

THE QUESTION:

RE: Rule 10.070 (b)(5) Impartiality (10/95 version of the Rules)
Rule 10.033 (c) Impartiality/Gifts & Solicitation (12/97 Draft)

The referenced Rules prohibit mediators from using mediation to procure future services “with” (10/95) / “from” (12/97) any party. Is this intended specifically to preclude a mediator from sending follow-up letters with information on the mediator’s services to any party and/or attorney subsequent to a mediation? If so, why would this pose any ethical dilemma if the mediation sessions are conducted in accordance with the Rules and ethical standards? Furthermore, if mediators are permitted to provide the general public and legal community with information on mediation services available, it would help to advance the mediation profession, which would be consistent with Rule 10.060 (12/97).

Thank you for your attention and response.

Sincerely,

Certified County & Family Mediator
Central Division

Authority References

Florida Rules for Certified and Court-Appointed Mediators 10.070(b)(5).
MQAP Opinion 97-009.

Summary of the Opinion

If the follow-up letter is sent after the mediator withdraws or the report is filed with the court, the letter does not violate the rules as long as it is consistent with the advertising and impartiality rules. The panel declines answering the second question since the panel does not have jurisdiction to interpret any proposed rule.

Opinion

Your question asks for an interpretation of rule 10.070 (b)(5), which prohibits a mediator from using the mediation process to solicit professional services from either party. The panel believes that the answer depends on, among other things, the definition of the term

mediation process. In a previous opinion, MQAP 97-009, the panel opined that the process began when a mediator was selected. At this time, the panel would complete its definition of the court-ordered mediation process by stating that it ends when the mediator withdraws or when the mediator's report is filed with the court, whether the report is a full agreement, a partial agreement, or an impasse. Thus any solicitation occurring between the selection of the mediator and either the withdrawal of the mediator or the filing of the report would occur during the mediation process. Since you do not make it clear when the follow-up letters are sent, the panel cannot answer your specific question as it relates to the timing of the letter. If the follow-up letter is sent after the mediator withdraws or the report is filed, the letter does not violate the rules as long as it is consistent with the advertising and impartiality rules.

The panel declines to interpret any proposed rule since its jurisdiction is limited to giving advisory opinions about existing rules.

Date

Charles Rieders, Panel Chair