**Instructions.** Review the fact pattern and discuss in your group for 10 minutes. Note that the last several pages of this handout are part of the Florida Rules for Certified and Court-Appointed Mediators (Fla. R. Med.). We’ll discuss as a large group thereafter.

**PROBLEM 1 (all three parts):**
You mediate in a county within the fictional 21st Judicial Circuit of Florida, which has an Administrative Order (‘‘AO’’) concerning actions referred to mediation. Among other things, the AO requires the parties referred to “undertake mediation in a serious manner, and to negotiate in good faith, on penalty of court sanction for failure to do so.”

1. You are assigned as mediator of *Smith v. Jones*, an action pending in the 21st Judicial Circuit. During the course of your first caucus with Mr. Jones, he tells you, “This case is worthless. I’m not going to put a penny down. I’m only here because the court says I have to be.”

   What action, if any, does this statement by Mr. Jones in caucus require of the mediator ethically?

2. If the AO also requires the mediator to report to the court, in the event of an impasse, whether the parties negotiated in good faith and if not, which party did not and why...

   May the mediator ethically complete that form?

3. Assume you convey Mr. Jones’ offer of “Zero” to Mr. Smith, who grows so irate, he asks you to declare impasse, which you do. Now, Mr. Smith has filed a motion in court for sanctions against Mr. Jones for failure to mediate in good faith. At a hearing on that motion, which Mr. Jones does not attend, you are called by Mr. Smith to testify as to what, if anything, Mr. Jones told you in caucus.

   How may you ethically respond?
Instructions. Review the fact pattern and discuss in your group for 10 minutes. Note that the last several pages of this handout are part of the Florida Rules for Certified and Court-Appointed Mediators (Fla. R. Med.). We’ll discuss as a large group thereafter.

PROBLEM 2:

Your homeowners’ [condominium] association has decided to embrace alternative dispute resolution to address the many citations issued for noncompliance by residents (uncut lawns, loud music, barking dog, window shade exteriors that are the “wrong” color, parking on sidewalks, basketball backboard/stands erected, etc.). Since you, a mediator certified by the Supreme Court, are famous in your neighborhood as a peacemaker, you have been asked to serve as Association “Resolutionist”. Now, before citations are issued by the Association, the complaining person has to bring his/her concerns before you, and the accused homeowner has a chance to explain his/her side of things.

In a particular case, one side gets so upset about a dog barking that he says to the neighbor, “I’ve had enough of this [insert colorful metaphor]! If he doesn’t make it stop so my infant can get some sleep, I am just going to shoot that [insert another colorful metaphor] dog.”

As a mediator, are you required to keep these discussions confidential?
Instructions. Review the fact pattern and discuss in your group for 10 minutes. Note that the last several pages of this handout are part of the Florida Rules for Certified and Court-Appointed Mediators (Fla. R. Med.). We’ll discuss as a large group thereafter.

PROBLEM 3 (both parts):

At a CME seminar, a certified mediator colleague told you about some practices of hers, which have gotten you thinking.

1. First, she says that, either as part of the opening statement or during the course of mediation, she tells the parties that, although everything discussed in caucus is confidential, she may choose to reveal items of caucus discussion, unless the party (or counsel) specifically directs her not to reveal the item(s).

   May this mediator ethically engage in this conduct?

2. The mediator also tells you that she has told parties that, while she is not ethically allowed to tell them how the judge might rule in their case, she has seen this judge rule on this issue in other, similar cases – and then states how the judge has ruled in those other cases. She also states she regularly tells parties that she has tried this type of case many times as an attorney, and, 9 times out of 10, the Defendant lost.

   May this mediator ethically engage in this conduct (assume that the statements are truthful)?
Rules for Certified and Court-Appointed Mediators

