

THE QUESTION:

Kindly render an advisory opinion on the following hypothetical.

Certified Family Mediator Bob is also a licensed real estate salesperson in the state of Florida.

Bob is engaged to conduct a family mediation at which both parties and their respective counsel are present. During the course of the mediation, it becomes evident that the parties will need to sell their marital residence in order to avoid foreclosure.

Bob volunteers that he is a realtor and would be happy to help them out. Both parties and their legal counsel agree to engage Bob to list the parties' house for sale. They all feel that since Bob is impartial and is familiar with their situation that he would be well suited to handle the transaction.

Before Bob actually signs the listing agreement, he is advised that doing so might be a violation of the Florida Rules for Certified and Court-Appointed Mediators. Bob therefore declines the listing and disassociates himself from the parties.

Questions:

1. Has Bob violated any applicable Rule?
2. If Bob had accepted the listing, would he have violated any applicable Rule, given the fact that both parties and their counsel agreed as part of the mediation to hire Bob, the realtor?
3. If the parties didn't have counsel, would the answer to question #2 be any different?

Thank you very much for your kind attention to this matter.

Very truly yours,

Certified Family Mediator
Southern Division

SUMMARY OF THE OPINION:

The panel believes that volunteering to be a realtor who would be happy to help the parties out is a violation of rule 10.070(b)(5), which specifically prohibits a mediator from using the mediation process to solicit, encourage, or otherwise incur future professional services of either party.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.070(a)(3), 10.070(b)(5).

OPINION:

The panel believes that volunteering to be a realtor who would be happy to help the parties out is a violation of rule 10.070(b)(5), which specifically prohibits a mediator from using the mediation process to solicit, encourage, or otherwise incur future professional services of either party. In addition, there would be a violation of rule 10.070(a)(3), which prohibits a mediator from accepting an item of value from any person involved in any mediation, if Bob retains the listing, which is considered an item of great value to a realtor. The fact that it may not result in actual financial gain to the realtor was considered irrelevant to the panel.

In response to the second question, the panel believes that if Bob had accepted the listing he would have violated rule 10.070(b)(5) and 10.070(a)(3). The remainder of the question becomes irrelevant.

In response to your third question, the panel finds irrelevant whether the parties had counsel or were pro se, since the rule was written in terms of whether the mediator solicited during the mediation process or accepted a favor.

Date

Charles Rieders, Panel Chair