

THE QUESTION:

I have a question which I'd like you to address and I'd like your thoughts concerning same. If need be, I'd like to hear what the ethics panel thinks about this.

Recently, a large local mediation firm apparently began doing business as a "straight corporation." In other words, they are not operating as a professional service corporation.

The firm does circuit civil and domestic mediation; I'm sure they do non-court annexed mediation as well.

Obviously, this firm could not be working within the judicial process on court annexed mediation unless its mediators were attorneys. But, for business reasons, including, probably, having the ability to operate out of state and, also, the ability to operate in ways which would otherwise be prohibited to attorneys, they have elected to operate as a business and not a professional service corporation. Nonetheless, they generally serve pursuant to court appointment. They get paid in accordance with court order. They operate pursuant to the Rules of Civil Procedure, mediation rules, etc.

My question is: How can they do this? Further, is this an ethical practice?

I believe that your office needs to give this matter serious consideration, if it has not done so previously, because we are about to create a situation where some small group of people are actually operating "outside the pale" of the court's control, even while licensed by the court. It could be hard for the Supreme Court to continue to assert jurisdiction and control over straight corporations which are not licensed as legal service corporations but which are nonetheless rendering what is, in the final analysis, a legal service (mediation) which is regulated pursuant to rules promulgated by the Supreme Court of Florida.

Has anybody thought about this?

Sincerely,

Family & Circuit Mediator
Central Division

AUTHORITY REFERENCES:

Florida Rules for Certified and Court-Appointed Mediators - 10.010(b), 10.020(a), 10.030, 10.030(a)(2)(A).

Florida Rules of Civil Procedure - 1.720(f).

Florida Rules of Juvenile Procedure - 8.290(e)(2)(B).
Florida Family Law Rules - 12.741(b)(6).

SUMMARY OF THE OPINION:

Currently, there are no licensure requirements for mediators in the State of Florida. Under rule 1.720(f), the court may only appoint a certified mediator if the parties are unable to agree on the selection of a mediator (certified or not). The rule does not contemplate the court appointing a corporation -- either a professional services corporation or any other type. The court may appoint an individual mediator who is associated with a group, however organized, but should not name the corporation as the mediator.

OPINION:

Your question is based on several inaccurate premises which we believe must be pointed out before the panel attempts an answer. Currently, there are no licensure requirements for mediators in the State of Florida. In fact, an individual, even if not certified by the Florida Supreme Court as a mediator, can obtain court-ordered cases if the parties select that mediator within ten days of the court order to mediation. Rule 1.720(f), Florida Rules of Civil Procedure, Rule 8.290(e)(2)(B), Florida Rules of Juvenile Procedure, and Rule 12.741(b)(6), Florida Family Law Rules.

You also state that the firm does both circuit civil and domestic cases. Under present rules, to obtain Florida Supreme Court certification as a family (domestic) mediator, an individual need not be an attorney. In addition to attorneys, individuals who have obtained a Masters or Doctorate in a mental health, behavioral, or social science, physicians licensed in adult or child psychiatry, and certified public accountants who are licensed in any United States jurisdiction may be certified if they have four years of experience in one of the aforementioned fields, have completed a Supreme Court certified family mediation training program and a mentorship, and are of good moral character. Rule 10.010(b). Thus, this firm could be working within the judicial process on court-connected mediation even if all of the mediators were not attorneys.

Another point deserves clarification. The panel assumes that your parenthetical reference to mediation being a legal service does not imply that it is the practice of law, which mediation clearly is not. The panel would distinguish between what a lawyer does, that is, practice law, and what a mediator does, that is, render services within a legal context.

Under rule 1.720(f), the court may only appoint a certified mediator if the parties are unable to agree on the selection of a mediator (certified or not). The rule does not contemplate the court appointing a corporation -- neither a professional services corporation nor any other type. The court may appoint an individual mediator who is associated with a group, however organized, but should not name the corporation as the mediator. All certified and all court-appointed mediators are bound by the Florida Rules for Certified and Court-Appointed Mediators, pursuant to rule 10.020(a), and as such are bound by rule 10.030 which requires a mediator to “adhere to the highest standards of integrity, impartiality, and

professional competence in rendering their professional service” and to stay informed of and abide by “all statutes, rules, and administrative orders relevant to the practice of court-ordered mediation.” Rule 10.030(a)(2)(A). There is nothing in your letter or question to indicate that the individual mediator is violating any of the rules. Mere association with a corporation which is not a professional service corporation is not unethical.

Date

Charles Rieders, Panel Chair