

# Ethical Breaches: When Mediators Don't Follow Ethical Guidelines

Rules taken from the *ADR Resource Handbook: Select ADR statutes, court rules, and administrative orders* created by the Florida Dispute Resolution Center, 2019

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# What is “Good Moral Character?” (Rule 10.110)

(c) **Certification.** The following shall apply in relation to determining the good moral character required for initial and continuing mediator certification:


(4) In assessing whether the applicant’s or mediator’s conduct demonstrates a present lack of good moral character the following factors shall be relevant:

(A) the extent to which the conduct would interfere with a mediator’s duties and responsibilities; (B) the area of mediation in which certification is sought or held; (C) the factors underlying the conduct; (D) the applicant’s or mediator’s age at the time of the conduct; (E) the recency of the conduct; (F) the reliability of the information concerning the conduct; (G) the seriousness of the conduct as it relates to mediator qualifications; (H) the cumulative effect of the conduct or information; (I) any evidence of rehabilitation; (J) the applicant’s or mediator’s candor; and (K) denial of application, disbarment, or suspension from any profession.” (p. 137)


It's okay if you feel a bit confused



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There are three rules that all mediators should consider:



## Rule 10.400 Mediators 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.” (p. 147)

*This should be regarded as the “golden rule” or “gold standard” for the mediation process.*

## 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.” (p. 141)

## 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.” (p. 150)

# The Scenarios: Your Guide to Ethical Breaches

- Each of the following scenarios represents *at least* one potential breach in the ethical standards mediators must adhere to according to the *ADR Resource Handbook (2019)*.
- Discover these breaches and discuss how they negatively impact the mediator as well as the mediation process.





# Scenario 1

*“when life hands you a lemon...”*

# Scenario 1

- You are mediating a dispute between Eileen and a local car dealership pertaining to her recent used car purchase. Eileen is present along with her attorney; the car dealership representative also has legal counsel present.
- During caucus with the car dealership representative, absent their legal counsel, they suggest if you rule in favor of them you will receive a major discount on a new car of your choosing. You tell them you are not able to decide an outcome, but will do your best to ensure they end up with *favorable* terms and that Eileen doesn't get everything she wants.

# Scenario 1

## Rule 10.330 Impartiality

(c) **Gifts and Solicitation.** “A mediator shall 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.” (p. 143)

## Rule 10.340 Conflicts of Interest

(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. (p. 144)



# Scenario 2

*“There’s nothing like family!”*



# Scenario 2

- Your cousin asks you to mediate a dispute he's having with his next door neighbor regarding their property line. You agree to be the mediator and do not mention your relationship with your cousin to the other party in 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.” (p. 143)

(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.” (pp. 143-144)



## Rule 10.340 Conflicts of Interest

### ***Could the mediator still conduct this mediation?***

(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.” (p. 144)



# Scenario 3

*The customer is ~~always~~ right*





# Scenario 3

- ▶ You are mediating a custody dispute between John and Ann who have been divorced for little over a year. Throughout the mediation John has been hostile and argumentative, but you have handled this by redirecting his outbursts. His disruptions are hindering the process and you are growing increasingly frustrated, and you know its primarily John who is making this difficult.
- ▶ After 45 minutes of deadlock, John vents his frustration with this mediation and asks to leave, stating he'd rather take his chances with the judge than dealing with a "judgmental idiot" like you. That was the last straw.
- ▶ You say to John: "If you don't shut up and sit down right now, I'm going to make sure Ann gets the kids and that the judge knows what kind of person you really are!"



# Scenario 3

## Rule 10.350 Demeanor

“A mediator shall be patient, dignified, and courteous during the mediation process.”  
(p. 145)

## 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 nonadversarial manner.” (p. 148)



# Scenario 4

*“They are on a need-to-know basis, and they don’t need to know.”*

# Scenario 4

- ▶ You are an international mediator who is involved in a major border dispute between two warring nations who are seeking peace. This is a milestone event which could bring forth a lasting peace which could greatly benefit both nations.
- ▶ During private caucus, one of the representatives of the nations mentions a recent treaty signed with a neighboring nation to allow troop deployment along the border of their rival nation, who is unaware of these developments. If true, this would disrupt the stability of the region and likely render the mediated settlement moot.
- ▶ Upon reconvening the session, you immediately inform the other party of this information you've been told in private.

