

27 June 2000

THE QUESTION

I am a certified mediator who is interested in the U. S. Postal Service mediation program. Their agreement to mediate says:

The mediator and all observers agree not to voluntarily testify on behalf of any party and will not report anything said during this mediation UNLESS one of the participants makes a genuine threat of physical harm, reports criminal activity occurring on postal property, reports fraud or abuse of postal property or suspected child or elder abuse.

The agreement referenced above is signed by everyone who participates in mediation, including the mediator. My questions for the Advisory Committee are:

1. Is merely signing this agreement an ethical violation?
2. Assuming one or more of the items listed occurs during mediation, is signing the agreement and reporting the items listed an ethical violation?

Sincerely,

Certified County & Family Mediator
Northern Division

AUTHORITY REFERENCED

Rule 10.200, Florida Rules for Certified and Court-Appointed Mediators
Rules 1.700 - 1.750, Florida Rules of Civil Procedure
Rule 8.290, Florida Rules of Juvenile Procedure
Rules 12.740 - 12.741, Florida Family Law Rules of Procedure
section 44.102(3), Florida Statutes
MQAP Opinions: 96-005 and 99-012

SUMMARY OF THE OPINION

A mediator is not ethically prohibited from signing the agreement referenced in the question. If an issue listed in the statement is revealed during a mediation, the mediator may report the activity without committing an ethical violation.

OPINION

As a mediator certified by the Supreme Court of Florida, you are bound by the Standards of Professional Conduct found in the Florida Rules for Certified and Court-Appointed Mediators in relation to all mediations you conduct. See rule 10.200. When mediating court-ordered cases, you are also subject to the Florida Statutes, court rules, and administrative procedures governing court-ordered mediation, such as Chapter 44, Florida Statutes, Rules 1.700 - 1.750, Florida Rules of Civil Procedure, Rule 8.290, Florida Rules of Juvenile Procedure, and Rules 12.740 - 12.741, Florida Family Law Rules of Procedure. When mediating cases which are conducted privately or for a non-State of Florida court program, other rules and procedures may apply.

The confidentiality provision found in section 44.102(3), Florida Statutes, applies only to cases conducted pursuant to chapter 44, Florida Statutes, that is, in the state courts. Thus, a mediator is not ethically prohibited from signing the agreement referenced in the question. If an issue listed in the statement is revealed during a mediation, the mediator may report the activity without committing an ethical violation. See MQAP 96-005 and MQAP 99-012 regarding “voluntary testifying.”

Date

Charles M. Rieders, Panel Chair