

August 5, 2009

The Question

A company, [name deleted] holds itself out as being made up of mediation “experts”.

Is it a violation of the ethical standards for mediators to hold themselves out as “experts” in the name of their business and/or to list themselves as mediation “experts” in their company’s advertisements and website information?

Certified County, Family and Circuit Civil Mediator
Southern Division

Authorities Referenced

Rule 10.610, Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2004-001 and 2002-003

Summary

Although the rules do not explicitly prohibit mediators from holding themselves out as “experts” in advertisements and web pages, communications regarding mediator qualifications or services must be both accurate and honest and may not contain false or misleading information.

Opinion

Although the rules do not explicitly prohibit mediators from holding themselves out as “experts” in advertisements and web pages, communications regarding mediator qualifications or services must be both accurate and honest and may not contain false or misleading information. See rule 10.610, Florida Rules for Certified and Court-Appointed Mediators. This is true of any marketing practice, including claims of expertise publicized by way of a business name or simply listing the names of mediators purportedly offering expert services. So, while permissible on its face, use of the term “expert” could run afoul of the rule.

Previous opinions relating to mediator advertising address comparable issues. In MEAC 2004-001, the Committee observed use of the title “judge” unaccompanied by clarifying information may confuse or mislead the public. Similarly, in MEAC 2002-003, the Committee opined even the truthful and accurate description of an individual as a “certified mediator” may

nonetheless be misleading upon failure to include a designation of the particular area or areas in which the mediator is certified.

In this instance, the term “experts” within the business name is associated with “mediation” in a manner permitting the public to infer the company’s mediators are qualified by education or experience to offer services in a specialized field. Summary review of the website in question discloses references to “expert arbitrators and mediators,” “expert panel[s] of [m]editors,” and “[ADR] specialists hav[ing] expertise in [specified] areas.” A link styled “Expert Mediators” notes clients “want an impartial timely, expert mediation.” Even if true, this consolidated emphasis may still be misleading, and, if so, ethically inappropriate under the advertising rule in light of a skills set in mediation which does not require subject matter expertise.

Qualifications and promised services can easily be oversold. It is clear, in the circumstances described, that the business’s name and web-based advertising are intended to raise expectations among potential clients. Marketing practices of this sort will be subject to scrutiny by mediation participants who may perceive anything less than “expert” assistance as a failure arguably stemming from inaccurate or dishonest advertising. At the very least, substantial caution should be exercised in this and any comparable circumstance where claims of professional qualifications or promised services may be perceived as false or misleading advertising or may lead to heightened (perhaps unrealistic) expectations regarding the mediation services to be rendered.

Date

Fran Tetunic, Committee Chair