

Dispute Resolution Center, Office of the State Courts Administrator,
Florida Supreme Court
Ethics Plenary 2020 Annual Conference for Mediators
Mediator Ethics & Vulnerable Adult Abuse: Understanding Our Responsibilities
Saturday, August 15, 2020; Virtual Presentation; 8:30 a.m. – 9:30 a.m.

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Reporting Vulnerable Adult Abuse in Florida

How to Report Elder Abuse, Neglect, and Exploitation

The Florida Department of Elder Affairs works in conjunction with the Department of Children and Families (DCF) Adult Protective Services and the Aging Network to protect disabled adults or elderly persons from further occurrences of abuse, neglect or exploitation. Services provided may include protective supervision, placement and in-home and community-based services.

To report online - go to the DCF web site at www.dcf.state.fl.us/service-programs/abuse-hotline/report-online.shtml

To report by phone - call Florida Abuse Hotline at **1-800-96-ABUSE (1-800-962-2873)**. Press 1 to report suspected abuse, neglect or exploitation of a vulnerable adult. This toll-free number is available 24/7. TTY (Telephone Device for the Deaf): 1-800-955-8771.

To report via fax, please print and complete the [DCF fax reporting form](#) with details and fax to 1-800-914-0004.

http://elderaffairs.state.fl.us/doea/abuse_prevention.php

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Florida Statutes Chapter 415, Adult Protective Services

415.1034 Mandatory reporting of abuse, neglect, or exploitation of vulnerable adults; mandatory reports of death

(1) Mandatory Reporting.

(a) Any person, including, but not limited to, any:

1. Physician, osteopathic physician, medical examiner, chiropractic physician, nurse, paramedic, emergency medical technician, or hospital personnel engaged in the admission, examination, care, or treatment of vulnerable adults;
2. Health professional or mental health professional other than one listed in subparagraph 1.;
3. Practitioner who relies solely on spiritual means for healing;
4. Nursing home staff; assisted living facility staff; adult day care center staff; adult family-care home staff; social worker; or other professional adult care, residential, or institutional staff;
5. State, county, or municipal criminal justice employee or law enforcement officer;
6. An employee of the Department of Business and Professional Regulation conducting inspections of public lodging establishments under s. 509.032;
7. Florida advocacy council member or long-term care ombudsman council member;
- or
8. Bank, savings and loan, or credit union officer, trustee, or employee,

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.

(b) To the extent possible, a report made pursuant to paragraph (a) must contain, but need not be limited to, the following information:

1. Name, age, race, sex, physical description, and location of each victim alleged to have been abused, neglected, or exploited.
2. Names, addresses, and telephone numbers of the victim's family members.
3. Name, address, and telephone number of each alleged perpetrator.
4. Name, address, and telephone number of the caregiver of the victim, if different from the alleged perpetrator.
5. Name, address, and telephone number of the person reporting the alleged abuse, neglect, or exploitation.
6. Description of the physical or psychological injuries sustained.
7. Actions taken by the reporter, if any, such as notification of the criminal justice agency.

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8. Any other information available to the reporting person which may establish the cause of abuse, neglect, or exploitation that occurred or is occurring.

(2) **Mandatory Reports of Death.** Any person who is required to investigate reports of abuse, neglect, or exploitation and who has reasonable cause to suspect that a vulnerable adult died as a result of abuse, neglect, or exploitation shall immediately report the suspicion to the appropriate medical examiner, to the appropriate criminal justice agency, and to the department, notwithstanding the existence of a death certificate signed by a practicing physician. The medical examiner shall accept the report for investigation pursuant to s. 406.11 and shall report the findings of the investigation, in writing, to the appropriate local criminal justice agency, the appropriate state attorney, and the department. Autopsy reports maintained by the medical examiner are not subject to the confidentiality requirements provided for in s. 415.107.

