

Advisory Opinion

MEAC 2009-003

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

May 14, 2009

The Question:

What are the allowable limits of a mediator's marketing efforts? Specifically, may a mediator take "prospective" attorney mediator participants to lunch at his/her expense? May a mediator host a luncheon, himself, for "prospective" attorney mediator participants and judges for the purpose of expanding his mediation practice? May a mediator give or accept college or professional football game tickets for the purpose of expanding his practice?

Thank you very much for your willingness to address this inquiry.

Circuit Mediator
Northern Division

Authorities Referenced

Rules 10.330; 10.340; 10.610, 10.620, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinions 2001-006 and 2002-004

Summary

A mediator's permissible marketing efforts depend on fact-specific circumstances such as cost and whether intended to cultivate favor with particular potential future clients.

Opinion

A mediator's permissible marketing efforts depend on fact-specific circumstances such as cost and whether intended to cultivate favor with particular potential future clients.

A mediator's marketing practices must be accurate and honest and not false or misleading. Rule 10.610. In addition, a mediator is prohibited from performing any act that would compromise the mediator's integrity or impartiality. Rule 10.620.

In a prior advisory opinion, the MEAC opined that letters to attorneys and other parties advertising one's services are permissible as are distribution of logo-embossed items of minimal value. Since items of greater value may create the appearance of mediator bias, they should be avoided. Specifically addressed were lunches and golf outings paid for by the mediator for the

purpose of developing goodwill and attracting future clients which were deemed to be inappropriate activities. MEAC 2001-006. The MEAC continues to have confidence in this opinion and thus, the luncheons for judges and prospective attorney participants for the purpose of generating future business are inappropriate activities.

Refining the test articulated in MEAC 2001-006, the MEAC opined in 2002 that sponsoring a sports tournament which is open to the public or holding a silent auction to raise monies for charitable causes for the purpose of advertising (incorporating the name of a mediation firm) may be permissible if done consistent with rules 10.330, 10.340, 10.610 and 10.620. MEAC 2002-004. Specifically, the MEAC drew a distinction between golf outings to cultivate favor with particular potential future clients versus holding an event open to the public. In the former situation, the activity creates a future conflict of interest and compromises the mediator's impartiality or at least the appearance thereof. In the latter situation, while there is still a potential for creating a conflict of interest and compromising the mediator's impartiality, the mediator may be able to conduct the activity in such a manner as to avoid those issues.

Applying the same tests articulated in these prior opinions, giving or accepting college or professional football game tickets for the purpose of expanding your mediation practice would not be acceptable. These items have substantial value and have the potential for creating a relationship between the mediator and one of the participants which appears to compromise the mediator's impartiality. Rule 10.340(a).

The MEAC notes that mediators often have professional relationships with other professionals in their area, including attorneys. Paying for lunch for a colleague who may hire you as a mediator for some future mediation is not necessarily prohibited so long as the purpose of the lunch is not to expand the mediator's practice. In order to make the appropriate determinations, the mediator needs to consider the impact the conduct will have on the mediator's impartiality and appearance of impartiality at a future mediation. Rule 10.340(a).

Date

Fran Tetunic, Committee Chair