# Scenario 4

## 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.” (p. 145)

# Scenario 4, However:

## Rule 10.420 Conduct of Mediation

(b) **Adjournment or Termination.** “A mediator shall:

(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.” (pp. 148-149)



# Scenario 5

*The secret to my success*

# Scenario 5

- ▶ You have a reputation for being a very effective mediator who has helped your clients reach numerous settlements. You advertise your services as highly effective.
- ▶ A colleague asks what your secret to your success is and you explain: “My sessions are scheduled for 30 minutes maximum, and I only allow my mediations to take a maximum of three sessions.” He also admits he does not do follow ups with clients and charges the same fees that you do by the hour.
- ▶ You do not explain your billing process to clients and keep no records of your mediation sessions.



# Scenario 5

## Rule 10.380 Fees and Expenses

(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.”  
(pp. 146-147)

(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.” (p. 147)

# Scenario 5

## Rule 10.380 Fees and Expenses

### (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.” (p. 147)

## 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.” (p. 149)



# Scenario 6

“what are you going to do, cry!?”



# Scenario 6

- ▶ During a very emotional mediation session, one of the parties becomes verbally abusive to the other party. You allow this behavior to continue as you feel it is an appropriate expression of emotion from that party. The other party, however, emotionally breaks down and stops actively participating in the mediation.
- ▶ You choose to continue the mediation despite what has happened.

# Scenario 6

## 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 nonadversarial manner.” (p. 148)

## Rule 10.420 Conduct of Mediation

(b) **Adjournment or Termination.** “A mediator shall:

(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

(5) terminate any mediation if the physical safety of any person is endangered by the continuation of mediation.” (p. 148)



# Scenario 6

## Rule 10.310 Self-Determination

(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.” (p. 141)



# Scenario 7

“what would you do, if you were me?”



# Scenario 7

- ▶ During an employee versus employer mediation, the employee keeps deferring to you for advice/help. They keep asking “what should I do? What would you do if you were me? How would you deal with this? I’m not sure what to do, I can’t really decide right now and I’m not sure I’m ready to make any decisions.”
- ▶ You give them advice and tell them what they *can* do and then advise them as to what they *should* do. The employee agrees with you and proceeds with that advice in the mediation.
- ▶ The employer is not pleased with you and vows to file a complaint since the employee is doing exactly what you suggested.



# Scenario 7

## Rule 10.370 Advice, Opinions, or Information

(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." (pp. 145-146)

## Rule 10.420 Conduct of Mediation

(b) **Adjournment or Termination.** A mediator shall:

(4) terminate a mediation entailing fraud, duress, the absence of bargaining ability, or unconscionability." (pp. 148-149)



# Scenario 8

“we’re not going to take it!”



# Scenario 8

- ▶ You are mediating a labor dispute between a union and their employer. This is the fourth mediation session, and you have invested over 8 hours in this process to which both parties are still deadlocked. You are physically and emotionally exhausted while both parties remain frustrated with the process.
- ▶ Finally, you interrupt the process and give the following speech: “That’s it! You’re wasting my time and each other’s time over this petty dispute. Just give the union the raise they asked for...they aren’t asking for your kidneys, just a few dollars more! And you union folks need to stop pretending your employer is a bunch of greedy crooks as they clearly don’t have the money you claim they are hoarding. I’m sick of your endless rhetoric! Now, settle this and let this finally end!”

# Scenario 8

## Rule 10.350 Demeanor

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

(p. 145)

## Rule 10.370 Advice, Opinions, and 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.”  
(p. 145)



# Scenario 9

In vino veritas

# Scenario 9

- ▶ You have been an independent mediator for years with a successful practice helping many people resolve their disputes. Privately, you have been struggling with alcoholism for years, with periods of sobriety occurring sporadically.
- ▶ Unfortunately, you recently drove under the influence and was involved in an accident where you left the scene. You were convicted of a felony, lost your driver's license permanently, sent to rehab for 3 months to get sober, and were placed on house arrest for the next 5 years.
- ▶ You choose not to disclose this to clients as this is deeply embarrassing to you, and your job as a mediator is how you make a living. You also choose not to disclose this to the authority who certifies you as a mediator.

