

THE QUESTION:

To the Members of the Panel:

I am a Certified Circuit Civil and Family Mediator, and wish to relate circumstances which I would appreciate addressed in an advisory opinion.

While conducting a county court mediation, an armed, uniformed deputy entered the room (ordinarily a jury deliberation room) where I was conducting a pre-trial mediation conference. The conference involved a contractual dispute between a man and a woman. The deputy sat himself down, without comment, opposite to me; the parties were on either side, facing each other. I asked the deputy why he was there, and he stated that the judge went off the bench, and was concerned that there might be a confrontation between the parties. I told the deputy that mediation conferences were confidential. He stated that he sat in on hearings all the time. I told him that the conference was not a hearing, but a confidential, privileged proceeding. He asked if he should leave, and I said yes, and he did so.

After the deputy left, I learned from the parties that they lived together at one time, and that there had been a claim of physical assault in their past by the man, a large and imposing figure, against the woman. However, the woman held her own in the conference; there was no offer of physical or even emotional imposition; and the conference ended without settlement or incident.

I am under the impression that the judge was disappointed in my deflection of his order to the deputy, and I am under the impression that the order was inappropriate. My feeling was that mediation should not have been ordered if an armed deputy was a necessary ingredient, particularly if the deputy was told to actually sit in on the conference. Unfortunately, with the judge unavailable, he and I could not come to an on-the-spot resolution which might have better served the concerns of each of us.

Your advisory opinion regarding these circumstances would be appreciated.

Respectfully,

Certified Family & Circuit Mediator
Central Division

SUMMARY OF THE OPINION:

The panel believes that you should not mediate if an armed, uniformed deputy is a necessary ingredient to the mediation. There are, however, circumstances under which persons other than the parties may attend mediation.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators - 10.050, 10.080(a), 10.110(b)(2).

Florida Statutes - Section 44.102(3).

OPINION:

The panel believes that the mediator is correct in stating that it is likely that mediation is inappropriate if an armed, uniformed deputy is a necessary ingredient in the mediation session, as this raises concerns regarding an absence of bargaining ability, an impeding power imbalance, or both. If the mediator believes such is the case, the mediator should suspend or terminate the mediation and refer the parties back to the judge. See rules 10.050 and 10.110(b)(2).

With respect to the matter of whether the deputy should be allowed in the room in the event that the case is appropriate for mediation, observers (such as those who are mentoring to become certified mediators) may be allowed in mediation with the consent of all parties. If a party objects to the presence of the deputy, or for that matter, to any observer, the mediator should ask that person to leave the conference room. Any person who attends a mediation remains subject to the confidentiality provision as outlined in section 44.102(3), Florida Statutes and rule 10.080(a).

Date

Charles Rieders, Panel Chair