

THE QUESTION:

Mediation - Hypothetical

A mediator was selected by the attorneys together with their clients. They attended mediation and reached a full agreement. The marriage was dissolved incorporating that agreement. Approximately one and one-half years later one of the parties (the husband) telephoned the mediator, a licensed practicing attorney, and asked her to represent him in his second dissolution of marriage.

Question: Can this mediator as an attorney represent the Husband in this second dissolution of marriage?

Sincerely,

County, Family & Circuit Certified Mediator
Northern Division

SUMMARY OF THE OPINION:

In this case, the mediator raises the prospect of legal work on a different matter than was the subject of the original mediation. There being no rule to preclude such involvement, the mediator is permitted to accept this future work.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.030(a), 10.070(b)(4), 10.070(b)(5).

OPINION:

Under rule 10.070(b)(4), Florida Rules for Certified and Court-Appointed Mediators, a mediator who is a lawyer may not represent either party in any matter during the mediation and under rule 10.070(b)(5), a mediator shall not use the mediation process to solicit future professional services with either party. In two previous opinions, the Advisory Panel addressed the issue of future legal work with mediation participants. In MQAP 94-002, the Advisory Panel stated that a mediator who mediated a personal injury case one year previously is precluded from being hired as co-counsel for the plaintiff in the same case. Further, in MQAP 94-003, in response to a question regarding the representation by the mediator of one of the parties to a mediation in an uncontested dissolution of marriage, this panel opined that while a mediator may prepare a written agreement during a family mediation proceeding in accordance with the rules, it is inappropriate for the

mediator to represent either party in any dissolution proceeding or in any matter arising out of the subject mediation.

In both of the previous opinions, the issue revolved around the mediator handling future work on the same matter which was the subject of the mediation. In this case, the mediator raises the prospect of legal work on a different matter than was the subject of the original mediation. There being no rule to preclude such involvement, the mediator is permitted to accept this future work. In doing so, the mediator should be mindful that acceptance of the future legal representation will preclude the mediator from re-mediating (e.g. a modification) with the original couple. In addition, the mediator must avoid any appearance of solicitation prohibited by rule 10.070(b)(5) and should consider the length of time from the original mediation to the future representation in order not to compromise the mediator's obligation, pursuant to rule 10.030(a) to "adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service."

Date

Charles Rieders, Panel Chair