

February 1, 2005

The Question

I am a Certified County, Circuit Civil and Family Law Mediator. There are two scenarios which I have encountered upon which I would like an opinion. They are as follows:

1. I have a niece by marriage (she married my nephew, who is my deceased wife's brother's child) that is currently an attorney working as a paralegal for a large multi office law firm. She recently sat for the Florida Bar Exam and based upon my knowledge of her, her standing in her class and her law review credentials, I have no doubt she will be admitted to the Florida Bar and immediately move from paralegal to practicing attorney. Would it be a CONFLICT OF INTEREST or any other problem for me to mediate cases with the referenced law firm or her?

2. My daughter is a paralegal for an insurance defense firm. Is it a CONFLICT OF INTEREST or any other problem for me to mediate cases with her law firm?

Certified County, Family and Circuit Civil Mediator
Southern Division

Authority Referenced

Rules 10.330(a), 10.340(a), (b), and (c), Florida Rules for Certified and Court-Appointed Mediators

Summary

A case your daughter is personally handling would be a nonwaivable, clear conflict, while her firm's case with which she had no involvement, is a conflict of interest which may be waivable after disclosure.

Opinion

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.” Rule 10.340(a). This rule also provides that a “mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest.” Impartiality is defined as “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 10.330(a).

The Committee believes that both of the scenarios you present pose potential conflicts of interest which, at a minimum, must be disclosed “as soon as practical.” Rule 10.340(b). The Committee opines that the mediator must do an analysis of each situation to ensure that there are no factors which would “clearly impair [the] mediator’s impartiality.” If there is a clear conflict, the mediator must withdraw from (or not accept) the mediation “regardless of the express agreement of the parties.” Rule 10.340(c). An example of a clear conflict would exist if you were asked to mediate a case your daughter is personally handling as opposed to a case from her firm with which she has no involvement. A case your daughter is personally handling would be a nonwaivable, clear conflict, while her firm’s case with which she had no involvement, may be waivable after disclosure, depending on the circumstances.

Date

Fran Tetunic, Committee Chair