2013

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Presenter Biographical Information

U.S. Bankruptcy Court: Court Ordered Mediation by Constance d'Angelis, Esq.

Bankruptcy Court Requirements for Certification

Administrative Order FLMB-2013-3

U.S. Bankruptcy Court approval letter

Application for Admission to List of Residential Mortgage Foreclosure Mediators

Order Directing Mortgage Mediation

DISCUSSION: Mediator Ethics Advisory Opinion

MEAC 2012-005 Advisory Opinion with Revised Summary (June 27, 2013)

Useful Links

Modifying Residential Mortgages in Bankruptcy Proceedings

COURSE INFORMATION

Bankruptcy Mediation: A New Trend

Presenter

August 9, 2013

- Constance d'Angelis, Esq. has been a member of the U.S. District Court for the Middle District of Florida and The Florida Bar since 1983. She has practiced debtor/creditors' rights law in both the Florida State Courts and the U.S. Bankruptcy Courts since being admitted to the Bar. Constance is approved by the U.S. Bankruptcy Court for the Middle District of Florida, Tampa Division, as a Residential Mortgage Mediator. In addition, she is a Florida Supreme Court Certified Circuit Civil Mediator, specifically certified in residential mortgage foreclosure mediations; and a Florida Qualified Arbitrator. She was an arbitrator for FINRA (Financial Industry Regulatory Authority) from the mid 80's until 2013. Currently, she is a member of the Tampa Bay Bankruptcy Bar and Hillsborough Bar associations. Constance is the author of the U.S. Bankruptcy Court approved course: *Modifying Residential Mortgages in Bankruptcy*.

Bankruptcy Mediation:
A New Trend

United States Bankruptcy Court
Middle District of Florida

Mortgage Mediator
Certification

Institute for Peaceful Solutions

A Florida Non-Profit Corporation
7 Laws Education Foundation
Approved training by Constance d'Angelis, Esq.

<http://7lawsofcredit.org>



United States Bankruptcy Court
Middle District of Florida

- Administrative Order on Certification of Residential Mortgage Modification Mediators
 - WWW.flmb.uscourts.gov
- Administrative Order: FLMB – 2013-3
- TO BE CERTIFIED BY THE COURT AS A MORTGAGE MEDIATOR, THE MORTGAGE MEDIATOR MUST:



Certification Requirements

- 1. Be a Florida Supreme Court Certified Circuit Court Mediator;
- 2. Have completed a least 8 hours of training approved by the Chief Bankruptcy Judge or her designee that focuses on modifying residential mortgages in bankruptcy proceedings; and

Certification Requirements, cont'd

- 3. Agree to accept two mediation assignments per year when one or more parties cannot pay the mediation fee; and
- 4. Submit an application to the Clerk of Court together with proof of compliance with (prior sections, 1 – 3).

Divisions

U.S. Bankruptcy Court, Middle District of Florida

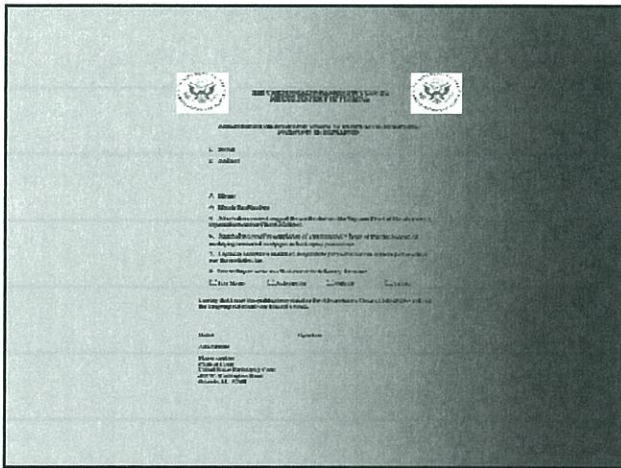
Tampa

Jacksonville

Fort Myers

Orlando

– Clerk of Court : 400 W. Washington Street,
Orlando, FL 32801



Residential Mortgage Foreclosure Mediators

- Modifying Residential Mortgages in Bankruptcy Proceedings
- 8 hours of training
- Middle District of Florida (The U.S. Bankruptcy Court) A/O FLMB-2013-3
- Southern District of Florida A/O differs – A/O 13-01 www.flsb.uscourts.gov

