

THE QUESTION:

I am a licensed Mental Health Counselor (since 1986) and a certified Family Mediator (since June, 1996) employed by [an organization in the Central Division]. Please clarify for me the potential conflict of interest there may be between my two certifications. Specifically:

A) I have some clients who come to the Center for marriage counseling. If for some their marital disputes are unquestionably irreconcilable and they decide to divorce, I want to advise them of the benefits of mediation. In doing this, the observation may be made that I am a mediator. If they request it, is it ethical then for me to serve as the mediator for their Marital Settlement Agreement?

B) I also have a long range area of concern. Since I have been employed by [an organization in the Central Division] for over seven years, I have worked as a therapist for many families. If a couple who are former clients (not current clients as in the above example) ask for mediation with me, am I ethically able to mediate for them?

I understand the Florida Rules handbook stating a mediator shall not provide counseling or therapy to either party during the mediation process, and also stating that a mediator shall not use the mediation process to solicit, encourage or otherwise incur future professional services with either party. However, the questions regarding mediating with former or current clients are still of concern to me.

I will appreciate any clearer direction you are able to give me.

Sincerely yours,

Certified Family Mediator
Central Division

SUMMARY OF THE OPINION:

The panel believes that you are permitted to mediate for a couple with whom you are providing marriage counseling if both parties request your involvement.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.030(a), 10.030(b), 10.070, 10.070(b)(4), 10.130.

OPINION:

A. As a licensed Mental Health Counselor you should consult with all appropriate licensing bodies to determine if you are subject to additional ethical constraints. Since this panel's jurisdiction is limited to certified and court-appointed mediators in activities relating to the Florida Rules for Certified and Court-Appointed Mediators. See rule 10.030(b), which states that the mediator standards do not "replace, eliminate, or render inapplicable relevant ethical standards, not in conflict with these rules, which may be imposed upon any mediator by virtue of the mediator's professional calling.")

In relation to the mediator standards of conduct, the panel believes that you are permitted to mediate for a couple with whom you are providing marriage counseling if both parties request your involvement. Since rule 10.070(b)(4) prohibits you from providing counseling or therapy to either party during the mediation process, you must be clear that when you undertake the mediation, your counseling role with the couple ceases. You should also be mindful of rule 10.130, which requires that a mediator "make only accurate statements about the mediation process, its costs and benefits, and the mediator's qualifications and rule 10.030(a) which requires a mediator to "adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service." Consequently, if you cannot maintain the impartiality required under rule 10.070, you should not accept the mediation.

B. The Advisory Panel, based on its analysis of the first question, believes that you may accept appointment as a mediator for former marriage counseling clients so long as you had a prior counseling relationship with both parties, both parties make the request for you to serve as mediator, and you believe that you can impartially discharge your duties as mediator.

April 22, 1997
Date

Charles W. Rieders
Charles Rieders, Panel Chair