

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Opinion Number: 2017-008
Date Issued: October 11, 2017

The Question

Here's the scenario A:

1. In Miami-Dade County, Mr. Smith is a litigant - a party - in 25 cases where Law Firm ABC represents Business XYZ. The opposing party in each case is different but the same law firm, Law Firm CDE, represents each of those parties.
2. In Broward County, Mr. Smith is asked to mediate a case where (i) Law Firm ABC represents (ii) Business XYZ and (iii) Law Firm CDE represents (iv) a person not a party to any of the lawsuits in Miami-Dade County.

Question: Is there any ethical problem in Mr. Smith mediating the case in Broward County?

Here's the scenario B:

1. In the Middle District Bankruptcy Court, Mr. Smith is a Trustee - a party - in 25 cases where Law Firm ABC represents Business XYZ. The debtor party in each case is different but the same law firm, Law Firm CDE, represents each of those parties.
2. In the Southern District Bankruptcy Court, Mr. Smith is asked to mediate a case where (i) Law Firm ABC represents (ii) Business XYZ and (iii) Law Firm CDE represents (iv) a debtor not a party to any of the lawsuits in the Middle District (but only in the Southern District). The mediator has done things to the detriment of the debtor as trustee in the Middle District because she did not appreciate the behavior of Law Firm CDE in the Southern.

Question: Is there any ethical problem with Mr. Smith mediating cases in a different district when and where they are a "powerful" party with influence in another district?

Florida Supreme Court Certified Circuit, Family, and County Court Mediator
Southeastern Division

Authorities Referenced

Rules 10.330(a) and 10.340(a), Florida Rules for Certified and Court-Appointed Mediators

Summary

If a mediator is a party in case A, it would be a clear conflict of interest which would compromise the mediator's impartiality for the mediator to mediate case B which involves the mediator's attorney and the attorney and opposing party in case A.



Opinion

Scenario A

According to the scenario presented, Mr. Smith is a party in the Miami-Dade County cases and it appears that Law Firm CDE represents him in those cases. Law Firm ABC represents Business XYZ which is the opposing party to Mr. Smith in a case. Due to Mr. Smith's relationships with the law firms ABC and CDE and Business XYZ, his own attorney and the attorney and opposing party in the Miami-Dade County cases, his serving as a mediator for those parties would compromise or appear to compromise his impartiality, a violation of rule 10.330(a), Florida Rules for Certified and Court-Appointed Mediators. It would also create a clear and non-waivable conflict of interest under rule 10.340(a), Florida Rules for Certified and Court-Appointed Mediators.

Scenario B

The situation described by the inquirer in Scenario B is essentially identical to that described in Scenario A due to the fact that a bankruptcy trustee is a party in a bankruptcy case. The opinions expressed by the writer of the question that "the mediator has done things to the detriment of the debtor as trustee in the Middle District because she did not appreciate the behavior of Law Firm CDE in the Southern" and that the mediator is "a powerful" party with influence in another district" are not relevant to the MEAC's disposition of the question, nor does the MEAC base its opinion on them. As in scenario A, in scenario B, the mediator is a party - the trustee - in cases involving Law Firms ABC and CDE and Business XYZ; therefore, the mediator cannot ethically mediate for the law firms and Business XYZ in other cases for the reasons stated in the answer to Scenario A above.

Signed and Dated by Susan Dubow, MEAC Committee Chair