

April 6, 2006

The Question

I need some clarification.

For training I have completed the 40 hours mediator training as required to qualify as a Family Mediator according to the Florida Rules. However I am currently certified as a County mediator. Recently I have created a company and I have an agreement with two other mediators I can call on for Family Mediation or other conflict.

My advertisement read as follow: "Got Conflict.... Mediate, Divorce through mediation contested or uncontested. Call 555- 5555." Several of my company cases have been referred to the [county deleted] Bar association for Lawyer referral, for the fact that I felt that an attorney would be best for client's case.

Some of my clients feel comfortable with me mediating their dissolution of marriage despite being informed that I am a county mediator, and have the training for Family mediation. My forms always indicate that I am county mediator. Most of the time my clients have a language barrier and need help with the forms.

Are there any ethical issues that I need to be aware of so I can fix it immediately?

Submitted by County Mediator
Central Division

Authority Referenced

Florida Rules for Certified and Court-Appointed Mediators: 10.100(e), 10.370, 10.610, and 10.640

Florida Rules of Civil Procedure: 1.720(f)

Florida Rules of Juvenile Procedure: 8.290(e)

Florida Family Law Rules of Procedure: 12.741(b)(6)

MEAC Opinions: 99-013, and 2000-004, and 2000-009

Summary

If the quotation provided is the complete advertisement and the telephone number relates to a person (or company) that does provide mediation services, it does not violate the mediator's ethical standard for advertising. However, if the advertising mediator is not competent to mediate the cases advertised, or if there were additional text which was false or misleading, the advertisement would violate rule 10.610.

Opinion

Based on the facts that are presented in this question, the Committee has identified two potential areas of concern, namely, advertising and assisting unrepresented parties in pursuing a dissolution of marriage. The Committee notes as a preliminary matter that as a Florida Supreme Court certified county mediator, you are bound by the Florida Rules for Certified and Court-Appointed Mediators even when handling a pre-suit case.

In relation to advertising, a mediator is obligated to "ensure that any advertisements of the mediator's qualifications, services to be rendered, or the mediation process are accurate and honest." Rule 10.610. A mediator is also prohibited from engaging in marketing practices which contain "false or misleading information." Rule 10.610. It is unclear from your question whether the quotation you provided from your advertisement represents the entire advertisement or merely a portion thereof. If the quotation is the complete advertisement and the telephone number relates to a person (or company) that does provide mediation services, the Committee believes that it is neither false nor misleading and therefore does not violate the mediator's ethical standard for advertising. The Committee distinguishes your factual situation from the improper situation described in MEAC 99-013 (in which a letterhead not specifying which of two attorneys was a certified mediator was deemed misleading), since there is no claim of certification in your advertisement.

The Committee notes that currently there is, with one exception,¹ no requirement that an individual be certified as a mediator in order to offer mediation services. In addition, the applicable rule allows parties, within ten days of a court order of referral to mediation, to agree to utilize a non-certified mediator who is "qualified by training or experience to mediate all or some of the issues in the particular case." Rule 12.741(b)(6)(A)(iii), Florida Family Law Rules of Procedure.

¹ Rule 10.100(e) recently created a certification requirement in relation to senior judges who also wish to serve as mediators. See also, rule 1.720(f), Florida Rules of Civil Procedure; rule 8.290(e), Florida Rules of Juvenile Procedure; and rule 12.741(b)(6), Florida Family Law Rules of Procedure.

The Committee notes that a mediator shall “decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator’s skill or experience.” Rule 10.640. In light of the foregoing, and given the fact that you completed a Florida Supreme Court certified family mediation training, the Committee cannot conclude that you are not competent to mediate dissolution of marriages and thus, the advertisement, on its face, does not necessarily violate the ethical standards. However, if you were in fact not competent to mediate those cases or if there were additional text which was false or misleading, the advertisement would be misleading and thus, violate rule 10.610.

In relation to assisting unrepresented parties, the Committee directs your attention to MEAC 2000-009, in which the Committee stated that:

... assisting pro se litigants with filling our forms approved by the Supreme Court after a mediated settlement is not a per se violation of the mediation rules. However, the Committee recommends that mediators proceed with the utmost caution because mediation rules, as well as other professions’ standards of conduct, could be violated.

In particular, the Committee in MEAC 2000-009 noted that rule 10.370 discusses the way in which information is provided and when the mediator must advise parties to seek independent legal advice. The opinion suggests that the rule could be violated if the mediator lacks the requisite knowledge or experience or if the mediator fails to advise a party of the right to seek independent legal counsel. The opinion also cautions that it is beyond the scope of this Committee to interpret codes and standards of professional conduct of professions other than Supreme Court certified mediators, which would preclude the providing of advice related to the unauthorized practice of law.

Additionally, the Committee has elsewhere cautioned mediators assisting parties in completing dissolution of marriage forms not to make any substantive decisions for the parties. MEAC 2004-004. The mediator must take special care to avoid making such substantive decisions for the parties, particularly wherein language fluency (or cultural background) may make it more likely that the parties will rely on the mediator’s suggestions as to how to complete the forms. The Committee opines that the safest course for a mediator in those circumstances is to err on the side of caution and refer the “clients” to counsel for advice as to how to complete the forms.

Date

Fran Tetunic, Committee Chair