**MORTGAGE MEDIATOR
CERTIFICATION TRAINING**

THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
Tampa, Florida

INSTITUTE FOR PEACEFUL SOLUTIONS CORPORATION, A FLORIDA NONPROFIT

**“YOU NEVER CHANGE THINGS BY FIGHTING THE
EXISTING REALITY. TO CHANGE SOMETHING,
BUILD A NEW MODEL THAT MAKES THE
EXISTING MODEL OBSOLETE.”**

R. Buckminster Fuller

The Florida Bar

Certificate of Accreditation for Continuing Legal Education

Title: Modifying Residential Mortgages in Bankruptcy

Level: Intermediate

CLE credits

General 8.5

Ethics 1.0

Certification Credits

Business Litigation 6.5

Real Estate 8.5

Course Outline

1. Bankruptcy: General Consumer Law
2. Specific Bankruptcy Provisions
3. General Florida Foreclosure Law and Mediation Process, Effect and Timing of Bankruptcy Filing
4. Ethics and Diversity

Course outline cont'd

- 5. Bankruptcy Court Ordered Mediation and the Mediator's Role
- 6. Loss Mitigation / Federal Foreclosure Assistance and Proprietary Programs
- 7. Loss Mitigation / View from Inside the Servicer/Lender
- 8. Debtor/Creditor Counsel Viewpoints; mortgage modifications from Mediator perspective

Bankruptcy Court Orders – Mediator Selection

- **Jacksonville:**

Selection of Mediator – The parties shall select a qualified mediator. ...

Court Selection: If the parties are unable to agree or secure a mediator within 28 days ...the Court can appoint an acceptable mediator.

Bankruptcy Court Orders – Selecting a Mediator

- **Orlando:**

Selection of Mediator: The parties shall select a qualified mediator *from this Court's list of approved attorney mediators.*

Court Selection: If the parties are unable to agree or secure a mediator within 28 days ...the Court can appoint an acceptable mediator

Bankruptcy Court Orders – Selecting a Mediator

- **Tampa:**

- ~~ The Court appoints to serve as Mediator: . . .
- ~~ The Court directs the parties to mutually select a mediator and file a notice with the Court identifying the selected mediator. If the parties fail to file such notice within 21 days of entry of this Order, the movant shall file a request for the Court to appoint a mediator unless debtor is pro se or this order is on the Court's own motion, in which case the Court will appoint a mediator.

Bankruptcy Court Orders – Financial Documentation

Debtor(s)' Financial Documents

Jacksonville and Orlando:

- Counsel for debtor(s) or, if unrepresented, the debtor(s) shall, 28 days after entry of this order, provide debtor(s)' most current (within 30 days) financial information to Counsel for creditor(s)...

Bankruptcy Court Orders – Financial Documentation

Tampa:

- At least *21 days prior to the scheduled mediation*, the Debtor's counsel or, the Debtor if unrepresented, shall provide to the *Creditor's representative* the Debtor's following information: . . .

Bankruptcy Court Orders – Financial Documentation

- Generally, the Middle District Court Orders regarding the Debtor's financial information to be provided to Counsel for Creditor or Creditor are the same, except that the Tampa Division requires an additional document(s):
- "u. Any appraisals or other evidence of value obtained or relied upon by the Debtor."
- See: Order Directing Mortgage Modification Mediation and Establishing Mediation Compensation.

Bankruptcy Court Orders – Mediator Report

- Jacksonville and Orlando:

Within 7 days of the conclusion of the mediation, the mediator is directed to file a written report indicating whether any agreement on a mortgage modification was reached. Parties are directed to promptly seek any necessary court approval for the mortgage modification and to formalize the modification in any needed legal documents.

Bankruptcy Court Orders – Mediator Report

- Tampa:

Within five days following the conclusion of mediation, the Mediator shall file a Mediator's Report and Completion of Mediation indicating whether the mediation resulted in settlement or an impasse.

Bankruptcy Court Orders – Settlement Authority

- Jacksonville and Orlando: Substantially the same; exception noted in italics.

