

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Opinion Number: 2017-005

Date Issued: September 29 2017

The Question

I recently learned about a questionable billing practice utilized by at least one mediator. I would appreciate the Committee's thoughts on the following business practice:

The mediator sends a written explanation of the mediator's fees to the parties or their counsel prior to mediation. The letter complies with the requirements of Rule 10.380(c) and includes the basis for and amount of charges, postponement and cancellation fees, the basis for other charges, and the parties' pro rata share of mediation fees. Importantly, the written explanation informs the parties that the mediator's fee will be equally divided between them which is also consistent with Rule 10.380(b)(3).

The letter also informs the parties that if either of the parties is not completely satisfied with the mediator's performance, the mediator will waive his/her fee. It is not entirely clear whether the fee will be waived only for the dissatisfied party, or whether it will be waived as to both parties.

Questions:

1. If parties are dissatisfied with a mediator's performance at mediation (even for a case that settles), is it permissible for the mediator to waive his/her mediator's fee as to all parties?
2. If one of the parties to the mediation informs the mediator that he/she is dissatisfied with the mediator's performance, is it permissible for the mediator to waive his/her fee as to the dissatisfied party, but still charge the other party?
3. Is the mediator's business practice consistent with Rule 10.330 – Impartiality, and Rule 10.380(b)(3), (c)(4), and (f) – Fees and Expenses?

Florida Supreme Court Certified Circuit, Appellate, and County Court Mediator
Central Division

Authorities Referenced

Rules 10.300, 10.330, and 10.380, Florida Rules for Certified and Court-Appointed Mediators

Summary

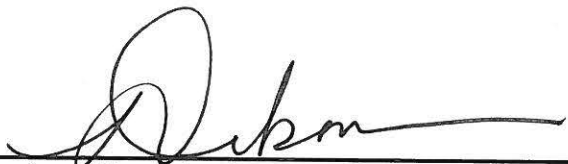
A mediator's business practices as to fees must reflect the principle of impartiality and be consistent with rule 10.380, Florida Rules for Certified and Court-Appointed Mediators.

Opinion

A mediator's responsibility to the parties includes the ethical principle that "a mediator's business practices should reflect fairness, integrity and impartiality," rule 10.300, Florida Rules for Certified and Court-Appointed Mediators. Rule 10.330 requires that a mediator "maintain impartiality throughout the mediation process," and defines "impartiality" as freedom from favoritism or bias in word, action, or appearance," including "a commitment to assist all parties, as opposed to any one individual."

Under the scenario presented, if the parties are dissatisfied with the mediator's performance at mediation (even for a case that settles), it is permissible for the mediator to waive their mediator's fee as to all parties. However, if one party is dissatisfied with the mediator's performance, it is not permissible for the mediator to waive their fee as to the dissatisfied party and still charge the other party as doing so would violate the mediator's impartiality by favoring and assisting one party. Unless the mediator's fee is waived as to all parties, the mediator's business practice is not consistent with rules 10.330, and 10.380(b)(3) and (c)(4).

In the scenario described, the MEAC does not believe that waiving the mediator's fee for both parties based on their dissatisfaction with the mediation process is a violation of rule 10.380(f) as doing so is not based on the outcome of the process, but the parties' opinion of the process regardless of the outcome.

 9/20/17
Signed and Dated by Susan Dubow, MEAC Committee Chair