31 August 2000

THE QUESTION

I am writing this letter to request a written opinion of MEAC regarding a situation in which I have been involved as a Certified Mediator.

I am an instructor for "......." an approved parenting education class provided for divorcing parents who are court ordered to attend such an approved class prior to the completion of their marital dissolution. I am also a Supreme Court Certified Family and County Mediator as well as a Licensed Mental Health Counselor.

Sometime in February 2000, a [former participant] who at some point in time attended the class, contacted [the] Director of the program and requested that [he] serve as mediator in his divorce case. [The director] was in need of a second mediation in order to fulfill his requirements for certification so he contacted me and asked if I would serve as the certified mediator. [The parties] were contacted and agreed and a mediation conference was established. [The director] conducted the mediation under my observation and after two sessions a full agreement was reached. The case was filed and the divorce was satisfactorily settled as per the agreement.

On or about May 8, 2000, [the director] received a letter from a [court administration employee] (see attached #1) raising concerns regarding our mediation for the above named couple. A discussion was held between myself and [the director] and after an informal consultation with [Dispute Resolution Center staff] a letter of response was prepared and sent (see attached #2). As a follow-up to my conversation with [DRC staff], I am writing this letter to obtain an opinion of the Committee regarding any "perception of impropriety" there may be on our part as was raised in [the] letter [from court administration].

As you will note in [the director's] response, both in his training and in our presentation, we explicitly state that we cannot and are not soliciting any additional services from the court-ordered attendees. The class is taught in a group setting. Typically, a minimum of six and a maximum of twenty people are in attendance. At no point do we engage in any personal relationship with any of the attendees and only answer questions about their situations in quite general terms. As a rule, and this is part of my question, at the end of the four-hour class, the members are required to fill out an evaluation of the program and are given an opportunity at that time to be contacted if they wish or desire further help (see attached #3).

In this case, as is the case with all such requests, it is our belief (and certainly our intent) that no solicitation of additional services is part of our presentation or procedure. In this case, as with other cases, an individual and/or couple, after attending the class which they have chosen (they may or may not attend together and may or may not attend the same instructed class or even our program), makes a request to us and never do we suggest in advance of or apart from their request that they should come to us for further services. It seems to me this is consistent with one of the

hallmarks of mediation, namely, self-determination.

Therefore, we would request an opinion from you given the above and attached materials. Do you believe we present a "perception of impropriety" in performing mediation for individuals and/or couples who request it after attending one of our classes? Are we soliciting? Is it, in your opinion, improper for us to provide mediation services to former class attendees? What, if any, changes would you suggest we make either in our presentation and/or materials that would alleviate any "perception of impropriety" or any other breach of the ethics of mediation? We have already changed the evaluation sheet to read "I would like to receive more information about..."

We eagerly await your response.

Most sincerely yours,

Certified County and Family Mediator
Southern Division

AUTHORITY REFERENCED

Rules 10.330, 10.340(a), 10.340(c), Florida Rules for Certified
and Court-Appointed Mediators
MQAP 97-003, 99-008

SUMMARY

A mediator is not precluded from mediating a case in which one of the parties attended a parenting course taught by the mediator.

OPINION

Rule 10.330 prohibits a mediator from using the mediation process to solicit or otherwise attempt to procure future professional services. Since the question arose out of non-mediation activity, service as an instructor for a parenting education course, this rule is not applicable. Rules which may be applicable are rule 10.340(a), which provides that a mediator shall not mediate a matter where there is a clear or undisclosed conflict

of interest, and rule 10.340(c), which allows a mediator to continue mediating after disclosure if there is not a conflict of interest clearly impairing a mediator's impartiality and all parties agree.

In previous opinions, the MQAP addressed similar questions to the one raised here. In MQAP 97-003, the advisory panel stated that a mental health counselor who had provided marriage counseling to a couple could serve as the couple's mediator if both parties requested the counselor/mediator's involvement. In MQAP 99-008, the advisory panel addressed the question from a field instructor for a Professional Development Center which trains employees of the agency responsible for filing petitions in dependency cases. The mediator questioned whether this activity precluded service as a mediator for dependency cases in that geographic area. The panel stated that disclosure of the relationship was probably required, but went on to say that the panel "does not believe that your

situation poses such a clear conflict of interest as to require the automatic recusal" mandated by the rules. The panel concluded that after disclosure, if any of the parties objects, the mediator must recuse. The MEAC finds these two opinions still applicable. Therefore, under the facts you have presented, the committee opines that no rules have been violated.

______________________________ ______________________________

Date

Charles M. Rieders, Panel Chair