2016-001: Use of Caucus
In collection cases, when an attorney asks a pro se litigant about his employment, wages, employer’s contact information, etc., can the mediator jump into a caucus session?

Or does that make the mediator an advocate for the defendant?
Use of Caucus

- Rule 10.400: Mediator’s Responsibility to the Mediation Process

  - A mediator is responsible for safeguarding the mediation process.
Use of Caucus

* Rule 10.410: Balanced Process

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

* Rule 10.310:

* A mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination.
2016-002: Officers of the Court
Are volunteer county mediators “officers of the court”?
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.
Officer of the Court

∗ 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.
**Key Takeaway:** Mediators should **not** refer to themselves as officers of the court.
2016-003: Confidentiality & Support Staff
Can a mediator give his support staff confidential mediation documents to copy or file?
Confidentiality & Support Staff

* Rule 10.360: Confidentiality & 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.
Confidentiality & Support Staff

* Rule 10.360: Confidentiality & 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.
**Key Takeaway:** Mediators have an affirmative obligation to advise staff performing clerical tasks of confidentiality rules and to ensure that staff fully understands the intent and practical implications of maintaining confidentiality.
2016-004: Proper memorialization of an agreement
Do verbal agreements satisfy the requirement to memorialize agreements?

What should be reported to the courts?
Memorializing Agreements

- Rule 10.420: Conduct of Mediation - 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.
Memorializing Agreements

Key Takeaway: A mediator is not required to write something regarding the terms of the agreement prior to the close of the mediation session if the parties have agreed who will memorialize the agreement and the process for its formalization.
Memorializing Agreements

- Florida Rules of Civil Procedure require a court-appointed mediator to reduce a verbal agreement to writing and have it signed by all parties (or at least follow up with the parties to make sure that has been done before reporting anything to the court)

- If needed, report “no agreement” to the court
2016-005: Mediator’s Support Staff as Notaries
Can a mediator’s support staff notarize or witness an agreement?
Support Staff as Notaries

* 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.
Support Staff as Notaries

* Key Takeaway: The mediator cannot serve as a notary for an agreement he mediated. However, his support staff can notarize or witness signatures on a settlement agreement.
2016-006: Orientation Sessions
Does a mediator have to conduct separate orientation sessions when one plaintiff has multiple cases with different defendants?
Orientation Sessions

* Rule 10.420: Conduct of Mediation
  * Upon commencement of the mediation session, a mediator shall describe the mediation process and the role of the mediator...
Orientation Sessions

* Key Takeaway: The mediator must do a separate orientation session for each case. This requirement cannot be waived by the parties. Doing the orientation session another way would compromise confidentiality.
Questions?

Sources:
Florida Rules for Certified and Court-Appointed Mediators
and
Florida Mediator Ethics Advisory Committee
Thank you for attending!