Rules for Certified and Court-Appointed Mediators ................................................................. 95
Part I Mediator Qualifications .................................................................................................... 97
  Rule 10.100 Certification Requirements ............................................................................... 97
  Rule 10.105 Point System Categories .................................................................................. 98
  Rule 10.110 Good Moral Character ...................................................................................... 101
  Rule 10.120 Notice of Change of Address or Name .............................................................. 102
  Rule 10.130 Notification of Conviction ............................................................................... 102
Part II Standards of Professional Conduct ........................................................................... 103
  Rule 10.200 Scope and Purpose .......................................................................................... 103
  Rule 10.210 Mediation Defined ............................................................................................ 104
  Rule 10.220 Mediator’s Role ................................................................................................. 104
  Rule 10.230 Mediation Concepts ......................................................................................... 104
  Rule 10.300 Mediator’s Responsibility to the Parties ............................................................ 105
  Rule 10.310 Self-Determination ......................................................................................... 105
  Rule 10.320 Nonparticipating Persons ............................................................................... 106
  Rule 10.330 Impartiality ........................................................................................................ 107
  Rule 10.340 Conflicts of Interest ......................................................................................... 107
  Rule 10.350 Demeanor ........................................................................................................ 109
  Rule 10.360 Confidentiality ................................................................................................. 109
  Rule 10.370 Advice, Opinions, or Information .................................................................... 109
  Rule 10.380 Fees and Expenses .......................................................................................... 110
  Rule 10.400 Mediator’s Responsibility to the Mediation Process ....................................... 111
  Rule 10.410 Balanced Process ............................................................................................ 111
  Rule 10.420 Conduct of Mediation ....................................................................................... 112
  Rule 10.430 Scheduling Mediation ...................................................................................... 113
  Rule 10.500 Mediator’s Responsibility to the Courts ........................................................... 113
  Rule 10.510 Information to the Court .................................................................................. 113
  Rule 10.520 Compliance with Authority ............................................................................. 113
  Rule 10.530 Improper Influence .......................................................................................... 113
  Rule 10.600 Mediator’s Responsibility to the Mediation Profession .................................... 114
  Rule 10.610 Marketing Practices .......................................................................................... 114
  Rule 10.620 Integrity and Impartiality .................................................................................. 115
  Rule 10.630 Professional Competence ............................................................................... 115
  Rule 10.640 Skill and Experience ....................................................................................... 115
  Rule 10.650 Concurrent Standards ...................................................................................... 115
  Rule 10.660 Relationships with Other Mediators ................................................................. 115
  Rule 10.670 Relationships with Other Professionals ............................................................ 116
  Rule 10.680 Prohibited Agreements .................................................................................... 116
  Rule 10.690 Advancement of Mediation ............................................................................. 116
Part III Discipline ............................................................................................................................................... 117
  Rule 10.700 Scope and Purpose ...................................................................................................................... 117
  Rule 10.710 Privilege to Mediate .................................................................................................................. 117
  Rule 10.720 Definitions ................................................................................................................................. 117
  Rule 10.730 Mediator Qualifications Board ............................................................................................... 118
  Rule 10.740 Jurisdiction ................................................................................................................................ 119
  Rule 10.750 Staff ............................................................................................................................................... 120
  Rule 10.800 Good Moral Character; Professional Discipline ........................................................................ 121
  Rule 10.810 Committee Process .................................................................................................................. 122
  Rule 10.820 Hearing Procedures .................................................................................................................. 124
  Rule 10.830 Sanctions ...................................................................................................................................... 125
  Rule 10.840 Subpoenas .................................................................................................................................... 127
  Rule 10.850 Confidentiality ............................................................................................................................ 127
  Rule 10.860 Interested Party ........................................................................................................................... 129
  Rule 10.870 Disqualification of Members of a Panel or Committee .............................................................. 129
  Rule 10.880 Supreme Court Chief Justice Review ....................................................................................... 129
  Rule 10.900 Mediator Ethics Advisory Committee .................................................................................... 130
(b) Report of Conviction. A conviction shall be reported in writing to the center within 30 days of such conviction. A report of conviction shall include a copy of the order or orders pursuant to which the conviction was entered.

(c) Suspension. Upon receipt of a report of felony conviction, the center shall immediately suspend all certifications and refer the matter to the qualifications complaint committee.

(d) Referral. Upon receipt of a report of misdemeanor conviction, the center shall refer the matter to the qualifications complaint committee for appropriate action. If the center becomes aware of a conviction prior to the required notification, it shall refer the matter to the qualifications complaint committee for appropriate action.

Part II Standards of Professional Conduct

Rule 10.200 Scope and Purpose

These Rules provide ethical standards of conduct for certified and court-appointed mediators. They 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.

