

January 10, 2007

**The Question**

The Facts:

A mediation takes place that results in a partial settlement. Of the two parties, one is represented and one is pro se.

The Question:

Is it forbidden legal advice for the mediator to advise the pro se party to retain an attorney to represent them in court for the trial of the unsettled balance of the matter?

I look forward to hearing from you.

Submitted by a Certified Family and Circuit Mediator  
Southern Division

**Authority Referenced**

Rules 10.330, 10.310(a), and 10.370, Florida Rules for Certified and Court-Appointed Mediators

**Summary**

A mediator is obligated to advise a party of the *right* to seek counsel, if the mediator believes that the party does not understand or appreciate how an agreement may adversely affect the party's legal rights or obligations, but is prohibited from giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues."

**Opinion**

In the scenario you describe, the partial agreement may affect legal rights and obligations based on matters included, as well as excluded, from the partial agreement. If the mediator believes a party does not understand or appreciate how a partial or full agreement may adversely affect legal rights or obligations, “the mediator shall advise the party of the right to seek independent counsel.” Rule 10.370(b). This obligation to advise of the *right* to seek counsel stands in stark contrast with the prohibition of giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues." Rule 10.370(c). Essentially, the mediator should not tell a party what to do, but "[c]onsistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide." Rule 10.370(a). Based on the facts you present, the most appropriate time to determine if a party understands his/her rights and obligations and advise of the right to seek counsel would be prior to the time the mediation resulted in a partial agreement. What happens following the partial agreement may affect the party's decision to resolve some of the matters at mediation. Along with maintaining impartiality, rule 10.330, the mediator is responsible for assisting the parties in reaching informed and voluntary decisions while protecting their right of self-determination, rule 10.310(a).

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Date

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Fran Tetunic, Committee Chair