The Question

The below fee sharing scenario is an increasing practice in Central Florida, and I am requesting expedited MEAC opinion.

A Florida Law Firm initially practices family law, but eventually grows to include other areas of law. That law firm also adds a subsidiary, “Mediation Department”. The Law Firm principal owns both the Law Firm and The Mediation Department. The owner is a lawyer and a mediator in his own firm and Mediation department/subsidiary of the law firm. There are also other mediators in the Mediation Department.

The Law Firm spends significant funds on large office space, marketing, web design, and online calendaring for the Law Firm and the subsidiary, Mediation Department. The Law Firm/Mediation Department pays all expenses as well - coffee, utilities, etc.

The Mediation Department (owned by the law firm) funnels cases to the mediators in great volume due to the intense marketing. Mediators are required to pay a percentage (25%) of the money earned as a mediator for the funneled cases to the Law Firm/Mediation Department to cover overhead and operational costs.

1. Is it ethical and in compliance with Florida Statutes and mediation rules to pay either the law firm OR the Mediation Department/subsidiary a percentage of the income earned from the mediation cases given to the mediator for operational costs?
   (A) Does the answer change if this is only a mediation practice with no law firm affiliation?

Under all scenarios, Mediators may work no days in a month, one day, or every day. Each mediator determines his or her own availability. The percentage paid to the mediation practice/law firm/mediation department remains the same for all work performed. If the mediator does not work, no money is due for the overhead. Online calendaring is used but reception is usually also provided.

2. Does it make a difference if the Law Firm/Mediation Department designates it a proportional part of the overhead (25%) with a CAP, rather than a referral fee?
3. May a mediator working in the Mediation Department of a law firm and paying percentage fees as described above, mediate cases for members of the law firm? If so, what disclosures must be made to clients?

Florida Supreme Court Certified County, Family, Circuit, and Appellate Mediator
Central Division

Authorities Referenced
Rules 10.340(a), 10.380(e) and (f), Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 2001-001

Summary
Pursuant to rule 10.380(e) and (f), Florida Rules for Certified and Court-Appointed Mediators, a mediator may not give or accept a referral fee, and contingency fees are not allowed. A mediator who shares office space or is in a mediation department of a law firm may pay or contribute to overhead costs.

Opinion
Answer to Question One:

The MEAC is not aware of any Florida Statute or mediator rule which prohibits a mediator from paying a law firm or the mediation department subsidiary of the law firm a percentage of the income earned by the mediator as compensation to the law firm or mediation department for operational services, space, and equipment the law firm or mediation department provides to the mediator. The scenario described does not involve a referral fee or contingency fee which are prohibited by rule 10.380(e) and (f), Florida Rules for Certified and Court-Appointed Mediators. The answer is the same if the business which provides cases to the mediator is only a mediation practice with no law firm affiliation. Although the scenario and questions presented are not exactly the same, the MEAC stands on the portion of the answer it provided in MEAC 2001-001 concerning permissible administrative fees:

While a mediator may not compensate another for merely making a referral, a mediator may compensate a colleague or mediation service for actual work performed by that colleague or mediation service. Examples include coordinating, scheduling and noticing mediations, and billing/collectiong mediation fees. Additionally, a mediator may compensate another for use of office space.

Mediator Ethics Advisory Committee Opinion 2017-012
Answer to Question Two:

As stated in the answer to Question One, no referral fee is allowed; however, rule 10.380 does not prohibit an administrative or overhead fee. It does not make a difference if the law firm mediation department designates the fee a proportional part of the overhead with a cap.

Answer to Question Three:

A mediator working in the mediation department of a law firm in the scenario described above may not mediate cases for members of the law firm as the financial relationship between the mediator and the law firm creates a clear conflict of interest that is not waivable by the parties under rule 10.340(a), Florida Rules for Certified and Court-Appointed Mediators.

Signed and Dated by Charles Castagna, MEAC Committee Chair

5/24/18