

The questions contained in the original text of the mediator's letter have been reformatted for appearance, clarity & brevity.

THE QUESTION:

95-005A

What is the duty of a mediator who is informed during a caucus of a family (dissolution of marriage) mediation that one spouse possesses an asset of which the other spouse has no knowledge?

95-005B

What is the responsibility of the mediator when one of the parties discloses the intention to commit a crime or acts which will be done in order to complete commission of a crime?

95-005C

Is a mediator who becomes aware that a plaintiff in a wrongful death action is making no claim for loss of consortium, which claim would appear to the mediator to be appropriate under the circumstances, bound to inform that party of this matter?

95-005D

Do the mediation rules apply to non-certified mediators who are mediating pre-litigation and post-litigation cases?

Sincerely,

Certified County, Family & Circuit Mediator
Central Division

SUMMARY OF THE OPINION

95-005A It is the opinion of the panel that since disclosure of the information would be a confidentiality violation and non-disclosure of the information would effect the integrity of the agreement, the mediator should withdraw from the mediation unless the party discloses the asset.

95-005B The panel is of the opinion that this question is of a legal rather than an ethical nature and therefore is not within the jurisdiction of the panel.

95-005C It is the opinion of the panel that it is an ethical violation for a mediator to give legal advice to a party.

95-005D It is the opinion of the panel that the rules only apply to non-certified mediators when mediating cases pursuant to court order.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators - 10.020(a), 10.060(c), 10.070(a)(1), 10.080(b), 10.090(a), 10.090(b), 10.110(a)(3).

OPINION 95-005A:

The panel is of the opinion that disclosure of information obtained during a caucus, without the permission of the disclosing spouse, would be in clear violation of rule 10.080(b), since parties must permit disclosure of information obtained in caucus. However, the mediator may be in a situation constituting a violation of rule 10.060(c), which prohibits a mediator from intentionally or knowingly misrepresenting material facts or circumstances in the course of conducting the mediation, and is clearly in violation of rule 10.110(a)(3), which prohibits a mediator from knowingly assisting the parties in reaching agreement which for reasons such as fraud would be unenforceable.

In light of the foregoing, it is advisable for the mediator to withdraw from the mediation to avoid engaging in fraud, unless the party discloses the asset.

OPINION 95-005B:

There is no specific rule or statutory provision which deals with the issue that you raise. This appears to be a legal question which is outside the purview of this panel.

OPINION 95-005C:

It is the panel's opinion that it is inappropriate for a mediator to give legal advice even if a party to the mediation is not represented by counsel. If the party is represented by counsel, which appears to be the case in your scenario, it would be clearly inappropriate to provide such legal advice. See rules 10.070(a)(1); 10.090(a) & (b).

OPINION 95-005D:

Rule 10.020(a) provides that the rules "apply to all mediators who are certified or participate in court-sponsored mediation . . ." The panel is of the opinion that the test to be applied is whether the mediation is being conducted by a certified mediator or whether the mediation is court-sponsored. Any mediation which is conducted by a certified mediator would be subject to the rules even if it is pre-litigation or post-judgment. If mediation is conducted by a mediator who is not certified pursuant to the rules, then pre- and post-litigation (post-judgment) mediation is not subject to the rules.

Date

Charles Rieders, MQAP Chair