

February 14, 2011

Question:

Mediators are being asked to mediate cases where the required pre-mediation disclosures will “sink the ship” of one party if the case does not settle.

One party is required to give another a road map to collect a deficiency judgment prior to the mediation ever starting. A “Heads I win, tails you lose” situation.

The simple, bare question is: Can Mediators ethically be a part of this scheme?”

Obviously, I have doubts or I would not be asking. I know of no situation where the fact of a “no settlement” more or less automatically gives one party a significant advantage over the other. A “no settlement” should at least legally leave the parties where they were prior to mediation.

Authorities Referenced

AOSC09-54 In Re: Residential Mortgage Foreclosure Cases
AOSC10-57 In Re: Guidance Concerning Managed Mediation Programs for Residential Mortgage Foreclosure Cases
Rule 10.520, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2009-0011, 2010-007, 2010-008, 2010-011 and 2010-012

Summary

Yes, it is ethical for a mediator to participate in the Florida Supreme Court’s Residential Mortgage Foreclosure Mediation Program (RMFP).

Opinion

This question pertains to the Residential Mortgage Foreclosure Mediation Program established by the Florida Supreme Court in AOSC09-54 further clarified in AOSC10-57. To begin, the MEAC takes exception to the questioner’s use of the term “scheme” in describing the RMFP established by the Florida Supreme Court.

All participation by mediators in the RMFP is voluntary. Mediators request to be placed on a circuits’ roster of residential mortgage foreclosure mediators in order to obtain mediation cases in any one of the 20 circuit’s RMFPs. In order for a mediator to be accepted into a RMFP, s/he must first be a Florida Supreme Court certified circuit court mediator and have taken a required mortgage foreclosure mediation training accepted by the circuit within which the mediator wishes to mediate. As such, all mediators in the RMFP are bound by the Florida Rules

for Certified and Court-Appointed Mediators, a fact acknowledged and supported by the Florida Supreme Court in its Administrative Orders.

For further guidance, the MEAC would direct the questioner to MEAC opinions 2009-0011, 2010-007, 2010-008, 2010-011 and 2010-012.

Date

Beth Greenfield-Mandler, Committee Chair