Committee Notes

2000 Revision. In early 1991, the Florida Supreme Court Standing Committee on Mediation and Arbitration Rules was commissioned by the Chief Justice to research, draft and present for adoption both a comprehensive set of ethical standards for Florida mediators and procedural rules for their enforcement. To accomplish this task, the Committee divided itself into two sub-committees and, over the remainder of the year, launched parallel programs to research and develop the requested ethical standards and grievance procedures.

The Subcommittee on Ethical Standards began its task by searching the nation for other states or private dispute resolution organizations who had completed any significant work in defining the ethical responsibilities of professional mediators. After searching for guidance outside the state, the subcommittee turned to Florida’s own core group of certified mediators for more direct and firsthand data. Through a series of statewide public hearings and meetings, the subcommittee gathered current information on ethical concerns based upon the expanding experiences of practicing Florida certified mediators. In May of 1992, the “Florida Rules for Certified and Court Appointed Mediators” became effective.

In the years following the adoption of those ethical rules, the Committee observed their impact on the mediation profession. By 1998, several other states and dispute resolution organizations
initiated research into ethical standards for mediation which also became instructive to the Committee. In addition, Florida’s Mediator Qualifications Advisory Panel, created to field ethical questions from practicing mediators, gained a wealth of pragmatic experience in the application of ethical concepts to actual practice that became available to the Committee. Finally, the Florida Mediator Qualifications Board, the disciplinary body for mediators, developed specific data from actual grievances filed against mediators over the past several years, which also added to the available body of knowledge.

Using this new body of information and experience, the Committee undertook a yearlong study program to determine if Florida’s ethical rules for mediators would benefit from review and revision. Upon reviewing the 1992 ethical Rules, it immediately became apparent to the Committee that reorganization, renumbering, and more descriptive titles would make the Rules more useful. For that reason, the Rules were reorganized into four substantive groups which recognized a mediator’s ethical responsibilities to the “parties,” the “process,” the “profession” and the “courts.” The intent of the Committee here was to simply make the Rules easier to locate There is no official significance in the order in which the Rules appear; any one area is equally important as all other areas. The Committee recognizes many rules overlap and define specific ethical responsibilities which impact more than one area. Clearly, a violation of a rule in one section may very well injure relationships protected in another section.

Titles to the Rules were changed to more accurately reflect their content. Additionally, redundancies were eliminated, phrasing tightened, and grammatical changes made to more clearly state their scope and purpose.

Finally, the Committee sought to apply what had been learned. The 2000 revisions are the result of that effort.

**Rule 10.210 Mediation Defined**

Mediation is a process whereby a neutral and impartial third person acts to encourage and facilitate the resolution of a dispute without prescribing what it should be. It is an informal and non-adversarial process intended to help disputing parties reach a mutually acceptable agreement.

**Rule 10.220 Mediator’s Role**

The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. 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.

Rule 10.300 Mediator’s Responsibility to the Parties

The purpose of mediation is to provide a forum for consensual dispute resolution by the parties. It is not an adjudicatory procedure. Accordingly, a mediator’s responsibility to the parties includes honoring their right of self-determination; acting with impartiality; and avoiding coercion, improper influence, and conflicts of interest. A mediator is also responsible for maintaining an appropriate demeanor, preserving confidentiality, and promoting the awareness by the parties of the interests of non-participating persons. A mediator’s business practices should reflect fairness, integrity and impartiality.

Committee Notes

2000 Revision. Rules 10.300 - 10.380 include a collection of specific ethical concerns involving a mediator’s responsibility to the parties to a dispute. Incorporated in this new section are the concepts formerly found in Rule 10.060 (Self Determination); Rule 10.070 (Impartiality/Conflict of Interest); Rule 10.080 (Confidentiality); Rule 10.090 (Professional Advice); and Rule 10.100 (Fees and Expenses). In addition, the Committee grouped under this heading ethical concerns dealing with the mediator’s demeanor and courtesy, contractual relationships, and responsibility to non-participating persons.

Rule 10.310 Self-Determination

(a) Decision-making. Decisions made during a mediation are to be made by the parties. A mediator shall not make substantive decisions for any party. A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.

(b) Coercion Prohibited. A mediator shall not coerce or improperly influence any party to make a decision or unwillingly participate in a mediation.

