

THE QUESTION: A year or so ago, I was the mediator of a personal injury case, involving a substantial claim. The case mediated to an impasse and I heard nothing more about the case until recently. An attorney called last week and asked me to come in as co-counsel for a plaintiff. As he began to describe the circumstances, I mentioned to him I had mediated the case. We agreed that I would need to seek an opinion from the Florida Bar before I could accept possible representation as co-counsel for the plaintiff.

Please advise whether my efforts as a mediator a year or so ago would preclude me from being hired as co-counsel for the plaintiff in a personal injury suit in which I had attempted mediation.

Thanking you for your attention, I remain

Sincerely,

Certified Circuit Mediator,
Southern Division

**SUMMARY OF
THE OPINION:**

The mediator who has served as a mediator in a personal injury case one year ago is precluded from being hired as co-counsel for the plaintiff in the same case.

If the mediator were permitted to accept an appointment to serve as co-counsel for the plaintiff in a personal injury suit he or she had mediated, regardless of the passage of time, both the integrity of the mediator and the integrity of the mediation process itself would be severely compromised.

AUTHORITY REFERENCED

Opinion: None.

Statute: None.

Administrative Order: None

Court Rule: 10.020(a), 10.030(a), 10.030(a)(1), 10.070(3), 10.070(5) 10.080, & 10.080(b), Florida Rules for Certified and Court-Appointed Mediators.

Previous MQAP Opinion: None.

Other Authority: None.

OPINION: In the Preamble to the Standards of Professional Conduct (Rule 10.020(a)), it states that: "As with other forms of dispute resolution, mediation must be built on public understanding and confidence. Persons serving as mediators are responsible to the parties, the public, and the courts to conduct themselves in a manner which will meet that confidence."

Similarly, Rule 10.030(a) clearly enumerates that "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 service, or undertake any act which would compromise the mediator's integrity."

Privacy and confidentiality lie at the heart of the mediation process. Parties are strongly encouraged to speak candidly and openly with the mediator, with the express understanding that the mediator "shall preserve and maintain the confidentiality of all mediation proceedings except where required by law to disclose information" (Rule 10.080).

If the mediator were permitted to accept an appointment to serve as co-counsel for the plaintiff in a personal injury suit she had mediated, regardless of the passage of time, both the integrity of the mediator and the integrity of the mediation process itself would be severely compromised. Indeed, the very foundation on which the mediation process is based, would be broken. Parties would no longer be able to confide in the mediator, knowing that their "confidential" remarks to the neutral and impartial third party could later be used against them by the same individual, who is now wearing the hat of "lawyer/adversary" at trial.

For the foregoing reasons, it is the opinion of this Panel that a mediator who has served as the mediator in a personal injury case is precluded from being hired as co-counsel for the plaintiff in the same case.

Date

MQAP Chair