

November 22, 2004

The Question

In a recent CME training, the following scenario presented itself and there were a number of different opinions as to a mediator's responsibility to adhere to rules 10.330 (c) and 10.610, Rules for Certified and Court-Appointed Mediators, in light of MEAC Opinions 97-007 and 2001-006.

The following occurred after a court-ordered small claims mediation had concluded:

The defendant and the mediator are walking from the mediation room on the way back to the courtroom (it is normal procedure in my county court that the case file be brought back to the mediation program director in the courtroom before being given to the judge) and the defendant asks the mediator for her business card. He says he often is involved in business deals that require mediation and would like to be able to call upon her to mediate future cases. (The plaintiff had stopped to use the rest room and was not witness to the request).

Is the mediator able to provide her business card to the disputant?

Certified County Mediator
Northern Division

Authority Referenced

Rule 10.330(a) and (c), 10.340, 10.610, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 97-007

Summary

Providing a party, upon request, with information which could have been provided at an earlier point in the mediation process does not constitute solicitation of services and thus is not a violation of these rules.

Opinion

A mediator is prohibited from soliciting or otherwise attempting to procure future professional services during the mediation process. Rule 10.330(c). A mediator is also obligated to maintain impartiality. Rule 10.330(a). The committee believes that providing one party, upon request, with information which could have been provided at an earlier point in the mediation process does not constitute solicitation of services and thus is not a violation of these rules. In addition, under the facts provided in the question, the Committee believes that such behavior neither created a conflict of interest (rule 10.340) nor constituted inappropriate advertising (rule 10.610). This is to be distinguished from the situation in MEAC 97-007, wherein the Committee opined that solicitation of real estate services by the mediator during the course of mediation was inappropriate.

Date

Fran Tetunic, Committee Chair