(c) Misrepresentation Prohibited. A mediator shall not intentionally or knowingly misrepresent any material fact or circumstance in the course of conducting a mediation.

(d) Postponement or Cancellation. If, for any reason, a party is unable to freely exercise self-determination, a mediator shall cancel or postpone a mediation.
Committee Notes

2000 Revision. Mediation is a process to facilitate consensual agreement between parties in conflict and to assist them in voluntarily resolving their dispute. It is critical that the parties’ right to self-determination (a free and informed choice to agree or not to agree) is preserved during all phases of mediation. A mediator must not substitute the judgment of the mediator for the judgment of the parties, coerce or compel a party to make a decision, knowingly allow a participant to make a decision based on misrepresented facts or circumstances, or in any other way impair or interfere with the parties’ right of self-determination.

While mediation techniques and practice styles may vary from mediator to mediator and mediation to mediation, a line is crossed and ethical standards are violated when any conduct of the mediator serves to compromise the parties’ basic right to agree or not to agree. Special care should be taken to preserve the party’s right to self-determination if the mediator provides input to the mediation process. See Rule 10.370.

On occasion, a mediator may be requested by the parties to serve as a decision-maker. If the mediator decides to serve in such a capacity, compliance with this request results in a change in the dispute resolution process impacting self-determination, impartiality, confidentiality, and other ethical standards. Before providing decision-making services, therefore, the mediator shall ensure that all parties understand and consent to those changes. See Rules 10.330 and 10.340.

Under subdivision (d), postponement or cancellation of a mediation is necessary if the mediator reasonably believes the threat of domestic violence, existence of substance abuse, physical threat or undue psychological dominance are present and existing factors which would impair any party’s ability to freely and willingly enter into an informed agreement.

Rule 10.320 Nonparticipating Persons

A mediator shall promote awareness by the parties of the interests of persons affected by actual or potential agreements who are not represented at mediation.

Committee Notes

2000 Revision. Mediated agreements will often impact persons or entities not participating in the process. Examples include lienholders, governmental agencies, shareholders, and related commercial entities. In family and dependency mediations, the interests of children, grandparents or other related persons are also often affected. A mediator is responsible for making the parties aware of the potential interests of such non-participating persons.

In raising awareness of the interests of non-participating persons, however, the mediator should still respect the rights of the parties to make their own decisions. Further, raising awareness of possible interests of related entities should not involve advocacy or judgments as to the merits of those
interests. In family mediations, for example, a mediator should make the parents aware of the children’s interests without interfering with self-determination or advocating a particular position.

**Rule 10.330 Impartiality**

(a) Generally. A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

(b) Withdrawal for Partiality. A mediator shall withdraw from mediation if the mediator is no longer impartial.

(c) Gifts and Solicitation. A mediator shall neither give nor accept a gift, favor, loan, or other item of value in any mediation process. During the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services.

*Committee Notes*

2000 Revision. A mediator has an affirmative obligation to maintain impartiality throughout the entire mediation process. The duty to maintain impartiality arises immediately upon learning of a potential engagement for providing mediation services. A mediator shall not accept or continue any engagement for mediation services in which the ability to maintain impartiality is reasonably impaired or compromised. As soon as practical, a mediator shall make reasonable inquiry as to the identity of the parties or other circumstances which could compromise the mediator’s impartiality.

During the mediation, a mediator shall maintain impartiality even while raising questions regarding the reality, fairness, equity, durability and feasibility of proposed options for settlement. In the event circumstances arise during a mediation that would reasonably be construed to impair or compromise a mediator’s impartiality, the mediator is obligated to withdraw.

Subdivision (c) does not preclude a mediator from giving or accepting de minimis gifts or incidental items provided to facilitate the mediation.

**Rule 10.340 Conflicts of Interest**

(a) Generally. A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises or appears to compromise the mediator’s impartiality.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.
(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator’s impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

(d) Conflict During Mediation. A mediator shall not create a conflict of interest during the mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

(e) Senior and Retired Judges. If a mediator who is a senior judge or retired judge not eligible for assignment to temporary judicial duty has presided over a case involving any party, attorney, or law firm in the mediation, the mediator shall disclose such fact prior to mediation. A mediator shall not serve as a mediator in any case in a circuit in which the mediator is currently presiding as a senior judge. Absent express consent of the parties, a mediator shall not serve as a senior judge over any case involving any party, attorney, or law firm that is utilizing or has utilized the judge as a mediator within the previous three years. A senior judge who provides mediation services shall not preside over any case in the circuit where the mediation services are provided; however, a senior judge may preside over cases in circuits in which the judge does not provide mediation services.

