

**FLORIDA SUPREME COURT
Mediator Ethics Advisory Committee**

Opinion Number: 2018-003

Date Issued: October 2, 2018

The Question

I am and have been a member of The Florida Bar for the past fifty-eight years and I also am and have been for the past twenty-four years a certified civil mediator practicing here in Florida. I have been selected by counsel for the parties in a civil action to mediate in November the claims and issues involved in this civil action; and I am asking that I be furnished your Advisory Opinion regarding what appears to be a possible (and perhaps, waivable by the parties) indication of a conflict of interest involving myself and one of the attorneys.

The Pertinent Facts Relating to This Inquiry

1. Attorney A and Attorney B are brothers each of whom is a member of The Florida Bar. Apart from the fact that they are brothers and reside (separate and apart) in Hollywood, Florida, they have no professional relationship with each other whatsoever. Attorney A is a sole practitioner practicing in Fort Lauderdale and Attorney B is a partner in a Miami law firm. [Neither one practices in the same legal specialty as the other.]

2. Attorney A has no involvement in the aforementioned civil action but Attorney B represents one of the parties therein.

3. Attorney A is engaged to be married to my daughter. Although I handled one mediation for Attorney A in 2009 I do not handle any of his mediations nor do I have any professional relationship whatsoever with Attorney A. Owing to the fact, however, that he and my daughter are engaged to be married my wife and I do see Attorney A and our daughter several times during each year and some of these contacts are at Attorney A's Hollywood, Florida home.

4. My contact with and knowledge of Attorney B. I have never at any time had (nor do I presently have) any professional or social relationship with Attorney B whatsoever. Because he is a guest in his brother, Attorney A's home at the two or three times a year Attorney A hosts a dinner party that includes my wife and myself as guests, we do meet Attorney B on these few social occasions each year and exchange greetings and social pleasantries with him. [Annually, the father of Attorneys A and B will host a dinner party to which my wife and I are sometimes present as guests in the father's home.]

5. Prior to being presently selected by Attorney B and all the other attorneys representing the parties in the civil action described above to mediate the dispute in November, I have never at any time conducted any mediations whatsoever involving Attorney B.

6 All of the facts enumerated in the preceding five paragraphs have been disclosed in writing to counsel representing all of the parties involved in the aforementioned civil action and I have requested that each counsel advise my office if said counsel's client-party involved in the lawsuit has any objection to my serving as mediator. In my written communication to all counsel I have indicated that if anyone has any objection my serving as mediator I will not serve in that capacity so that another mediator can be engaged.

The two questions that I submit for the Advisory Committee's opinion are as follows:

A. Does the limited social relationship I have with Attorney B create a conflict of interest under Rule 10.340 (Conflicts of Interest), of the Florida Rules for Certified & Court-Appointed Mediators?

B. Assuming that all of the facts enumerated above are presently disclosed in writing to counsel for all of the parties involved in the civil action to be mediated, do the parties have the right under Florida law to waive in writing any suggested conflict of interest described above?

Florida Supreme Court Certified County, Circuit, and, Appellate Mediator
Southeast Division

Authorities Referenced

Rule 10.340, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 2004-008

Summary

A mediator is obligated to disclose any relationship that compromises or appears to compromise the mediator's impartiality.

Opinion

A conflict of interest “arises when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromise or appears to compromise the mediator’s impartiality,” rule 10.340(a), Florida Rules for Certified and Court-Appointed Mediators. The mediator should be aware that any act or situation that has the appearance of compromising the mediator’s impartiality creates a potential conflict of interest. The MEAC has in the past encouraged mediators to conduct an analysis of each situation to ensure that there are no factors which will “clearly impair the mediator’s impartiality,” rule 10.340(c), Florida Rules for Certified and Court-Appointed Mediators. The mediator should continue this analysis throughout the mediation process.

The MEAC opined in MEAC 2004-008 that mediating a case with an immediate family member, a daughter who was an attorney representing one of the parties, is a clear conflict of interest. In the scenario presented by this inquirer, there is no immediate family member involved, but rather a potential extended family relationship in which the mediator’s daughter is engaged to marry attorney B’s brother, attorney A, and a limited social relationship in which the mediator sees attorney B at family gatherings such as dinners hosted by attorney A two or three times a year and an annual dinner party hosted by the father of attorneys A and B. Given these facts, the MEAC does not believe the relationship creates a clear conflict of interest. However, the relationship could appear to compromise the mediator’s impartiality, thus the inquirer acted appropriately in disclosing to the parties the information regarding the extent of the relationship and the sporadic social interactions according to rule 10.340(b) and (c), Florida Rules for Certified and Court-Appointed Mediators. The burden to disclose the potential conflict of interest rests with the mediator.

 10/02/18

Signed and Dated by Christy Foley, MEAC Committee Chair