

THE QUESTION:

Background information

A case was court ordered to mediation. The parties elected to have a court-connected mediation program schedule and select a mediator. The court-connected mediation program placed the case on their docket with one of their contract mediators. One party did not appear at the mediation, and everyone agreed to reschedule. After several reschedulings, one party's attorney contacted the mediation program to say the mediation had been scheduled privately with the contract mediator who had been appointed by the program. The fee for court-ordered mediation is \$100/case while private mediators may charge up to \$100/hr.

Question

Is it ethical for a mediator to handle a case on a private basis that the mediator originally received through the mediation program with which s/he contracts?

Thank you for your attention to this matter.

Certified County and Family Mediator
Central Division

SUMMARY OF THE OPINION:

Adherence to the standards of professional conduct require a mediator, upon agreeing to perform services for a specified fee, to perform such services at that fee unless relieved of that duty by the court.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.020(a), 10.030(a), 10.030(a)(1), 10.030(a)(2)(A), 10.070(b)(5), 10.100(a).

Florida Rules of Civil Procedure -
1.720(g).

OPINION:

Mediators are required to "adhere to the highest standards of integrity . . . in rendering their professional service." Rule 10.030(a). Adherence to the standard of integrity requires a mediator, upon agreeing to perform services for a specified fee, to perform such services at that fee unless relieved of that duty by the court. If the mediator were allowed to "re-negotiate" the fee for a case for which a fee had already been agreed to, it would be

tantamount to a unilateral change in the terms of a contract which the panel agrees would violate rule 10.030(a)(1) by constituting an "act which would compromise the mediator's integrity." Such action would also constitute a violation of rule 10.100(a), which requires a mediator to occupy a position of trust with respect to the parties and the courts and to be governed by high standards of honor and integrity when charging for services and expenses. There may also be a violation of rule 1.720(g) which provides that the presiding judge may determine the reasonableness of the fees charged by the mediator. This rule is made an ethical violation through rule 10.030(a)(2)(A) which requires a mediator to abide by all court rules.

The panel also believes the described action on the mediator's part would violate rule 10.020(a) since the mediator would be guilty of action which did not merit the confidence of the party, the public, and the courts. The attempt by the mediator to obtain a fee increase under the described circumstances would undermine the confidence of the parties (even if they agreed to such a one-sided proposition) and the public by appearing to be the actions of a mediator interested more in financial remuneration than performing mediation services. Such action could, depending on the circumstances, give the appearance of a mediator using the mediation process to solicit future professional services in violation of 10.070(b)(5).

However, if the mediator believes the conditions of the referral have been so modified as to constitute a material breach of the referral agreement, the mediator could petition the court to relieve the mediator of the responsibility to mediate the case or modify the payment provisions to ensure the mediator equitable treatment. An example of a reason for petitioning for modification would be because of cancellation of conferences with inadequate notice and no compensation for rescheduling. The panel believes that if the mediator obtains such an order there would be no ethical violation.

Date

Charles Rieders, MQAP Chair