

August 14, 2001

THE QUESTION

Dear Committee Members:

I am a Certified Circuit Court Mediator and owner of a mediation company. I am seeking your opinion concerning permissible advertising by mediators. As you know, the rules for advertising by lawyers and mediators are different. Rule 10.610 sets out advertising prohibitions for mediators. It does not address all advertising scenarios.

Specifically, I would like your opinion whether it is permissible under the Florida Rules for Certified and Court-Appointed Mediators to engage in the following advertising:

- A. Letters to attorneys and other parties advertising mediation services (within the prohibition set out under Rule 10.610).
- B. Distribution of logo golf shirts and other logo embossed items typically found on one's desk. This takes into consideration Rules 10.330, 10.530 and 10.610. These items would be given through out the year but not as part of any attempt to solicit business during the mediation process or influence court personnel for case assignments.
- C. Lunches or golf outings paid by the mediator as part of an overall goodwill and client development strategy.

It would be most appreciated if you would advise me whether the aforesaid activities are prohibited and if so, why.

Very truly yours,

Circuit Mediator
Central Division

AUTHORITY REFERENCED

Rules 10.330(c), 10.340, 10.610 and 10.620, Florida Rules for Certified and Court-Appointed Mediators

Committee Notes to rule 10.340, Florida Rules for Certified and Court-Appointed Mediators

SUMMARY

- A. Letters to attorneys and other parties advertising one's services are permissible.
- B. Logo embossed items of minimal value are permissible forms of advertising. Items of greater value, such as embossed golf shirts, may create the appearance of mediator bias, and therefore, should be avoided.
- C. Lunches and golf outings paid for by the mediator for the purpose of developing goodwill and attracting future clients are inappropriate activities.

OPINION

2001-006A

Letters to attorneys and other parties advertising one's services are permissible, so long as all information regarding the mediator's qualifications, services to be rendered, and the mediation process are accurate and honest. See rule 10.610.

2001-006B

Pursuant to rule 10.330(c), a mediator shall not give a gift "or other item of value *in any mediation process*." [emphasis added] However, since your question specifically addresses items which would be given throughout the year and not during a mediation process, the applicable rules appear to be rule 10.610, which relates to advertising and rule 10.620, which addresses the general integrity and impartiality requirements. The Committee opines that logo embossed items of minimal value are permissible forms of advertising. Examples of such items include pens, calendars, and cups. However, mediators should be wary of providing items of greater value, such as embossed golf shirts. Such expensive gifts may create the appearance of mediator bias and raise doubts as to the mediator's neutrality. Mediators should avoid potential conflicts of interest. See rule 10.340 and the *Committee Notes* to rule 10.340.

2001-006C

The Committee opines that a mediator paying for lunches¹ and golf outings for the purpose of developing goodwill and attracting future clients can create the appearance of bias. Therefore, these would be inappropriate activities for a mediator. See rules 10.340 and 10.620.

Date

Charles M. Rieders, Committee Chair

¹ The Committee notes that provision of lunches incident to a mediation are not covered by this opinion and would likely fall under rule 10.330(c) governing gifts and solicitation. The Committee Note to this rule specifically states that a mediator is not precluded from "giving or accepting de minimis gifts or incidental items provided to facilitate the mediation."

