

THE QUESTION:

Question Re: Mediation Rules - Rule 12.741(b)(5)

Rule 12.741(b)(5) states as follows: The mediator may meet and consult privately with any party or parties or their counsel.

Question: Does this rule apply strictly to the time during which the mediation is actually taking place. [sic] Or, may a mediator meet and consult privately with any party prior to or after the mediation? The rule is unclear. Any information you can give us regarding this rule would be appreciated.

Sincerely,

County, Family & Circuit Certified Mediator
Northern Division

SUMMARY OF THE OPINION:

The panel believes that the mediator is not prohibited from having contact with either party, either before or after the mediation.

AUTHORITY REFERENCED:

Rules: Florida Rules for Certified and Court-Appointed Mediators -
10.070(a).

Florida Family Law Rules of Procedure -
12.741(b)(5)

Florida Rules of Civil Procedure -
1.720(e)

OPINION:

Your question deals with both the situation of contact before the mediation session and after the session. Rule 12.741(b)(5), Florida Family Law Rules of Procedure, authorizes the mediator to meet and consult privately with any party or parties or their counsel. The civil counterpart of this provision is found in rule 1.720(e), Florida Rules of Civil Procedure.

In relation to contacts prior to mediation, the panel believes that you are not prohibited per se from having contact with a party, either in written form (a case summary) or orally (by telephone or prior to the beginning of the session). The panel would, however, caution against pre-mediation contact with one party or that party's attorney in the presence of another party, particularly an unrepresented party, since the other party may feel that this is a form of collusion and thus a lack of impartiality in violation of rule 10.070(a). In any case, the mediator should fully disclose to each party any contact that may have occurred with the other party.

In relation to post-mediation contact, the panel reaffirms its reasoning set forth in MQAP 94-001, to wit, that with consent of counsel and the parties (or the parties alone, if not represented by counsel) and a stipulation of confidentiality, a mediator may continue to assist the parties in reaching a voluntary agreement where no agreement is reached at the initial mediation conference.

Date

Charles Rieders, Panel Chair