

Advisory Opinion

MEAC 2011-011

Mediator Ethics Advisory Committee

c/o Florida DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

October 19, 2011

The Question:

If I work for the State of Florida in ADR could I also be employed outside the state system as an arbitrator, primary mediation instructor, contractor in the RMFM program or otherwise be self employed in the ADR field as my part time job?

When I review the State of Florida Employee Handbook on page 38 of 56 (http://www.djj.state.fl.us/forms/personnel/sof_employee_handbook_03-10-03.pdf) it refers to Florida Statutes, Title X, Part III, Chapter 112, in sections I. Additional Employment Outside State Government and J. Code of Ethics for Public Officers and Employees. When I go to Florida Statute Chapter 112.313, I don't seem to gain enough specific clarity about ADR. When I review the Mediator Ethics Advisory Opinions under Conflicts of Interest, I see no specific rule prohibiting a part time job in ADR for state ADR employees. Opinion No. 2005-002, 99-009 and 99-006, refer to some sort of judicial employment and mediating. In the rules reference section under 99-009, there is a note that says "changes to the rules in 2000 may impact this opinion." Has that happened?

Is there a change in being employed by the state and having outside employment in the ADR area of expertise unless it "presents a clear or undisclosed conflict of interest?"

As an example, let's say I am a state ADR employee and doing divorce mediations and county small claims or county civil mediation and I never handle circuit civil mediations. Could I be a contractor outside of state employment in the circuit civil area or be a primary mediation instructor and provider in the family law area?

Could you clarify if my example is or is not a clear example of a conflict?

Certified County, Family, Dependency and Circuit Mediator
Northern Division

Authorities Referenced

Rules 10.330, 10.340, 10.520, 10.620, Florida Rules for Certified and Court-Appointed Mediators

MEAC Opinions 2005-002, 1999-009, 1999-006

Summary

The questions presented relate to the Code of Ethics for Public Officers and Employees, Chapter 112, Florida Statutes and not the Florida Rules for Certified and Court-Appointed Mediators.

Opinion

The MEAC does not have the authority to address possible conflicts of interests involving state employees under Chapter 112, Florida Statutes, and therefore declines to do so.

In MEAC Opinions 1999-009 and 1999-006, the MEAC found no outright prohibition in the Florida Rules for Certified and Court-Appointed Mediators restricting county employees from serving as certified mediators which is different than the questions posed in this opinion.

As a cautionary note, certified mediators employed by the State of Florida, are reminded that they are prohibited from using the mediation process to “solicit or otherwise attempt to procure future professional services” (See Rule 10.330(c)). In addition, mediators must make appropriate disclosures in accordance with Rule 10.340 (a)-(d), Conflict of Interest.

Date

Beth Greenfield-Mandler, Committee Chair