415.1036 Immunity

(1) Any person who participates in making a report under s. 415.1034 or participates in a judicial proceeding resulting therefrom is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from any liability, civil or criminal, that otherwise might be incurred or imposed. This section does not grant immunity, civil or criminal, to any person who is suspected of having abused, neglected, or exploited, or committed any illegal act upon or against, a vulnerable adult. Further, a resident or employee of a facility that serves vulnerable adults may not be subjected to reprisal or discharge because of the resident's or employee's actions in reporting abuse, neglect, or exploitation pursuant to s. 415.1034.

(2) Any person who makes a report under s. 415.1034 has a civil cause of action for appropriate compensatory and punitive damages against any person who causes detrimental changes in the employment status of the reporting party by reason of the reporting party's making the report. Any detrimental change made in the residency or employment status of such a person, such as, but not limited to, discharge, termination, demotion, transfer, or reduction in pay or benefits or work privileges, or negative evaluations, within 120 days after the report is made establishes a rebuttable presumption that the detrimental action was retaliatory.

415.102 Definitions of terms used in ss. 415.101-415.113.—As used in ss. 415.101-415.113, the term:

(1) "Abuse" means any willful act or threatened act by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health. Abuse includes acts and omissions.

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- (8)(a) “Exploitation” means a person who:
1. Stands in a position of trust and confidence with a vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult; or
 2. Knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, the vulnerable adult’s funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult.
- (b) “Exploitation” may include, but is not limited to:
1. Breaches of fiduciary relationships, such as the misuse of a power of attorney or the abuse of guardianship duties, resulting in the unauthorized appropriation, sale, or transfer of property;
 2. Unauthorized taking of personal assets;
 3. Misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or
 4. Intentional or negligent failure to effectively use a vulnerable adult’s income and assets for the necessities required for that person’s support and maintenance.
- (16) “Neglect” means the failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a vulnerable adult. The term “neglect” also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others. “Neglect” is repeated conduct or a single incident of carelessness which produces or could reasonably be expected to result in serious physical or psychological injury or a substantial risk of death.
- (28) “Vulnerable adult” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

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Florida Statutes Chapter 44, Mediation Alternatives to Judicial Action

44.405 Confidentiality; privilege; exceptions

(1) Except as provided in this section, all mediation communications shall be confidential. A mediation participant shall not disclose a mediation communication to a person other than another mediation participant or a participant's counsel. A violation of this section may be remedied as provided by s. 44.406. If the mediation is court ordered, a violation of this section may also subject the mediation participant to sanctions by the court, including, but not limited to, costs, attorney's fees, and mediator's fees.

(2) A mediation party has a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding mediation communications.

(3) If, in a mediation involving more than two parties, a party gives written notice to the other parties that the party is terminating its participation in the mediation, the party giving notice shall have a privilege to refuse to testify and to prevent any other person from testifying in a subsequent proceeding regarding only those mediation communications that occurred prior to the delivery of the written notice of termination of mediation to the other parties.

(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;

(4) Offered to report, prove, or disprove professional malpractice occurring during the mediation, solely for the purpose of the professional malpractice proceeding;

(5) Offered for the limited purpose of establishing or refuting legally recognized grounds for voiding or reforming a settlement agreement reached during a mediation; or

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(6) Offered to report, prove, or disprove professional misconduct occurring during the mediation, solely for the internal use of the body conducting the investigation of the conduct.

(b) A mediation communication disclosed under any provision of subparagraph (a)3., subparagraph (a)4., subparagraph (a)5., or subparagraph (a)6. remains confidential and is not discoverable or admissible for any other purpose, unless otherwise permitted by this section.

(5) Information that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery by reason of its disclosure or use in mediation.

(6) A party that discloses or makes a representation about a privileged mediation communication waives that privilege, but only to the extent necessary for the other party to respond to the disclosure or representation.

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Florida Rules for Certified and Court-Appointed Mediators

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.

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.

Rule 10.420 Conduct of Mediation

- (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.

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 10.650 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.

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Mediator Ethics Advisory Committee Opinions

MEAC Advisory Opinion 2017-016

Date Issued: April 11, 2018

The Question

A mediator is required to report reasonable suspicion of abuse or neglect involving a "vulnerable adult" as defined in Florida Statute 415.1034. See also, MEAC Opinion 2011-018, "a report of abuse, neglect or abandonment is required by law." There is no confidentiality for mediation communications that require a mandatory report pursuant to Chapter 415 solely for the purpose of making the mandatory report to the Florida Abuse Hotline. See Florida Statute 44.405(4)(a)3.

