

FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee

Opinion Number: 2017-009
Date Issued: October 11, 2017

The Question

Are there any problematic ethical considerations for a mediator who works for a mediation company and who also works for a law firm being a mediator on cases where one of the parties consulted with attorneys in such law firm (attorneys other than the mediator/attorney in question) where there was only a consultation and no representation?

Can the mediator/attorney who had no contact with the party at the law firm mediate that party's case at/through the mediation company?

Court-Appointed Family Mediator
Southeast Division

Authorities Referenced

Rules 10.330(a), and 10.340(a) – (c), Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 2011-014

Summary

Prior consultation with a party to a mediation by a member of the mediator's law firm requires disclosure by the mediator, but is a waivable if the parties agree.

Opinion

MEAC Opinions are based on the facts presented in the question. Rule 10.340(a) – (c), Florida Rules for Certified and Court-Appointed Mediators, states:

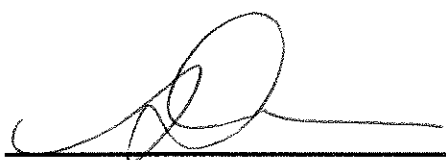
(a) Generally. A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. A conflict of interest arises when any relationship between the mediator and the mediation participants or the subject matter of the

dispute compromises or appears to compromise the mediator's impartiality.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties.

In MEAC Opinion 2011-014 the committee stated that the factors of the particular case determine whether a conflict can be waived by the parties. In the case presented, the law firm did not engage in representation involving the party to the mediation and the mediator had no contact with the party who consulted with the attorneys at the firm so a clear conflict of interest is absent under subdivision (a) of the rule, however, the mediator must disclose the matter to the parties involved in the mediation according to subdivision (b), and the potential conflict is waivable if agreed to by the parties under subdivision (c). The circumstances written of here may reasonably be regarded as allowing the mediator to maintain impartiality under rule 10.330(a), Florida Rules for Certified and Court-Appointed Mediators, if the parties agree the consultation does not compromise the mediator's impartiality.



10/11/17

Signed and Dated by Susan Dubow, MEAC Committee Chair