Identification of Mediation Participants with Settlement Authority

At least 21 days prior to the scheduled mediation, counsel for the creditor(s) must provide a completed Certification of Settlement Authority identifying the creditor(s) representative who will appear at the mediation to the *Chapter 13 Program Manager ...*, the mediator, and debtor(s) counsel along with the case number of the action and contact information ...

Certification of Settlement Authority

- Jacksonville and Orlando:

A Certificate of Settlement Authority must be provided. And, at least one of the creditor's representatives designated therein MUST attend any mediation session.

The Certificate may be amended no later than 5 days prior to mediation session.

- Tampa: No such requirement.

Bankruptcy Court Orders – Settlement Authority

- Tampa –

Each party or its representative having full authority to settle without further consultation shall attend the mediation with counsel, if any. If the failure of a party to comply with this requirement results in an impasse, such party may be liable for sanctions to include payment of all fees incurred by the other parties to the mediation.

Settlement Authority Mediator Requirements

- Jacksonville and Orlando:
1. Mediator SHALL take a written roll prior to commencement of any mediation conference
 2. If Mediator determines a needed party not present, Mediator SHALL report non-appearance.
 3. If Mediator determines party does not have full authority to settle, Mediator SHALL report non-appearance of rep with full authority.

Settlement Authority Mediator Requirements

- Tampa:

No Mediator requirement to report non-appearance or failure to comply with Settlement Authority prerequisite.

No Mediator requirement to take a "written roll".

Note: If failure of party to comply results in impasse, party may be liable for sanctions.

Mediation Communication

- Jacksonville and Orlando:

Written Roll and communication of authority of the mediator is NOT a mediation communication; and is not privileged or confidential.

- Tampa:

No written roll or communication of authority required of the mediator.

Telephonic Appearances

- Jacksonville and Orlando:

Both creditor counsel and creditor representative (designated in Certificate of Settlement Authority) may appear by phone.

Each must be able to sign a binding settlement agreement by fax, email or electronic means, at the time of the mediation.

Debtor and counsel must be physically present.

Telephonic Appearances

- Tampa:

Telephonic appearance may be authorized in advance by the Mediator, at the Mediator's discretion.

Mediation Fee

- Orlando:

1. \$385.00 paid by Debtor to Ch 13 Trustee; and
 2. Mediator receives \$350.00; and
 3. Trustee receives \$35.00
 4. Two (2) hours of mediation.
 5. Trustee disburses mediator fee promptly upon:
 - A. Filing of Mediator Report concluding or continuing mediation; or
 - B. Modification of the loan – whichever is earlier. Or
 - C. Failure to timely cancel session or attend scheduled session.
- CANCELLATION: 14 days prior to scheduled mediation date

Mediation Fee

Jacksonville:

1. \$350.00 paid by Debtor to Debtor Attorney; and
2. Mediator receives \$350.00 for
3. Two (2) hours of mediation.
4. Attorney disburses mediator fee promptly upon:
 - A. Filing of Mediator Report concluding or continuing mediation; or
 - B. Modification of the loan – whichever is earlier. Or
 - C. Failure of either party to timely cancel mediation session or attend scheduled session.

CANCELLATION: 14 days prior to scheduled mediation date

Mediation Fee

- Tampa:
 1. \$350.00 Mediator fee; and
 2. Fee paid equally by parties prior to commencement of the mediation, for
 3. Two (2) hours of mediation.
 4. Continuation of mediation beyond two hours:
 - a. Mediator normal hourly rate; or
 - b. Such other rate agreed by parties.
 - c. Added fee paid equally by parties before conclusion.

Good Faith

"All parties are directed to comply with this Order and to engage in the mediation process in good faith. Failure to do so may result in the imposition of damages and sanctions."

See Mortgage Modification Mediation Order for United Bankruptcy Court Middle District of Florida, Orlando and Jacksonville Divisions.

Is "Good Faith" required and is there an affirmative duty to disclose?

