

November 7, 2002

THE QUESTION

I have recently been appointed by the federal court in Orlando, Florida, as mediator for an “ADA” case. While conducting a conflict check, I have learned that my partners are handling two (2) pending cases involving the same plaintiff as that in the case in which I have been appointed. I have disclosed this fact to the parties and am awaiting whether either party will request a new mediator to be appointed by the court. Should both parties agree to my appointment, however, I would like the Committee’s opinion whether this real or potential conflict can be waived by the parties and whether I can go forward with the mediation. From a personal standpoint, I feel that I can remain neutral and impartial since none of the parties involved in the case which I have been appointed as the mediator, is represented by my law firm. I look forward to receiving an ethics opinion shortly. In order to expedite matters, I request that I receive an oral preliminary opinion so that matters are not delayed in this case.

Very truly yours,

Certified Circuit Mediator
Central Division

AUTHORITY REFERENCED

Rule 10.340, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 2001-009

SUMMARY

Serving as the mediator for a case involving a party to mediation against whom your law firm has cases pending creates a clear conflict necessitating the withdrawal of the mediator, regardless of the express agreement of the parties.

OPINION

The Committee believes that the circumstance you describe results in a clear conflict of interest under rule 10.340(a) and paragraph four of the *Committee Note* to that rule, which provides that such conflicts occur when “circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality.” Specifically, the Committee believes that mediating a case involving a party to mediation against whom your law firm has cases pending creates a clear conflict necessitating the withdrawal of the mediator, regardless of the express agreement of the parties. See rule 10.340(c). From an ethical standpoint, the Committee sees no significant difference between your law partners representing one of the parties in the matter

referred to you for mediation (see discussion in MEAC 2001-009) or representing a party involved in other litigation against one of the parties to the matter referred to you. In either case, your law firm (in which you are apparently a partner and therefore have a monetary interest) is part of an adversary process involving a party to your mediation.

Date

Fran Tetunic, Committee Chair