

Advisory Opinion

January 19, 1995

MEDIATOR QUALIFICATIONS ADVISORY PANEL c/o Dispute Resolution Center • Supreme Court Building • Tallahassee, FL 32399-1905

THE QUESTION: Per our discussion, I would like to pose a question to the ethics panel.

I recently mediated a family law matter involving child support, alimony, division of assets, etc. Neither party was represented by counsel. I prepared a summary of the agreement reached by the parties and it was signed by them. I told them to take that agreement to an attorney who would prepare a marital settlement agreement incorporating the terms they negotiated.

They requested that I prepare the more formal marital settlement agreement and represent the wife in an uncontested dissolution of marriage. We discussed this and I advised them that as a mediator, I am a neutral third party helping them arrive at their own agreement. As an attorney, I would be an advocate, even though the dissolution was uncontested. I felt uncomfortable with this request and declined to represent either party and suggested that independent counsel be obtained.

I wondered whether there are any directives or ethical decisions on this point. Since this issue may arise with other mediators, I would appreciate if you would bring this to the attention of the committee.

Thanks for your cooperation.

Very truly yours,

Certified Family & Circuit Civil Mediator,
Southern Division

**SUMMARY OF
THE OPINION:**

It is essential to the mediation process that a mediator is above reproach and maintains the higher standards of integrity and impartiality required by statutes and rules governing mediation.

A mediator may prepare a written agreement during a family mediation proceeding in accord with the rules, however, it is inappropriate for the mediator to represent either party in any dissolution proceeding or in any matter arising out of the subject mediation.

AUTHORITY REFERENCED

Opinion: None.

Statute: Florida Statutes §44.1011(2).

Administrative Order: None

Court Rule: 10.020(b), 10.030(a), 10.030(a)(1), 10.070(a), 10.070(a)(3), 10.070(b)(4), 10.070(b)(5), 10.110(a)(1), Florida Rules for Certified and Court-Appointed Mediators.
1.730(b), 1.740(f)(1) Florida Rules of Civil Procedure.

Previous MQAP Opinion: None.

Other Authority: None.

OPINION: It is essential to the mediation process that a mediator is above reproach and maintains the highest standards of integrity and impartiality required by statutes and rules governing mediation.

Rule 10.030(a) provides: "Integrity, impartiality, and professional competence are essential qualifications of any mediator. Mediators shall adhere to the highest standards of integrity, impartiality, and professional competence in rendering their professional service." Rule 10.030(a)(1), states: "A mediator shall not accept any engagement, perform any services, or undertake any act which would compromise the mediator's integrity."

A mediator who is a lawyer may not represent either party in any matter during mediation. [Rule 10.070(b)(4)]. Pursuant to Rule 10.070(b)(5) "A mediator shall not use the mediation process to solicit, encourage, or otherwise incur future professional services with either party."

Mediations that settle should end in a written agreement. Florida Rules of Procedure 1.730(b) requires an agreement to be reduced to writing. Likewise Rule 1.740(f)(1) which applies to family mediation also requires the agreement to be reduced to writing.

Formalization of an agreement is addressed in Rule 10.110(a)(1) which provides that: "The mediator shall cause the terms of any agreement reached to be memorialized appropriately and discuss with the participants the process for formalization and implementation of the agreement."

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MQAP Chair