

February 19, 2001

THE QUESTION

I have reviewed Florida Bar Ethics Opinion 86-8, which indicates that as a certified attorney mediator I can prepare settlement agreements for the parties with whom I mediate if they so desire. My question goes one step further. Assuming the parties have mediated, I have prepared a settlement agreement, and they have signed the agreement after each being directed to take it to another attorney for review and given time to do so, can my staff and I assist the parties further by preparing the Supreme Court approved forms for an uncontested dissolution of marriage which incorporate the mediated settlement agreement provided I disclose to the parties that I do not represent either of them and the parties sign the agreement and forms and file the action pro se? Specifically, forms 12.901(b)(1), 12.902(a), 12.901(f), 12.901(j), 12.990(b)(1).

It would seem to me that if as a mediator I can prepare an Agreement, which involves a lot more drafting than filling in blanks in a form, that my paralegal staff and I should be able to fill out/prepare/complete the Supreme Court Approved forms for the parties I mediate with so long as I make it clear that I do not represent either one of them; I direct each of them to take the mediated agreement and the forms to an attorney prior to signature, and I do not file the case for them rather the parties file the case, if all, pro se. This would also seem to be consistent with the Court's position that paralegals can fill out/prepare/complete the Supreme Court Approved forms for individuals and not be guilty of practicing law without a license.

Please let me know your opinion in these matters. Thanks.

Sincerely,

Certified Family Mediator
Central Division

AUTHORITY REFERENCED

Rules 10.330(c), 10.370, 10.380(c) and 10.650, Florida Rules for
Certified and Court-Appointed Mediators
Opinion 96-8, Florida Bar Ethics Opinions
Rule 10-2.1(a), Rules Regulating the Florida Bar

SUMMARY

Assisting pro se litigants with filling out forms approved by the Supreme Court of Florida after a mediated settlement agreement is not a per se violation of the mediation rules; however, caution should be exercised to ensure compliance with mediation rules and other professions'

standards of conduct.

OPINION

The Committee opines that the practice of assisting pro se litigants with filling out forms¹ approved by the Supreme Court after a mediated settlement is not a per se violation of the mediation rules. However, the Committee recommends that mediators proceed with the utmost caution because mediation rules, as well as other professions' standards of conduct, could be violated. If a mediator chooses to offer such services, the mediator should be mindful of the following rules:

Rule 10.330(c) provides that during the mediation process, a mediator shall not solicit or otherwise attempt to procure future professional services. Thus, if the mediator chooses to offer this service, such offer must be made before mediation begins.

Rule 10.370 discusses the way in which information is provided and the necessity of independent legal advice. This rule could be violated if the mediator lacks the requisite knowledge or experience to complete the forms or if the mediator fails to advise a party of the right to seek independent legal counsel.

Rule 10.380(c) requires mediators to give the parties or their counsel a written explanation of any fees or costs prior to mediation. This requires a mediator to disclose any and all fees to be charged for assisting parties in preparing Supreme Court approved forms.

In answering this question, the Committee assumes that the assistance provided to the parties by mediators and their paralegals in preparing such forms in an uncontested dissolution of marriage (consistent with the terms of the parties' mediated settlement agreement) does not constitute either the practice of law by an attorney or the unauthorized practice of law by a non-attorney. However, with respect to the practice of law by attorney-mediators, the Committee notes that lawyer-mediators can potentially violate The Florida Bar Rules of Professional Conduct if they act as mediators and later represent either of the parties in a dissolution of marriage or other matter related to the mediation. Lawyers who also work as family mediators should carefully review Opinion 86-8, Florida Bar Ethics Opinions (October 15, 1986), in light of rule 10.650, which states that other ethical standards by which mediators are bound are not abrogated by the mediation rules.

With respect to the work paralegal staff can perform in filling out, preparing, and completing Supreme Court approved forms for pro se parties, the Committee recommends that mediators determine whether such assistance constitutes the "unlicensed practice of law," which is defined in rule 10-2.1(a), Rules Regulating the Florida Bar. This rule provides, in relevant part, as follows:

The unlicensed practice of law shall mean the practice of law,

¹ For example, Form 12.901(b)(1), Petition for Dissolution of Marriage with Dependent or Minor Children; Form 12.901(f), Uniform Child Custody Jurisdiction Act (UCCJA) Affidavit; Form 12.901(j), Notice of Social Security Number; Form 12.902(a), Answer, Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage; Form 12.990(b)(1), Final Judgment of Dissolution of Marriage with Minor Child(ren)(uncontested).

as prohibited by statute, court rule, and case law of the State of Florida. For purposes of this chapter, it shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida. Oral communications by non-lawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form.

It is beyond the scope of this Committee's authority to interpret codes and standards of professional conduct for professions other than Florida Supreme Court certified mediators. This Committee cannot determine whether the acts of paralegals constitute the unlicensed practice of law (UPL) in Florida or whether the specific actions of family mediators violate any other profession's ethical requirements.

Date

Charles M. Rieders, Chair