

May 2, 2001

THE QUESTION

Re: Formal relationships between Mediators

I am aware that remuneration for “a mediation referral” is prohibited under Rule 10.380(e). Would a more formal relationship between Mediators, something akin to the “of counsel” relationship in the legal practice, violate this rule? Specifically, would a Mediator who has a scheduling or legal conflict in a proposed Mediation be able to offer the disputants the services of his/her (related) colleague in exchange for some form of compensation from that colleague? Would the answer to this query depend on the extent and formality of the relationship between the Mediators (employment, partnership, affiliation)? Would there be factual scenarios that would validate and/or invalidate this arrangement.

Thank you for your review and response.

Sincerely,

Certified Circuit Mediator
Northern Division

AUTHORITY REFERENCED

Rules 10.380(c)(3); 10.380(e), Florida Rules for Certified
and Court-Appointed Mediators

SUMMARY

A mediator may not compensate another for merely making a referral, but may compensate a colleague or mediation service for actual work performed by that colleague or mediation service.

OPINION

Rule 10.380(e) requires that “no commissions, rebates, or similar remuneration shall be given or received by a mediator for a mediation referral.” Under this rule, any payment for a mediation referral is impermissible, regardless of what it is called or the relationship established between the mediators. Therefore, a mediator who has a scheduling or legal conflict would not be able to offer the services of a colleague in exchange for compensation – whether or not they had an “of counsel” relationship, or any other formal business relationship.

The Committee notes the distinction between impermissible referral fees and permissible administrative fees explained in writing prior to the mediation under rule 10.380(c)(3). While a

mediator may not compensate another for merely making a referral, a mediator may compensate a colleague or mediation service for actual work performed by that colleague or mediation service. Examples include coordinating, scheduling and noticing mediations, and billing/collecting mediation fees. Additionally, a mediator may compensate another for use of office space.

Date

Charles M. Rieders, Panel Chair