

THE QUESTION

To the Mediator Qualifications Advisory Panel:

I am a mediator employed as an independent contractor with a court-annexed juvenile dependency mediation program. My contract is with the court itself, which receives reimbursement for my services through a primary contract with a funding agent. Pursuant to this agreement, mediators are to be hired as subcontractors to provide the mediation services contemplated by the contract. Funding for this particular program is provided by the Department of Children and Families ("the Department"). The Department has designated a contract manager to negotiate, administer, monitor and enforce the terms and conditions of the contract.

At the present time, mediation notes and agreements are kept in a program file separate from the mediation outcome report and other relevant documents (such as court orders, notices, or letters and memoranda regarding scheduling). The contract manager is provided access to the file containing the outcome report and associated documents, but not provided access to the other program file. My first questions to you today regard the confidentiality of two items in particular: the mediation agreement, and participant surveys regarding satisfaction with the mediation process.

The contract between the funding agency and the court requires access to the mediation agreements (but not the mediation notes) through the mediation program files. In every case where an agreement is reached, that agreement is prepared and filed with the court at the same time that an outcome is filed.

Although the contract manager is not an actual participant in the mediation, the manager has indicated that, according to Department legal staff opinion, the contract manager is a "representative" of the Department, entitled to access to the mediation agreements contained in the dependency mediation program files. In reviewing the applicable statutes, it appears that Section 39.814, subsections (3) and (4) may be relevant. Those subsections provide, in pertinent part, that the Department and its designees have right "to inspect and copy any official record" pertaining to a dependent child, and that "all information obtained pursuant to this part in discharge of official duties by any employee of the court shall be confidential...and shall not be disclosed to anyone other than" the Department.

a) While I have explored with the contract manager her ability to obtain the information directly from Department attorneys, or directly from the court files themselves, she maintains that this is impracticable, and asserts that it is a requirement of the funding contract that she be provided access through the dependency mediation program files. My concern, of course, is with my obligation, pursuant to chapter 39, Florida Statutes, and the rules governing court-ordered mediation in general, and dependency mediation in particular, to keep these agreements confidential. May the contract manager be provided access to the mediation agreements through the dependency mediation

program files, without breaching these confidentiality requirements?

b) The primary funding contract also requires satisfaction surveys which are subject to Department review. Am I correct in assuming that I need to indicate to the participants in the mediation, at the time the surveys are being filled out, that the surveys will not be kept confidential? Otherwise, I am concerned that the participants may not realize that this is another exception to the general rule of confidentiality which applies.

c) Next, I have a question concerning those participants in child dependency mediation who are not ordered by the court to participate in the mediation, but regarding whose participation nobody objects. Are these individuals covered by the mediation rules regarding confidentiality (by virtue of the fact that the mediation itself is court-ordered), or must I require them to sign a separate confidentiality agreement, in order to ensure that they will keep confidential the discussions in which they participate? Since child dependency mediations frequently involve participants other than those who have been specifically ordered to mediation by the court, this is a question which often arises.

d) Lastly, a question which might have been more timely before the holidays. During a recent child dependency mediation training, it was brought to our attention that the mediation rules contain a proscription against giving gifts to court personnel. Is this to be interpreted as an absolute proscription (which would preclude nominal gifts, such as are not required to be reported by State officers under State conflict of interest laws), or may the rule be construed similarly to provisions contained in State conflict of interest laws?

I appreciate your expertise in addressing each of these matters. Thank you very much for your assistance.

Very truly yours,

Certified County, Family, Circuit and Dependency Mediator
Northern Division

AUTHORITY REFERENCES:

Florida Rules for Certified and Court-Appointed Mediators: 10.040, 10.070(a)(3)
Florida Statutes: 112.3148(6)(d)

SUMMARY OF THE OPINION:

The Florida Rules for Certified and Court-Appointed Mediators imply that any gift to court personnel is prohibited. The mediator's first three questions are beyond the purview of this body.

OPINION:

- a)** The panel is of the opinion that the issue you raise concerning confidentiality involves an interpretation of statutes and is thus beyond the purview of this body.
- b)** In relation to the issue of participant surveys, the panel would also decline, for the reason previously noted, to answer your questions.
- c)** Regarding your question on the maintaining of confidentiality by participants, the panel must once again decline to answer, for the reason previously noted.
- d)** On your final issue, the panel references the last sentence of rule 10.040, which prohibits a mediator from "any activity which has the appearance of improperly influencing a court to secure placement on a roster or appointment to a case, including gifts or other inducements to court personnel." Unlike the restriction on gift-giving to a party or attorney contained in rule 10.070(a)(3), there is no reference to items of "value." The implication is that any gift would be prohibited. Therefore, the panel is of the opinion that the statutory \$100 limitation contained in section 112.3148(6)(d), Florida Statutes, is of no relevance to the issue.

Date

Charles Rieders, Panel Chair