Committee Notes

2000 Revision. Potential conflicts of interests which require disclosure include the fact of a mediator’s membership on a related board of directors, full or part time service by the mediator as a representative, advocate, or consultant to a mediation participant, present stock or bond ownership by the mediator in a corporate mediation participant, or any other form of managerial, financial, or family interest by the mediator in any mediation participant involved in a mediation. A mediator who is a member of a law firm or other professional organization is obliged to disclose any past or present client relationship that firm or organization may have with any party involved in a mediation. The duty to disclose thus includes information relating to a mediator’s ongoing financial or professional relationship with any of the parties, counsel, or related entities. Disclosure is required with respect to any significant past, present, or promised future relationship with any party involved in a proposed mediation. While impartiality is not necessarily compromised, full disclosure and a reasonable opportunity for the parties to react are essential.

Disclosure of relationships or circumstances which would create the potential for a conflict of interest should be made at the earliest possible opportunity and under circumstances which will allow the parties to freely exercise their right of self-determination as to both the selection of the mediator and participation in the mediation process. A conflict of interest which clearly impairs a mediator’s impartiality is not resolved by mere disclosure to, or waiver by, the parties. Such conflicts occur when circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.

To maintain an appropriate level of impartiality and to avoid creating conflicts of interest, a
mediator’s professional input to a mediation proceeding must be confined to the services necessary to provide the parties a process to reach a self-determined agreement. Under subdivision (d), a mediator is accordingly prohibited from utilizing a mediation to supply any other services which do not directly relate to the conduct of the mediation itself. By way of example, a mediator would therefore be prohibited from providing accounting, psychiatric or legal services, psychological or social counseling, therapy, or business consultations of any sort during the mediation process. Mediators establish personal relationships with many representatives, attorneys, mediators, and other members of various professional associations. There should be no attempt to be secretive about such friendships or acquaintances, but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.

Rule 10.350 Demeanor

A mediator shall be patient, dignified, and courteous during the mediation process.

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 10.370 Advice, Opinions, or Information

(a) Providing Information. Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) Independent Legal Advice. When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel.

(c) Personal or Professional Opinion. 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. Consistent with standards of impartiality and preserving party self-determination however, a mediator may point out possible outcomes of the case and discuss the merits of a claim or defense. 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.
Committee Notes

2000 Revision (previously Committee Note to 1992 adoption of former rule 10.090). Mediators who are attorneys should note Florida Bar Committee on Professional Ethics, formal opinion 86-8 at 1239, which states that the lawyer-mediator should “explain the risks of proceeding without independent counsel and advise the parties to consult counsel during the course of the mediation and before signing any settlement agreement that he might prepare for them.”

2000 Revision. The primary role of the mediator is to facilitate a process which will provide the parties an opportunity to resolve all or part of a dispute by agreement if they choose to do so. A mediator may assist in that endeavor by providing relevant information or helping the parties obtain such information from other sources. A mediator may also raise issues and discuss strengths and weaknesses of positions underlying the dispute. Finally, a mediator may help the parties evaluate resolution options and draft settlement proposals. In providing these services however, it is imperative that the mediator maintain impartiality and avoid any activity which would have the effect of overriding the parties’ rights of self-determination. While mediators may call upon their own qualifications and experience to supply information and options, the parties must be given the opportunity to freely decide upon any agreement. Mediators shall not utilize their opinions to decide any aspect of the dispute or to coerce the parties or their representatives to accept any resolution option.

While a mediator has no duty to specifically advise a party as to the legal ramifications or consequences of a proposed agreement, there is a duty for the mediator to advise the parties of the importance of understanding such matters and giving them the opportunity to seek such advice if they desire.

Rule 10.380 Fees and Expenses

(a) Generally. A mediator holds a position of trust. Fees charged for mediation services shall be reasonable and consistent with the nature of the case.

