

January 11, 2010

The Question

Our county court mediators have had some lively discussions on whether, if, during the mediation conference, a defendant asks the mediator for an explanation of a judgment, is it appropriate for the mediator to provide such explanation? The question is primarily raised on credit card cases.

Some of the mediators are of the opinion that providing such information may be construed as legal advice, and others do not.

Several mediators have asked the plaintiff [‘s counsel] if he/she would be willing to provide the explanation of a judgment. That practice, however, seems to open other issues in that while some attorneys will provide an explanation, with the disclaimer that they represent the plaintiff, the explanation may be as simple as “it’s a piece of paper signed by the judge that you owe the money” without explaining possible consequences.

I would appreciate your opinion on this issue.

Submitted by County & Family Mediator
Northern Division

Authorities Referenced

Rules 10.220, 10.310(a), 10.330(a), 10.420(b)(3), 10.370(a)-(c) and 10.410, Florida Rules for Certified and Court-Appointed Mediators

Summary

Consistent with the standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide. Rule 10.370(a). If the mediator’s explanation of a judgment is consistent with Rule 10.370(a), then the mediator may provide that information.

Opinion

Consistent with the standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide. Rule 10.370(a). If the mediator’s explanation of a judgment is consistent with Rule 10.370(a), then the mediator may provide that information.

The role of the mediator includes assisting in the identification of issues, exploration of alternatives, and facilitating voluntary agreements. Rule 10.220. The mediator is also responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination. Rule 10.310(a). Thus, a mediator may assist the parties in accumulating necessary information in order to make an informed decision. Though a mediator shall not offer a personal or professional opinion (including a legal opinion) intended to coerce the parties, unduly influence the parties, decide the dispute or direct a resolution of any issue, a mediator recognizing potential issues with respect to legal rights and obligations is nonetheless permitted to respond in other ways. Rule 10.370(c). A mediator may, for example:

1. Provide copies of information sheets provided by the court on legal matters and definitions;
2. Provide any Florida Bar Pamphlets on the subject matter at issue;
3. Repeat any instructions or information made by the judge prior to their entering the mediation; or
4. Read and discuss language from the court forms.

If it becomes apparent that parties do not fully understand or appreciate how an agreement may affect legal rights and obligations, the mediators must advise the parties of their right to seek independent legal counsel. Rule 10.370(b). If the mediator believes the case is unsuitable for mediation, or any party is unable or unwilling to participate meaningfully in the process, the mediator shall adjourn or terminate the mediation. Rule 10.420(b)(3).

It is not appropriate for a mediator to ask a plaintiff's counsel to provide legal information or advice to the pro se defendant in the case. [(see Rules 10.310(a), Self Determination, 10.330(a), Impartiality, 10.370(c), Advice, Opinions or Information, and 10.410, Balanced Process)]

Date

Fran Tetunic, Committee Chair