

THE QUESTION:

BACKGROUND

I recently successfully mediated an estate adversary proceeding. At the conclusion of mediation, a written settlement agreement was entered into by the parties. It was fully executed by all parties, their counsel and myself as mediator.

Apparently, a dispute has arisen as to some party or parties' obligation(s) under the agreement. One of the parties has at least twice been before the court seeking entry of order(s) to compel enforcement of settlement. In an order entered April 1, 1996, the trial court, in pertinent part, ordered myself appointed as special master to: "...resolve any disputes among...(the parties)...arising from the settlement agreement...". I am ordered to file a report, the parties are granted leave to file exceptions.

I am a bit perplexed as to just what I should do.

Fla. R. Civ. P. 1.490 directs me to conduct a hearing and file a report. Fla. R. for Court Appointed Mediators 10.090(d) provides, in part, that "...under no circumstances may (I) offer a personal or professional opinion as to how the court...will resolve the dispute...". Evans v Evans, 603 So. 2d 15, Fla. 5th DCA '92 suggests that mediators should stick to mediating; and, judges to judging. I have a concern that in filing whatever "report" or other paper, that I may violate some party's right to confidentiality. I read Fla. Stat. 44.102(3) to afford only a limited waiver where agreements are executed. That is, only to the extent of the agreement itself; unless the parties have specifically agreed to a broader waiver. I find no cases that afford guidance.

What should I do in response to the order appointing me special master?

Very truly yours,

Certified Circuit Civil Mediator
Southern Division

SUMMARY OF THE OPINION:

Integrity and impartiality are fundamental requisites of mediation. By accepting the appointment as Special Master, the mediator places these requirements at risk.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.030(a)(1), 10.080.

Chapter 44 - Florida Statutes -
44.102(3).

OPINION:

In considering the circumstances surrounding the appointment as Special Master, the Panel believes the mediator should decline the order. Information obtained within the mediation context (with the exception of the written agreement) is confidential by statute. In the course of mediating the case, the mediator obtained information which should not be disclosed or utilized outside of the mediation context. Because it is not possible to separate the information gained in the mediation setting from this later proceeding, the mediator would carry the information into the decision-making context of the Special Master. This information may bias the mediator in rendering a decision as special master, and would breach the confidentiality provisions of Rule 10.080 and Ch. 44.102(3).

An additional consideration is rule 10.030(a)(1) which requires a mediator to decline any act which would compromise the mediator's integrity. In considering this question, the panel believes this requirement is jeopardized by the acceptance of dual, conflicting roles in the resolution of the same case.

Date

Charles Rieders, MQAP Chair