In MEAC 2012-007, MEAC issued the following opinion: "If a mediator decides, during the mediation process, to report a party's mediation communications to an appropriate body, the mediator must thereafter withdraw from the mediation to avoid the appearance of bias and/or partiality."

Scenario 1: The mediator is asked to mediate a lawsuit involving nursing home abuse/neglect. Prior to the mediation, counsel for each of the parties provides the mediator with detailed confidential pre-mediation summaries and learns: plaintiff in the lawsuit is suing the nursing home and nursing personnel for alleged failure to provide the care necessary for the well-being of an elderly person, that the plaintiffs experts will testify the nursing home and its personnel failed to provide the level of care appropriate for the well-being of the elderly person, and there is no dispute that the plaintiff suffered serious injuries while in the nursing home.

Scenario 2: The mediator is asked to mediate a lawsuit involving nursing home abuse/neglect. During the course of the mediation, the mediator learns: plaintiff in the lawsuit is suing the nursing home and nursing personnel for alleged failure to provide the care necessary for the well-being of an elderly person, that the plaintiffs experts will testify the nursing home and its personnel failed to provide the level of care appropriate for the well-being of the elderly person, and there is no dispute that the plaintiff suffered serious injuries while in the nursing home.

I would appreciate the Committee's opinions on the following questions.

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Questions:

When a mediator learns about possible abuse or neglect involving a vulnerable adult prior to the mediation as described in Scenario 1, and believes he/she has a mandatory obligation to report abuse or neglect to the Florida Abuse Hotline, can the mediator mediate this case?

If the answer to question 1 is no, a situation would be created where the case could never be mediated since the information revealed in the lawyer's pre-mediation summaries would trigger a mandatory report to the hotline for every mediator. Are there any options for the mediator in this instance that might allow for him/her to mediate the case?

If the mediator learns about the possible abuse or neglect during the mediation as described in Scenario 2, and believes he/she has a mandatory obligation to report abuse or neglect to the Florida Abuse Hotline, can the mediator proceed with the mediation and wait to report to the Florida Abuse Hotline until after the mediation concludes (i.e. settles or impasse)?

If the answer to question 3 is no, a situation would be created where mediators could never finish mediating the case since the essential facts that will be discussed at every mediation involving this case would trigger a mandatory report to the hotline for every mediator. Are there any options for the mediator in this instance that might allow for him/her to mediate the case?

Are the answers to the questions above any different if the mediator has not reached any conclusions as to whether the defendant's conduct actually rises to the level of abuse or neglect, but is only fulfilling his/her obligation to make a mandatory report of reasonable suspicion to the Florida Abuse Hotline?

Supreme Court Certified County, Circuit, Appellate Mediator Southern Division

Authorities Referenced

Rule 10.330(a) and (b), Florida Rules for Certified and Court-Appointed Mediators Sections 39.201(1)(f), 415.1034(1)(a), and 415.107, Florida Statutes
MEAC Opinion 2012-007

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Summary

As required of any person, a mediator has a statutory obligation to immediately report a reasonable suspicion of abuse or neglect involving a vulnerable adult to the central abuse hotline under section 415.1034(1)(a), Florida Statutes. In some circumstances, after making a mandatory report, the mediator should decline a case or withdraw from a case being mediated.