# Scenario 9

## 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.”  
(p. 149)

## 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.”  
(p. 150)



# Scenario 10

“You don’t have to be lonely...”





# Scenario 10

- You are a 35 year old single man who is mediating the divorce settlement of a younger couple, both aged 25. One of the parties is a woman you find attractive and she flirts with you before and after the session.
- Between the first and second mediation sessions you ask the woman out on a date and she accepts. After the second mediation you go on a second date and it is clear you are going to be an item.
- You continue the mediation process as normal and do not disclose this information to the other party.

# Scenario 10

## 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.” (p. 151)

## 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.” (p. 143)



# Scenario 11

“*RULES?* What rules!?”

# Scenario 11

- ▶ You are a Florida-certified mediator who recently moved to North Carolina. There is an ongoing, high profile dispute ongoing in the State pertaining to access to a natural gas pipeline, which your spouse is involved in its construction. You approach the local courts who are arbitrating a small part of the dispute and offer your assistance, hoping to be assigned this case. To show your interest and demonstrate your commitment to a particular outcome, you offer the court a dramatically reduced fee and offer the presiding judge several gifts.
- ▶ You also assure the court that you are certified to mediate in North Carolina (you actually aren't).

# Scenario 11

## 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.”

(p. 150)

## 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.”

(p. 149)



# Scenario 12

“You’re acting like you have a choice in the matter.”

# Scenario 12

- ▶ You are a court-appointed mediator involved in a particularly difficult conflict which has gone on for several sessions.
- ▶ Both parties seem deadlocked and unwilling to compromise or collaborate on achieving only one of several issues that were discussed. If they could resolve this one key issue, the mediation would be finally concluded.
- ▶ At one point during the session you announce “Okay, if this were up to me, here’s what I would do...” and strongly encourage both parties to do exactly as you suggested. You also happen to suggest if they do not heed your suggestion, you will report back to the courts that both parties were completely unwilling to engage in the mediation process.

# Scenario 12

## 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.” (p. 141)





# Scenario 13

“Don’t forget about us.”

# Scenario 13

- ▶ You are mediating a divorce settlement which also involves a custody dispute. The couple has two children who are caught in the middle of this divorce.
- ▶ Throughout this contentious mediation, both parties aggressively pursue their interests, including sole custody of both children. No matter how many times you attempt to redirect their rhetoric, asking them to reflect on their harsh words, they both refer to the children as “MY children” in the same manner they refer to “MY house” and “MY car.”
- ▶ Since the couple separated, the children have been spending time predominantly with grandparents such to avoid the open hostility displayed by their parents. The children’s grades are suffering, they are experiencing behavioral problems at school, and the grandparents are unable to financially support their grandchildren any longer.



# Scenario 13

## 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.” (p. 142)



# Scenario 14

“Who’s coming with me!?”



# Scenario 14

- ▶ You work at a well-known law firm who employs a team of skilled mediators helping clients resolve disputes outside of the courtroom in a major Florida city. It is a lucrative venture, but you decide it's time to move on and work independently.
- ▶ Your supervisor, who is also a mediator, upon hearing of your wanting to leave is upset by your decision and demands you sign a “non-compete clause” where you can't mediate disputes between any parties that have ever used the law firm, and you can't take on new clients within the county limits. Failure to sign the clause would lead to immediate termination, a bad reference given to all your clients, and the firm would inform all of the local judges to avoid assigning mediations to you. The law firm holds considerable influence in the local bar association and could make working independent very difficult for you.

# Scenario 14

## Rule 10.660 Relationships with Other Mediators

“A mediator shall respect the professional relationships of another mediator.” (p. 152)

## 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.” (p.152)

## 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.” (p. 152)



# Scenario 15

“If you’re good at something...”



