

April 21, 2008

The Question

As you probably already know, the majority of cases which we mediate in Small Claims Court involve credit card debt. It is my personal opinion, (though never expressed in mediations), that defendants in these cases are being charged usurious rates of interest. The legal rate, at present, for the State of Florida, is 11 percent. Credit card debtors are paying much higher rates. I have been told that the US Congress is the governing body which regulates these rates. Following a mediation of a credit card case, would it be unethical for me to tell anyone who feels they have been treated unfairly, to contact their elected US representatives regarding these interest rates?

Certified County Mediator
Central Division

Authority Referenced

Rules 10.330, 10.340(a), Florida Rules for Certified and Court-Appointed Mediators
Committee Notes to rule 10.330, Florida Rules for Certified and Court-Appointed Mediators

Summary

Although the rules do not explicitly contain such a prohibition, a mediator should not engage in such conduct.

Answer

The standards of conduct for mediators do not explicitly contain a prohibition against actions outside of the mediation process which might give the appearance of partiality. However, the MEAC notes that a representative of a credit card company overhearing a mediator telling an opposing party to contact a member of Congress regarding interest rates may have some (legitimate) concerns regarding the mediator's impartiality in the mediation which just concluded. These concerns would also extend to any subsequent mediations that the mediator may conduct with that representative.

Moreover, in the question submitted, the mediator posits that in the mediator's "personal opinion... defendants in these cases are being charged usurious rates." The MEAC notes that a mediator is obligated not to mediate a matter that presents a clear or undisclosed conflict of interest.¹ Rule 10.340(a). The Committee Notes to rule 10.330 further clarify that a mediator "shall not accept or continue any engagement for mediation services in which the ability to maintain impartiality is reasonably impaired or compromised." Thus, the MEAC encourages the mediator to consider carefully whether, given the mediator's personal feelings about the credit card industry, the mediator should continue to mediate these cases. There may be mediators who are able to put their personal feelings aside and still "maintain impartiality throughout the mediation process" as required by rule 10.330. However, those who find that they cannot do so are obligated not to mediate those cases.

Date

Fran Tetunic, Committee Chair

¹ "A conflict of interest arises when any relationship between the mediator... and the subject matter of the dispute compromises or appears to compromise the mediator's impartiality." Rule 10.340(a). "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 10.330(a).