- Tampa:

No "Good Faith" requirement in Court's Order Directing Mortgage Modification Mediation and Establishing Mediation Compensation. But see,
- Local Rules U.S. Bankruptcy Court for the Middle District of Florida; and
- MEAC opinion 2012-005

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re)	
)	
ADMINISTRATIVE ORDER ON)	Administrative Order
CERTIFICATION OF RESIDENTIAL)	FLMB-2013-3
MORTGAGE MODIFICATION)	
MEDIATORS)	
)	
Debtor[s].)	
)	

**ADMINISTRATIVE ORDER PRESCRIBING PROCEDURES FOR
RESIDENTIAL MORTGAGE FORECLOSURE MEDIATORS CERTIFICATION**

The Bankruptcy Court for the Middle District of Florida is a national leader in the using mediation to assist parties modify residential mortgages. The Court perceives the need to expand the panel of qualified mediators. Accordingly, it is

ORDERED:

1. Beginning February 1, 2013, the Clerk of Court shall maintain list of mediators in each Division of this Court who are certified to mediate modifications of residential mortgages involved in foreclosure actions ("Mortgage Mediator").
2. To be certified by the Court as a Mortgage Mediator, the Mortgage Mediator must:
 - A. Be a Florida Supreme Court Certified Circuit Court Mediator;
 - B. Have completed at least 8 hours of training approved by the Chief Bankruptcy Judge or her designee that focuses on modifying residential mortgages in bankruptcy proceedings; and
 - C. Agree to accept two mediation assignments per year when one or more parties cannot pay the mediation fee; and
 - D. Submit an application to the Clerk of Court together with appropriate proof of compliance with Section 2 (A, B & C).

3. Any person acting as a Mortgage Mediator as of the date of this Order shall have until September 1, 2013, to demonstrate compliance with the requirements of Paragraph 2.

DONE AND ORDERED in Orlando, Florida, on January 31, 2013.


KAREN S. JENNEMANN
Chief United States Bankruptcy Judge

United States Bankruptcy Court
Middle District of Florida
Sam M. Gibbons United States Courthouse
801 North Florida Avenue, Suite 854
Tampa, Florida 33602-3899

Catherine Peek McEwen
United States Bankruptcy Judge

Phone 813-301-5082

March 27, 2013

Ms. Constance d'Angelis
Attorney at Law
84 Davis Boulevard # 201
Tampa, FL 33606

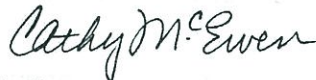
RE: Course for Residential Mortgage Modification Mediators

Dear Ms. d'Angelis:

Your Mortgage Modification Mediator training course as described in the letter attached your email dated March 4, 2013, is approved for purposes of our the Middle District of Florida's Administrative Order on Certification of Residential Mortgage Modification Mediators (Administrative Order FLMB-2013-3) prescribing the requirements for inclusion on the Court's panel of certified residential mortgage modification mediators.

Thank you for your submission.

Very truly yours,



Catherine Peek McEwen

CPM:mm

cc: Hon. Karen M. Jennemann
Chief Bankruptcy Judge



THE UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA



APPLICATION FOR ADMISSION TO LIST OF RESIDENTIAL MORTGAGE
FORECLOSURE MEDIATORS

1. Name: _____
2. Address: _____

3. Phone: _____
4. Florida Bar Number: _____
5. Attached is a current copy of the certificate from the Supreme Court of Florida showing my certification as a Circuit Mediator.
6. Attached is a proof of completion of a minimum of 8 hours of training focused on modifying residential mortgages in bankruptcy proceedings.
7. I agree to accept two mediation assignments per year when one or more parties cannot pay the mediation fee.
8. I am willing to serve as a Mediator in the following divisions:
☐ Fort Myers ☐ Jacksonville ☐ Orlando ☐ Tampa

I certify that I meet the qualifications stated in the Administrative Order FLMB-2013-3 and that the foregoing statements are true and correct.

Dated: _____ Signature: _____

Attachments

Please send to:
Clerk of Court
United States Bankruptcy Court
400 W. Washington Street
Orlando, FL 32801

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

This document is provided for informational purposes only. It is not to be submitted as a proposed order. The Court will prepare all such orders.

In re:

Case No. 8: _____

Chapter _____

_____,
Debtor(s)*. _____/

**ORDER DIRECTING MORTGAGE MODIFICATION
MEDIATION AND ESTABLISHING MEDIATION COMPENSATION**

THIS CASE came on for consideration of a motion for mortgage modification mediation (the "Motion") in the form of

- ☐ a motion filed at Doc. No. ____.
- ☐ an *ore tenus* motion made at a hearing held on _____.
- ☐ the Court's own motion made at a hearing held on _____.

