

## A Mediator's Duty to the Process RESOURCE MATERIALS

### Applicable Rules and Statutes

#### A. Rules for Certified and Court-Appointed Mediators:

<https://flcourts.ccplatform.net/content/download/216759/1966500/rules-certified-court-appointed-mediators.pdf>

#### B. Rule 10.420 Conduct of Mediation

(a)(3) communications made during the process are confidential, except where disclosure is required or permitted by law.

#### C. Title V JUDICIAL BRANCH: **Chapter 44 of the Florida Statutes** MEDIATION ALTERNATIVES TO JUDICIAL ACTION

#### **Fla. Stat. Ch. 44.405 Confidentiality; privilege; exceptions.—**

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0000-0099/0044/Sections/0044.405.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0000-0099/0044/Sections/0044.405.html)

(4)(a) Notwithstanding subsections (1) and (2), there is no confidentiality or privilege attached to a signed written agreement reached during a mediation, unless the parties agree otherwise, or for any mediation communication:

1. For which the confidentiality or privilege against disclosure has been waived by all parties;
2. That is willfully used to **plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence;**
3. That requires a **mandatory report** pursuant to **chapter 39 or chapter 415** solely for the purpose of making the mandatory report to the entity requiring the report;

D. **Fla. Stat. Ch. 415.1034** establishes the duty of mandatory reporting of abuse, neglect or exploitation of vulnerable adults, and identifies “any person, including but not limited to..., who knows or has reasonable cause to suspect that a vulnerable adult has been or is being abused, neglected, or exploited shall immediately report such knowledge or suspicion to the central Abuse Hotline.”

[http://www.leg.state.fl.us/Statutes/index.cfm?App\\_mode=Display\\_Statute&Search\\_String=&URL=0400-0499/0415/Sections/0415.1034.html](http://www.leg.state.fl.us/Statutes/index.cfm?App_mode=Display_Statute&Search_String=&URL=0400-0499/0415/Sections/0415.1034.html)

E. **Fla. Sta. Ch. 825.101(4)** defines an “**elderly person**” as one 60 years or older who is suffering from the infirmities of aging, prohibits neglect, or other physical or psychological abuse.

[http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App\\_mode=Display\\_Statute&Search\\_String=825.101&URL=0800-0899/0825/Sections/0825.101.html](http://www.leg.state.fl.us/statutes/index.cfm?mode=View%20Statutes&SubMenu=1&App_mode=Display_Statute&Search_String=825.101&URL=0800-0899/0825/Sections/0825.101.html)

F. **Rule 10.420 Conduct of Mediation** of Rules for Certified and Court Appointed Mediators

(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.

**A Guide for Professionals by DCF-APS on Adult Abuse, Neglect and Exploitation**

<https://www.myflfamilies.com/service-programs/adult-protective-services/docs/GuideforProfessionals.pdf>

- Adult Protective Services
- Mandatory Reporting of Abuse, Neglect, and Exploitation
- Preparation for Making the Report
- Penalties
- Indicators of Abuse, Neglect, and Exploitation
- High Risk Circumstances of Abuse, Neglect, and Exploitation
- Barriers to Identification of Abuse and Neglect
- The Protective Investigation
- Definitions

This Guide is an excellent source for defining Elder Abuse, Neglect and Exploitation and the process for investigating and reporting it. Hot Line numbers, penalties and content of the report are included.

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**MEDIATOR ETHICS ADVISORY COMMITTEE (MEAC) OPINIONS**

- 1) **MEAC 2003-003 Statement of Exceptions to Confidentiality are Required in Opening Statement:**
  - A Mediator is required to advise the parties in the Opening Statement that confidentiality applies and that exceptions exist.
  - Mediator is not required to go into detail as to any specific statutory provisions.
  - It is sufficient and necessary to state that “mediation communications are confidential, except where disclosure is required by law.”

- 2) **MEAC 2012-007 Mediator may Use Discretion in Deciding to Report a Communication that is not Expressly stated as subject to Mandatory Reporting.**
  - If the Rules do not expressly mandate that a communication is an exception to confidentiality and must be reported, there is not a mandatory reporting requirement. Reporting is optional.
  - The reporting requirement does not expressly apply to the commission of PAST crimes.
  - If a Mediator chooses to report, he should report only to the appropriate authorities.
  - If a Mediator reports, he must withdraw from the mediation.
  
- 3) **MEAC 2013-003 Mandatory Reporting Requirements vs. Discretionary Reporting**
  - Only communications expressly identified as an exception to the Confidentiality rules may be reported, which includes Mandatory Reporting under Ch. 415, (Abuse, Neglect or Exploitation of Vulnerable Adults)
  - Assessment:
    - 1) Is the statement a mediation communication?
    - 2) Does it fall under one of the exceptions to confidentiality?
    - 3) If reporting is discretionary, is reporting reasonable or advisable?
  - If the communication does not fall under the mandatory reporting exceptions, but falls under another exception to confidentiality, the mediator has the discretion to report it.
  - If the Mediator reports, he must withdraw from the mediation as the mere act of reporting indicates a bias.
  
- 4) **MEAC 2011-018 Mandatory Reporting Shall be made by following the Appropriate Process to the Appropriate Agency**
  - Mandatory Reporting of Elder Abuse is governed by Ch. 415, which also provides for the method of reporting.
  - Mandatory Reporting of Elder Abuse should be made to the Central Abuse Hotline.
  - Reporting of Elder Abuse is allowed and required as an exception by Statute to the Rules of Confidentiality.
  
- 5) **MEAC 2012-001 Threats of Harm do not Require Mandatory Reporting and the Mediator is Cautioned to Use his Best Efforts to explore the Seriousness of the Threat.**
  - When a Person threatens, during Mediation, to cause harm to himself or another, the Mediator may report the communication.
  - A threat to harm oneself or another is not a confidential communication.
  - The Mediator has the discretion, not the requirement, to report the communication to the proper authorities.
  - Mediator has a duty to the process to make sure parties can meaningfully participate and that mediation is the proper process.
  - Mediator should use caution and assess whether he thinks the threat is credible and reasonable.