

9 November 1999

THE QUESTION

I am currently in the process of being certified to mediate dependency cases. I also work for (a community college) as a field instructor for the Professional Development Center on a yearly contract basis. I am stationed in (a city in the Northern Division) and provide training in an 11 county district that encompasses parts of four judicial circuits. I provide training to new employees of the Department of Family Safety, the agency responsible for filing petitions in dependency cases. I also provide training to experienced staff when there are legislative changes or policy changes that impact on the counselor's day to day responsibilities. All training is based on standardized curriculum that is used throughout the state.

I have done three co-mediations. (Whenever I am scheduled to mediate I take annual leave from my job with [the community college]). In each mediation I made full disclosure of my relationship with the department as well as the fact that I was not yet certified. About a week ago the State Attorney who is the managing attorney for the attorney's representing the Department of Family Safety expressed his concern that my mediating dependency cases could be a conflict of interest. I feel that since I do not work for the department, have no authority over any one in the department, and make full disclosure of my relationship with the parties at the start of a mediation, there is not an inherent conflict of interest. The program manager for the dependency mediation program was present for this conversation and suggested I write for clarification.

Therefore, I am requesting your opinion on the question of whether or not my employment, as I have described it, would bar my participation in dependency mediations in any counties included in the district in which I provide training.

Thank you for your consideration.

Sincerely,

Certified County & Family Mediator
Northern Division

AUTHORITY REFERENCES

Florida Rules for Certified and Court-Appointed Mediators – 10.070 (b)(1);
10.070 (b)(2); 10.070 (b)(3)

SUMMARY OF OPINION

While merely providing training to persons who are later parties to a mediation does not preclude the mediator from providing mediation services, the fact that such training occurred must be disclosed to all parties prior to the mediation. If any party objects, the mediator must then withdraw from the mediation.

OPINION

The panel believes that the provision of training to persons for whom you subsequently serve as the mediator could fall into the category of a required rule 10.070(b)(2) disclosure. Thus, the panel is of the opinion that you are acting appropriately in disclosing your teaching responsibilities at the mediation session. Pursuant to rule 10.070(b)(2), a mediator is required to disclose “any close personal relationship or other circumstance . . . which might reasonably raise a question as to the mediator’s impartiality.” Rule 10.070(b)(1) requires that any disclosure be made as soon as practical after the mediator becomes aware of the matter and places the burden of disclosure on the mediator. The panel, however, does not believe that your situation poses such a clear conflict of interest as to require the automatic recusal mandated by rule 10.070(b)(3).

The panel also believes that the mediator, after making the required disclosure, must recuse himself or herself, if any party objects, as outlined in rule 10.070(b)(3), which allows a disclosing mediator to serve only “if both parties so desire.” In your request for an opinion, you indicate that a representative of the state attorney’s office expressed concern as to your impartiality. The panel believes that, if an explicit request for recusal is made, you must honor such request, irrespective of your own feelings, without convening the mediation and going through what would be the formality of disclosure and objection.

Date

Charles M. Rieders, Panel Chair