The Motion requests mediation for the purpose of modifying the mortgage agreement between the Debtor and _____ (the "Creditor"). Based on the Court's review of the Motion and the record, the Court finds that the Motion should be granted. Accordingly, it is

ORDERED:

1. The Motion is granted.
2. If an attorney has not appeared in this case on behalf of the Creditor, then within 14 days of entry of this Order, the Creditor shall file a designation on the record of the attorney, or other person, who will serve as the Creditor's representative in connection with this mediation and that person's contact information, including e-mail address.

* All references to "Debtor" shall refer to both debtors in a case filed jointly by two individuals.

3. Within 21 days of entry of this Order, the Creditor shall supply the Debtor's counsel, or the Debtor if unrepresented, with the Creditor's loan modification requirements.
4. ☐ The Court appoints _____ to serve as Mediator.
☐ The Court directs the parties to mutually select a mediator and file a notice with the Court identifying the selected mediator. If the parties fail to file such notice within 21 days of entry of this Order, the movant shall file a request for the Court to appoint a mediator unless the debtor is pro se or this order is on the Court's own motion, in which case the Court will appoint a mediator.
5. The Mediator is entitled to compensation of \$350 for two hours of mediation, to be paid equally by the parties prior to commencement of the mediation. If the parties agree to continue the mediation beyond two hours, the Mediator shall thereafter be entitled to his/her normal hourly rate for residential mortgage modification mediation, or such other rate as the parties and the Mediator may agree upon, to be paid equally by the parties prior to the conclusion of the mediation.
6. ☐ The mediation shall be scheduled to occur within 60 days of entry of this Order.
☐ The mediation shall be scheduled to occur no later than _____.
7. The Mediator is responsible for coordinating a mutually convenient date, time, and place of the mediation.

8. At least 21 days prior to the scheduled mediation, the Debtor's counsel, or the Debtor if unrepresented, shall provide to the Creditor's representative the Debtor's following information:
- a. Completed HAMP RMA Financial Disclosure Loan Modification Package;
 - b. Completed Lender Specific Modification Form;
 - c. Last two months' pay stubs for all non self-employed borrowers;
 - d. Six month profit/loss statement from self-employed borrowers, typed, signed and dated on business letterhead;
 - e. Benefit Statements (Social Security, Disability, Unemployment, Welfare, Pension Award Letter, etc.);
 - f. Lease agreement (if claiming rental income) or contribution letter;
 - g. Last two months' bank statements (all pages), personal and business, if applicable;
 - h. Last two years federal income tax returns (including all schedules), personal and business, if applicable, signed and dated;
 - i. IRS Form 4506-T;
 - j. Current utility bill (showing name and property address of debtor/debtors);
 - k. Homeowners' insurance quote/policy;
 - l. Current tax assessment for property;
 - m. Proof of HOA fees and payment status;
 - n. Hardship Letter, signed and dated;
 - o. Schedule I;
 - p. Schedule J;
 - q. Chapter 13 Plan, if applicable;
 - r. Consent to Escrow, signed and dated;
 - s. Completed Dodd-Frank Form;
 - t. Any additional information requested by the Creditor or identified as required information on the Creditor's website; and
 - u. Any appraisals or other evidence of value obtained or relied upon by the Debtor.
9. At least 14 days prior to the scheduled mediation, the Creditor shall review the Debtor's financial information and notify the Debtor of any additional or updated financial records the Debtor must provide to the Creditor. The Debtor must provide additional or updated records within three business days of such notification.
10. Each party or its representative having full authority to settle without further consultation shall attend the mediation with counsel, if any. If the failure of a

party to comply with this requirement results in an impasse, such party may be liable for sanctions to include payment of all fees incurred by the other parties to the mediation. Telephonic appearance may be authorized in advance by the Mediator, at the Mediator's discretion. At the Mediator's request, the trustee of a securitized loan or its fully authorized designee with complete and master servicer settlement authority shall provide the Mediator with a copy of any applicable settlement guidelines.