Opinion

As required of any person, a mediator has a statutory obligation to immediately report a reasonable suspicion of abuse or neglect involving a vulnerable adult to the central abuse hotline under section 415.1034(l)(a), Florida Statutes. In the scenario presented, the mediator is being asked to mediate a lawsuit regarding nursing home abuse or neglect – the very subject matter of a mandatory report to the central abuse hotline. Pursuant to the statute, upon being contacted to mediate the case, the mediator should inquire separately of the parties if they have knowledge, and, if so, would like to disclose to the mediator such knowledge, regarding whether suspicion of abuse, neglect, or exploitation of a vulnerable adult has been reported to the Florida Abuse Hotline. See section 415.107, Florida Statutes (providing for confidentiality of “reports of abuse, neglect, or exploitation of the vulnerable adult, including reports made to the central abuse hotline). In the event the mediator is unable to confirm that the incident has been reported prior to the mediation, or new allegations of abuse or neglect are disclosed to the mediator during mediation, the mediator must immediately report the allegations to the hotline. Then, as stated in MEAC 2012-007, the mediator must decline or withdraw from the case to avoid the appearance of bias or partiality which results from making the report. See rule 10.330(a) & (b), Florida Rules for Certified and Court-Appointed Mediators.

In the event the mediator is told by one or both of the parties that the abuse or neglect has been previously reported to the hotline, the mediator must still make a report to the hotline as there is no exception to mandatory reporting under section 415.1034(l)(a), for abuse and neglect which a person is told has been previously reported. See section 39.201(l)(t), Florida Statutes, for a limited exception to reporting child abuse. The mediator should communicate to the parties that the mediator made a report due to the statutory obligation. If the mediator is not the initial reporter and the mediator believes they can be neutral and impartial despite making the report, the MEAC believes the appearance of bias or partiality under rule 10.330 may not exist and the mediator may mediate the case with the parties’ consent; however, the mediator shall not disclose the identity of the party who has made the prior abuse report. See section 415.107

Signed by Susan Dubow, MEAC Committee Chair

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MEAC Advisory Committee 2013-003

Date of Issue: November 1, 2013

The Question

If a person during a caucus session tells the mediator that he committed a crime which had nothing to do with the case in mediation and someone else is going to be wrongfully punished for that crime does the mediator "A": say anything to the authorities or "B": let the innocent person go to jail.

The mediator did tell both parties in his opening statement that everything they discussed was confidential. That statement makes me think in the future the mediator should say "Anything we discuss pertaining to (this case) is confidential".

The person that made the unsettling statement which was made off-hand, appeared sound and rational.

The mediator felt uncomfortable with what he just heard, was somewhat flummoxed and said something to the effect that that issue had nothing to do with the present small claims case they were discussing and continued to caucus.

The case settled, everyone shook hands and that was that.

The mediator left the courtroom wondering what he should do or not do with the unsettling information.

What should the mediator have done or said at the time he heard the admission of the crime and/or after he left the court?

Submitted by a Certified County
Southern Division
Authorities Referenced

Rules 10.360, 10.420(a) and 10.650, Florida Rules for Certified and Court-Appointed Mediators
Sections 44.403 & 44.405, Florida Statutes (2012)
MEAC Opinion 2012-007

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Summary

Unless a crime disclosed to the mediator in caucus falls under one of the exceptions to confidentiality for mediation communications in section 44.405, Florida Statutes (2012), the mediator should not report it. If a mediator decides, during the course of the mediation, that the mediator will make such a report, the mediator must withdraw from the mediation.

Opinion

When deciding whether to report a past crime revealed during caucus, the mediator must ask him/herself several questions. First, is the statement a “mediation communication?” As defined in section 44.403, Florida Statutes (2012), a “mediation communication” is “an oral or written statement, or nonverbal conduct intended to make an assertion, by or to a mediation participant made during the course of a mediation, or prior to mediation if made in furtherance of a mediation.”

Second, as a mediation communication, does the statement qualify as one of the exceptions to mediation confidentiality under section 44.405(4)(a)1.- 6., Florida Statutes (2012)? The ethical requirement for mediator disclosure of communications under rule 10.360(a), Florida Rules for Certified and Court-Appointed Mediators, dictates that mediation communications are confidential “except where disclosure is required or permitted by law or is agreed to by all parties.” (Emphasis added.) If the communication requires a mandatory report pursuant to chapter 39 (child abuse, abandonment, or neglect) or chapter 415(abuse, neglect, or exploitation of vulnerable adults) of the Florida Statutes, the mediator has an ethical obligation to report it. Section 44.405(4)(a)3., Florida Statutes (2012). If the communication does not fall under the mandatory reporting exceptions, then the mediator must ask if it falls under any of the other exceptions to confidentiality. If the communication does fit within the definition of an exception, the mediator has the discretion to report.