# Scenario 15

- ▶ You are a certified mediator who has been working independently for several years with a number of satisfied clients and good recommendations. Other mediators know you and respect you as a professional.
- ▶ Recently, the local courts have approached you to take on several pro bono mediation cases and you refused all of them. You inform them of your fees and that they are non-negotiable.
- ▶ Also, a local university who teaches mediation has approached you to “mentor” several students as well as recent graduates who are interested in a career in mediation. You refuse and ask they not contact you again as you are “too busy.”



# Scenario 15

## 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.” (p. 152)



# Scenario 16

“I can do this!”

# Scenario 16

- ▶ You are an established mediator with years of experience conducting successful transformative-style mediations. While trained in conducting narrative and problem-solving mediations, it has been years since you actually used either method, and your client demographic predominantly involves interpersonal disputes. You admit you haven't followed any new trends or professional practices in problem-solving mediation; in other words, your skills have lapsed considerably.
- ▶ You are approached to mediate a high profile land dispute that requires a vast amount of understanding of property law to digest. You agree to be the mediator, confident that you can help "transform" the relationship between both parties.

# Scenario 16

## 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.” (p. 151)

## 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.” (p. 151)



# Scenario 17

“Trust me.”

# Scenario 17

- ▶ You are a student in a respected PhD program who just completed courses in mediation, facilitation, and adjudication. These courses have more than adequately prepared you to mediate disputes and according to certified mediators taking the courses with you, has covered even more than the average certification course.
- ▶ You are also a lawyer, but not able to practice law within the United States.
- ▶ You decide to start your own mediation practice in Florida, creating business cards and advertisements which state “Florida Supreme Court certified mediator providing fair judicial decisions, expert legal counsel, and guaranteed cost-effective divorce settlements.”

# Scenario 17

## 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." (p. 150)
- (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." (p. 150)

# Scenario 17

## Rule 10.610 Marketing Practices

(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.” (pp. 150-151)





# Scenario 18

“If you scratch my back, I’ll scratch yours”

# Scenario 18

- You are a new, recently certified mediator ready to start your new profession in Florida.
- Finding clients has proven to be difficult, and as a result your new business is suffering; however, you've made connections through several local friends and pillars of the community who will send you clients to help your business grow. Several want you to pay them a small fee for each client referral, which you feel is a reasonable cost to do business.
- Others ask that you side with certain outcomes in the disputes being referred to you instead of paying a "referral fee." You agree and guarantee you will do your best to help their friends end up having a positive outcome.

# Scenario 18

## Rule 10.380 Fees and Expenses

(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.” (p. 147)

# Scenario 18

## Rule 10.610 Marketing Practices

(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.

(f) **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." (p. 151)



# Scenario 19

“Let’s get this over with.”



# Scenario 19

- ▶ You are a high energy mediator who is excited to work with your latest clients. You immediately hit it off with both parties and realize this may end up being the easiest mediation you've ever conducted.
- ▶ Because of the easy-going nature of the clients and your own willingness to expedite the process, you skip going into a long introduction about the mediation process and immediately get to the “meat” of the issues. You figure there is no need to explain the finer details and if you happen to mention they have the option to have legal counsel present, it would only complicate matters.

# Scenario 19

## 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." (p. 148)



## Scenario 20

“If you don't ask, you'll never know.”



# Scenario 20

- ▶ John is an experienced mediator who works frequently with other mediators and students of conflict resolution.
- ▶ Upon request, John freely shares his mediation records with other mediators as well as students, hoping they will learn from his experience/s. John feels it's not necessary to anonymize the client information because most of the clients he interacts with are online.
- ▶ Also, upon review of John's records, you discover he often does not mention to his clients they have the right to legal counsel. In fact, there were several mediations where legal counsel should've been consulted, but wasn't.

# Scenario 20

## Rule 10.370 Advice, Opinions, or Information

### Rule 10.360 Confidentiality

(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.”

(p. 145)

(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.” (p. 145)



# References

Florida Dispute Resolution Center. (2019). *ADR Resource Handbook: Select ADR statutes, court rules and administrative orders*. Tallahassee, FL: Office of State Courts Administrator.