11. Debtor's counsel may charge the Debtor additional fees to prepare for and participate in the mediation, by filing an application for compensation for either a flat ("a la carte") fee of up to \$1,800 or attorney's fees in some other amount based on a reasonable hourly rate.
12. Within five days following the conclusion of mediation, the Mediator shall file a Mediator's Report and Completion of Mediation indicating whether the mediation resulted in settlement or an impasse.
13. Participation in mediation conducted pursuant to this Order does not preclude participation in state court foreclosure mediation.

DONE and ORDERED at Tampa, Florida, in Chambers on _____.

BY THE COURT

[Name of Judge]
United States Bankruptcy Judge

Copies furnished to:

Debtor's counsel
Creditor's counsel per matrix
Creditor's counsel per NoA

Advisory Opinion with Revised Summary**MEAC 2012-005**

Mediator Ethics Advisory Committee

Florida DRC, Supreme Court Building Tallahassee, FL 32399

June 27, 2013

The Question:

This letter is a request for a formal advisory opinion from the Mediator Ethics Advisory Committee ("MEAC"). The issues presented are (1) whether it is a breach of confidentiality for mediators to disclose that a party failed to negotiate in good faith or willfully failed to appear at a mediation conference when such disclosure is required by the local rules of the Florida federal courts, and (2) if so, whether the mediator should withdraw from all mediations in the federal courts that require such disclosure.

According to the Mediation Confidentiality and Privilege Act, "all mediation communications shall be confidential." Fla. Stat. § 44.405(1) (2011). Importantly, there is no requirement that parties to court-ordered mediation participate in good faith. *Avril v. Civilmar*, 605 So. 2d 988, 989-990 (Fla. 4th DCA 1992). In an advisory opinion dated January 17, 2005, the MEAC addressed the issue of a court-ordered mediation requiring the mediator to monitor and report violations of good faith by the participating parties. MEAC Opinion 006 (2004). In this opinion, the MEAC recommended the mediator withdraw from the mediation because of the conflict between the court order and the rules of ethics. *Id.* In its response, the MEAC stated, "[a] mediator is not able to comply with both the Florida Rules for Certified and Court-Appointed Mediators and a court order to report a party who fails to mediate in good faith." *Id.*

In another advisory opinion, on July 24, 2006, the MEAC addressed whether it was an ethical violation for a mediator to report to the court that a party did not have full settlement authority. MEAC Opinion 003 (2006). The MEAC confirmed that barring special circumstances, a mediator is "limited to reporting that no agreement was reached" and concluded that such disclosure would be an ethical violation. *Id.*

Additionally, the Florida Rules for Certified and Court Appointed Mediators provide that "[a] mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation." R. 10.520, Fla. Rules for Certified and Court-Appointed Mediators.

A conflict arises when one attempts to reconcile the local rules of United States Bankruptcy Court for the Middle District of Florida with the Mediation Confidentiality and Privilege Act. Regarding mediation conferences, the local rules state that "[t]he mediator shall report to the Court 'the willful failure to attend the mediation conference or to participate in the mediation process in good faith, which failure may result in the imposition of sanctions by the

Court.” Local Rule 9019-2(d)(2), Bankr. M.D. Fla. A similar requirement appears in the Rule 9019-2(C)(4) of the local rules of the Bankruptcy Court for the Southern District of Florida and in the local rules of other federal courts in Florida. These requirements appear to be in direct conflict with the mandates of the Mediation Confidentiality and Privilege Act.

It should be noted that the present issue is distinguishable from the issue in MEAC Opinion 2004-006 because the apparent violation of confidentiality stems not from a court order, but from the local rules of the federal courts, applicable to all, and not just some, mediations in the federal courts. Such a systemic conflict would not be addressed by merely withdrawing from the mediation, which is the solution proposed by MEAC Opinion 2004-006 when a mediator is confronted with the decision between maintaining confidentiality or obeying a court order. This framework forces mediators to decide between protecting confidentiality, as required by the Mediation Confidentiality and Privilege Act, and therefore withdrawing from all mediations in the Florida federal courts, or violating local rules of the federal courts requiring them to disclose a failure by the parties to “willfully” attend mediation or “participate in good faith.”