There is an exception for mediation communications related to crimes. It states the communication must indicate the act was “willfully used to plan a crime, commit or attempt to commit a crime, conceal ongoing criminal activity, or threaten violence.” Section 44.405(4)(a)2., Fla. Stat. (2012). In the instant case, the inquirer did not specify the type of crime committed. Nevertheless, the facts, as reported, support a presumption by the mediator that the communication was a reference to a past crime and did not rise to the standard for an exception under section 44.405(4)(a)2. The MEAC continues to have confidence in its previous opinion MEAC 2012-007, in which the exception to confidentiality for a mediation communication regarding a past crime was discussed.

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Further, once a mediator makes the discretionary decision to report a mediation communication, the mediator must withdraw from the mediation immediately. Rule 10.330, Florida Rules for Certified and Court-Appointed Mediators, states, (a) “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) A mediator shall withdraw from mediation if the mediator is no longer impartial.” The mere act of reporting the mediation communication indicates a bias on the part of the mediator and, at a minimum, gives the appearance of partiality.

Additionally, based upon the information provided, the MEAC would point out that the mediator’s obligation to explain confidentiality in the opening statement requires the parties be informed that communications made during the process are confidential, *except where disclosure is required or permitted by law*.

The MEAC would finally direct the inquirer to rule 10.650, Concurrent Standards, Florida Rules for Certified and Court-Appointed Mediators, which may obligate the mediator to other professional standards that may require consideration.

Signed by Beth Greenfield-Mandler, MEAC Committee Chair

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MEAC Advisory Opinion 2011-018

March 16, 2012

The Question:

There has been a lot of discussion among our mediators in reference to the proper way to disclose and report any Child Abuse, Elder Abuse and Abuse of the Disabled. In light of all the abuse scandals in the sports programs of universities around the nation, we are concerned about the proper procedure for mediators to disclose this information discovered during a mediation. We know there are "Hot Lines" for reporting these abuses, but is that the extent of our ethical obligation as mediators?

Submitted by a Certified County and Family Mediator
Central Division

Authorities Referenced:

Rules 10.360 (a) and 10.650, Florida Rules for Certified and Court-Appointed Mediators
Florida Statutes 39.201, 44.405 (4)(a)(3) and 415.1034

Summary:

Certified mediators are required to follow the statutory requirements for reporting abuse in accordance with Florida Statutes and consistent with other professional licenses held by a certified mediator. [See Rule 10.650]

Opinion:

Certified mediators are required to follow the statutory requirements for reporting abuse in accordance with Florida Statutes and consistent with other professional licenses held by a certified mediator. [See Rule 10.650]

Section 201(1)(a) Chapter 39 and Section 1034, Chapter 415 of the Florida Statutes govern the reporting requirements. The applicable portions of each section follow with emphasis on the mandatory nature of reporting by **any person** who knows or suspects such abuse.

Section 201(1)(a) Chapter 39, Florida Statutes states,
"any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person

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responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2). (2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline. [emphasis added]

Section, 1034(1)(a), Chapter 415, Florida Statutes states,

(a) any person.....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. [emphasis added]

It is clear from the reading of these sections that the requirement to report abuse or neglect rests with every person.

The reporting of abuse against children, the elderly and vulnerable adults is not a violation of mediation communications under the Rules for Certified and Court-Appointed Mediators as Rule 10.360 (a) states, “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.” In this instance, a report of abuse, neglect or abandonment is required by law. However, unless the mediator is a member of a profession which requires the mediator to report the abuse in any other way than outlined in the statutes, reporting by any other method than to the appropriate hotline would be a violation of the Act.

The reporting of abuse against children, the elderly and vulnerable adults is also not a violation of the statutory requirement for mediation confidentiality as Section 405(4)(a)(3), Chapter 44, outlines that there is no mediation confidentiality for communications 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.”

Signed by Beth Greenfield-Mandler, Committee Chair