(b) Guiding Principles in Determining Fees. A mediator shall be guided by the following general principles in determining fees:

1. Any charges for mediation services based on time shall not exceed actual time spent or allocated.

2. Charges for costs shall be for those actually incurred.

3. All fees and costs shall be appropriately divided between the parties.

4. When time or expenses involve two or more mediations on the same day or trip, the time and expense charges shall be prorated appropriately.
(c) Written Explanation of Fees. A mediator shall give the parties or their counsel a written explanation of any fees and costs prior to mediation. The explanation shall include:

1. the basis for and amount of any charges for services to be rendered, including minimum fees and travel time;
2. the amount charged for the postponement or cancellation of mediation sessions and the circumstances under which such charges will be assessed or waived;
3. the basis and amount of charges for any other items; and
4. the parties’ pro rata share of mediation fees and costs if previously determined by the court or agreed to by the parties.

(d) Maintenance of Records. A mediator shall maintain records necessary to support charges for services and expenses and upon request shall make an accounting to the parties, their counsel, or the court.

(e) Remuneration for Referrals. No commissions, rebates, or similar remuneration shall be given or received by a mediator for a mediation referral.

(f) Contingency Fees Prohibited. A mediator shall not charge a contingent fee or base a fee on the outcome of the process.

Rule 10.400 Mediator’s Responsibility to the Mediation Process

A mediator is responsible for safeguarding the mediation process. The benefits of the process are best achieved if the mediation is conducted in an informed, balanced and timely fashion. A mediator is responsible for confirming that mediation is an appropriate dispute resolution process under the circumstances of each case.

Committee Notes

2000 Revision. Rules 10.400 - 10.430 include a collection of specific ethical concerns involved in a mediator’s responsibility to the mediation process. Incorporated in this new section are the concepts formerly found in rule 10.060 (Self-Determination), rule 10.090 (Professional Advice); and rule 10.110 (Concluding Mediation). In addition, the Committee grouped under this heading ethical concerns dealing with the mediator’s duty to determine the existence of potential conflicts, a mandate for adequate time for mediation sessions, and the process for adjournment.

Rule 10.410 Balanced Process

A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and
encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.

*Committee Notes*

2000 Revision. A mediator should be aware that the presence or threat of domestic violence or abuse among the parties can endanger the parties, the mediator, and others. Domestic violence and abuse can undermine the exercise of self-determination and the ability to reach a voluntary and mutually acceptable agreement.

**Rule 10.420 Conduct of Mediation**

(a) Orientation Session. Upon commencement of the 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 process are confidential, except where disclosure is required or permitted by law.

(b) Adjournment or Termination. A mediator shall:

(1) adjourn the mediation upon agreement of the parties;

(2) adjourn or terminate any mediation which, if continued, would result in unreasonable emotional or monetary costs to the parties;

(3) adjourn or terminate the mediation if the mediator believes the case is unsuitable for mediation or any party is unable or unwilling to participate meaningfully in the process;

(4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability; and

(5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.

(c) Closure. The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the parties and counsel the process for formalization and implementation of the agreement.
Committee Notes

2000 Revision. In defining the role of the mediator during the course of an opening session, a mediator should ensure that the participants fully understand the nature of the process and the limits on the mediator’s authority. See rule 10.370(c). It is also appropriate for the mediator to inform the parties that mediators are ethically precluded from providing non-mediation services to any party. See rule 10.340(d). Florida Rule of Civil Procedure 1.730(b), Florida Rule of Juvenile Procedure 8.290(o), and Florida Family Law Rule of Procedure 12.740(f) require that any mediated agreement be reduced to writing. Mediators have an obligation to ensure these rules are complied with, but are not required to write the agreement themselves.

Rule 10.430 Scheduling Mediation

A mediator shall schedule a mediation in a manner that provides adequate time for the parties to fully exercise their right of self-determination. A mediator shall perform mediation services in a timely fashion, avoiding delays whenever possible.

Rule 10.500 Mediator’s Responsibility to the Courts

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.

Committee Notes

2000 Revision. Rules 10.500 - 10.540 include a collection of specific ethical concerns involved in a mediator’s responsibility to the courts. Incorporated in this new section are the concepts formerly found in rule 10.040 (Responsibilities to Courts).

Rule 10.510 Information to the Court

A mediator shall be candid, accurate, and fully responsive to the court concerning the mediator’s qualifications, availability, and other administrative matters.