I am hoping for clarification on how a mediator should act when operating under these local rules, and I request the MEAC deliver an advisory opinion on this matter.

Submitted by a Certified Circuit Mediator
Central Division

Authorities Referenced:

Rules 10.360, 10.420(a)(3), 10.500, 10.520, Florida Rules for Certified and Court-Appointed Mediators

Rule 9019-2(d)(2) of the local rules of the Bankruptcy Court for the Middle District of Florida
Sections 401-405, Chapter 44, Florida Statutes

MEAC Opinions 2004-006 and 2006-003

Summary:

In accordance with Rule 10.520, a certified mediator conducting a mediation in U.S. Bankruptcy Court for the Middle District of Florida who discloses that “a party failed to negotiate in good faith” or “willfully failed to appear at mediation” does not violate the mediator’s ethical responsibilities to mediation confidentiality as such disclosure is required by the local rules of that court.

Opinion:


Your inquiry concerns a local procedural rule of the federal bankruptcy court. Complying with local court rules falls under Rule 10.360 which creates an exception: "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." [emphasis added] Further, Rule 10.520 states "A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation." Pursuant to Rule 10.520, when a mediator is conducting a court-ordered mediation in federal court, the mediator is required to comply with the local court rules. Therefore, the mediator may report to the federal court in which the mediator is conducting the mediation "the willful failure to attend the mediation conference or to participate in the mediation process in good faith" which is required by Local Rule 9019-2(d)(2), Bankr. M.D. Fla. and such a report does not violate the Florida Mediation Confidentiality and Privilege Act, Section 44.405, Chapter 44, Florida Statutes.

The MEAC distinguishes this scenario from the one set forth in MEAC 2004-006. In that opinion, a court order required the mediator to report violations of good faith in the state trial court. This obligation to report was in conflict with the procedural rules which limit communication by the mediator to notifying the court of agreement or no agreement "without comment or recommendation" (See Florida Rule of Civil Procedure 1.730). The MEAC also distinguishes MEAC Opinion 2006-003; that case centered on a mediator's desire to report a lack of settlement authority for which there is no exception to confidentiality (See Sections 401- 405, Chapter 44, Florida Statutes).

In conclusion, Rule 10.420(a)(3) requires the mediator to explain the mediation process, the role of the mediator, and inform the mediation participants that "communications made during the process are confidential, except where disclosure is required or permitted by law." Rule 10.500 states "A mediator is accountable to the referring court with ultimate authority over the case. Any interaction discharging this responsibility, however, shall be conducted in a manner consistent with these ethical rules." As explained above, the mediator in this scenario is acting appropriately under the Florida Rules for Certified and Court-Appointed Mediators in making the report to the referring federal court.

In the scenario presented, the MEAC advises the mediator should highlight, during opening statement, the federal bankruptcy court's requirement for the mediator to report "willful failure to attend the mediation conference or to participate in the mediation process in good faith" as an exception to the parameters of mediation confidentiality found in state court rules.

June 27, 2013
Date


Beth Greenfield-Mandler, Committee Chair

Useful Links

Mers Inc, who owns your mortgage look up tool

<http://www.mersinc.org/>

Making Home Affordable Home page

<http://www.makinghomeaffordable.gov/pages/default.aspx>

HUD home page

<http://portal.hud.gov/hudportal/HUD>

Fannie Mae Tool mortgage modification calculator

<http://www.knowyouroptions.com/find-resources/information-and-tools/financial-calculators/modification-calculator>

Fannie Mae repayment plan mortgage calculator

<http://www.knowyouroptions.com/find-resources/information-and-tools/financial-calculators/repayment-plan-calculator>

Report mortgage rescue scams, this link is available at the Housing & Education web site

<http://www.Myhomeamerica.org>

Housing & Education Alliance Web Site

<http://www.checkmynpv.com>

Making Home Affordable link to calculate Net Present Value

Modifying Residential Mortgages in Bankruptcy Proceedings

The Florida Bar Accreditation

CLE Credits

Certification Credits

General - 8.5

Business Litigation - 6.5

Ethics - 1.0

Real Estate - 8.5

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7LawsofCredit.org



Provider # 278268