

September 30, 2009

The Question

In a published print advertisement for mediation services, is it appropriate for a certified mediator to state the following:

Question 1. He is a former circuit court judge below his name?

Question 2. Advertise: "Good lawyers don't need a messenger..." "They need a proactive, yet neutral third party evaluator to resolve their dispute?"

Question 3. Advertise below the quote in #2 above "Family Law – Complex Civil – Securities – Class Action?"

Submitted by a Certified County & Circuit Mediator
Northern Division

Authorities Referenced

Rules 10.610 and 10.660, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2004-001 and 1995-007

Summary

Answer to Question 1: Advertisements of mediation services must be accurate and honest and may not contain false or misleading information. If the mediator in this instance is, in fact, a former circuit judge, then a representation of same in an advertisement for mediation services is neither inaccurate nor dishonest.

Answer to Question 2: An advertisement offering evaluation services as mediation is misleading and a violation of the mediator advertising rule.

Answer to Question 3: To avoid engaging in a marketing practice which contains misleading information, the mediator should make clear that the listing is for types of cases handled rather than certification areas.

Opinion**Answer One**

Yes. Advertisements of mediation services must be accurate and honest and may not contain false or misleading information. See rule 10.610, Florida Rules for Certified and Court-Appointed Mediators. If the mediator in this instance is, in fact, a former circuit judge, then a

representation of same in an advertisement for mediation services is neither inaccurate nor dishonest. In MEAC 2004-001, this committee determined use of the term “judge” alone is potentially misleading and requires inclusion of clarifying information. In this instance, the mediator notes he is a former judge. Without more, the representation would seem a truthful description of the individual’s background and experience. If, however, the information were included before the name as a title, in a list of mediator qualifications, or otherwise employed in a manner suggesting judicial experience makes one a better or more qualified mediator, then such use would be misleading and a violation of the mediator advertising rule.

Answer Two

No. Rule 10.610 requires mediators ensure advertisements of mediation services and descriptions of the mediation process itself are accurately portrayed. Previously addressing a similar question, this committee noted a description of mediation as an “evaluation” is inaccurate given the definition of mediation found in section 44.1011, Florida Statutes. See MEAC Op. 95-007. In that opinion, the committee rightly observed “[m]ediation and early neutral evaluation are two separate and distinct alternative dispute resolution processes.” Id. The committee concluded an advertisement offering evaluation services as mediation is misleading and a violation of the mediator advertising rule. See id. Moreover, in this instance, the advertisement impermissibly casts other mediators in a bad light by portraying them as “messengers.” See rule 10.660.

Answer Three

Yes. However, to avoid engaging in a marketing practice which contains misleading information, the mediator should make clear that the listing is for types of cases handled rather than certification areas. Otherwise, the advertisement may be seen as impermissibly implying that the mediator is certified in areas in which the court does not grant certification.

Date

Fran Tetunic, Committee Chair