Rule 10.520 Compliance with Authority

A mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation.

Rule 10.530 Improper Influence

A mediator shall refrain from any activity that has the appearance of improperly influencing a court to secure an appointment to a case.
Committee Notes

2000 Revision. Giving gifts to court personnel in exchange for case assignments is improper. De minimis gifts generally distributed as part of an overall business development plan are excepted. See also rule 10.330.

Rule 10.600 Mediator’s Responsibility to the Mediation Profession

A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.

Committee Notes

2000 Revision. Rules 10.600 - 10.690 include a collection of specific ethical concerns involving a mediator’s responsibility to the mediation profession. Incorporated in this new section are the concepts formerly found in rule 10.030 (General Standards and Qualifications), rule 10.120 (Training and Education), rule 10.130 (Advertising), rule 10.140 (Relationships with Other Professionals), and rule 10.150 (Advancement of Mediation).

Rule 10.610 Marketing Practices

(a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practice, including advertising, which contains false or misleading information. A mediator shall ensure that any marketing of the mediator’s qualifications, services to be rendered, or the mediation process is accurate and honest.

(b) Supreme Court Certification. Any marketing practice in which a mediator indicates that such mediator is “Florida Supreme Court certified” is misleading unless it also identifies at least one area of certification in which the mediator is certified.

(c) Other Certifications. Any marketing publication that generally refers to a mediator being “certified” is misleading unless the advertising mediator has successfully completed an established process for certifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term “certified” in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.

(d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified mediator.

(e) Prohibited Claims or Promises. A mediator shall not make claims of achieving specific outcomes or promises implying favoritism for the purpose of obtaining business.
Additional Prohibited Marketing Practices. A mediator shall not engage in any marketing practice that diminishes the importance of a party’s right to self-determination or the impartiality of the mediator, or that demeans the dignity of the mediation process or the judicial system.

Commentary

2010 Revision. Areas of certification in subdivision (b) include county, family, circuit, dependency and other Supreme Court certifications.

The roles of a mediator and an adjudicator are fundamentally distinct. The integrity of the judicial system may be impugned when the prestige of the judicial office is used for commercial purposes. When engaging in any mediation marketing practice, a former adjudicative officer should not lend the prestige of the judicial office to advance private interests in a manner inconsistent with this rule. For example, the depiction of a mediator in judicial robes or use of the word “judge” with or without modifiers to the mediator’s name would be inappropriate. However, an accurate representation of the mediator’s judicial experience would not be inappropriate.

Rule 10.620 Integrity and Impartiality

A mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator's integrity or impartiality.

Rule 10.630 Professional Competence

A mediator shall acquire and maintain professional competence in mediation. A mediator shall regularly participate in educational activities promoting professional growth.

Rule 10.640 Skill and Experience

A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator’s skill or experience.

Rule 10.650 Concurrent Standards

Other ethical standards to which a mediator may be professionally bound are not abrogated by these rules. In the course of performing mediation services, however, these rules prevail over any conflicting ethical standards to which a mediator may otherwise be bound.

Rule 10.660 Relationships with Other Mediators

A mediator shall respect the professional relationships of another mediator.
Rule 10.670 Relationships with Other Professionals

A mediator shall respect the role of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals.

Rule 10.680 Prohibited Agreements

With the exception of an agreement conferring benefits upon retirement, a mediator shall not restrict or limit another mediator’s practice following termination of a professional relationship.

Committee Notes

2000 Revision. Rule 10.680 is intended to discourage covenants not to compete or other practice restrictions arising upon the termination of a relationship with another mediator or mediation firm. In situations where a retirement program is being contractually funded or supported by a surviving mediator or mediation firm, however, reasonable restraints on competition are acceptable.

Rule 10.690 Advancement of Mediation

(a) Pro Bono Service. Mediators have a responsibility to provide competent services to persons seeking their assistance, including those unable to pay for services. A mediator should provide mediation services pro bono or at a reduced rate of compensation whenever appropriate.

(b) New Mediator Training. An experienced mediator should cooperate in training new mediators, including serving as a mentor.

(c) Support of Mediation. A mediator should support the advancement of mediation by encouraging and participating in research, evaluation, or other forms of professional development and public education.