

Advisory Opinion

MEAC 2009-009

Mediator Ethics Advisory Committee c/o DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

December 21, 2009

The Question

I have been contacted by two lawyers representing parties to a pending civil lawsuit. The lawyers have requested that I conduct a mediation in [name of town], but not a court-appointed mediation. I am presently certified as a circuit civil mediator.

In running conflict checks, I have learned that one of my partners is *currently* performing unrelated corporate transactional work for one of the lawyers' firms, which represent one of the parties. Assuming I make a full and fair disclosure of this relationship and the parties agree to waive the issue, may I conduct the mediation?

Submitted by Certified Circuit Civil Mediator
Central Division

Authorities Referenced

Rule 10.340, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2002-005 and 2008-007

Summary

It is a conflict of interest for a mediator to mediate a case when one of the mediator's law partners is currently performing transactional legal services for the law firm representing the party to the mediation.

Opinion

Proceeding with a mediation when one of your law office partners is currently performing legal work for the law firm representing one of the mediation parties is a conflict of interest. Rule 10.340(a) provides that "a mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest." Further, a conflict arises "when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises *or appears to compromise* the mediator's impartiality."

In MEAC 2002-005 and 2008-007, the Committee determined that a clear conflict of interest exists whenever a law firm in which a mediator is a partner is part of an adversary process involving a party to the mediation. In this query, the mediator's partner is performing transactional, rather than adversarial, work for the law firm representing one of the parties. The

Committee opines that whether the nature of the legal work is transactional or adversarial, the premise remains that one of the parties has a relationship with the mediator's law firm that cannot be overcome by disclosure of the mediator or waiver by the parties.

Date

Fran Tetunic, Committee Chair