

September 18, 2004

THE QUESTION

Which Rules for Certified and Court-Appointed Mediators, if any, are applicable to a certified circuit mediator when doing the following in a non-court appointed capacity as the issues are not in litigation:

- A. Assisting two neighbors in resolving a dispute over a barking dog;
- B. Negotiating the purchase price with a local car dealer for a car my spouse is trying to purchase;
- C. Assisting my local town council by negotiating the sale of town property to several town residents;
- D. Assisting a state representative by negotiating with a bill's sponsor acceptable wording for an amendment to the bill.

Certified Circuit Civil Mediator
Central Division

AUTHORITY REFERENCED

Rules 10.110(b), 10.200, 10.610, 10.620, 10.650, Florida Rules for Certified and Court-Appointed Mediators

SUMMARY

The Florida Rules for Certified and Court-Appointed Mediators apply to any mediation conducted by a Florida Supreme Court certified mediator and to any court-ordered mediation, even if conducted by a non-certified mediator by agreement of the parties. The general standards (for example, integrity, advertising, and good moral character) will be applicable to certified mediators at all times while the applicability of the specific mediation standards to any given situation will depend on whether the activity is "mediation."

OPINION

The Standards of Professional Conduct (Part II) of the Florida Rules for Certified and Court-Appointed Mediators "provide ethical standards of conduct for certified and court-appointed mediators." Rule 10.200. The Mediator Qualifications Board, which handles grievances filed against certified mediators, has consistently interpreted this to mean that the standards apply to any mediation conducted by a Florida Supreme Court certified mediator and to any court-ordered

mediation, even if conducted by a non-certified mediator by agreement of the parties. Rule 10.200 provides the rationale for this interpretation by stating that the standards are “intended to both guide mediators in the performance of their services and instill public confidence in the mediation process. The public’s use, understanding, and satisfaction with mediation can only be achieved if mediators embrace the highest ethical principles.”

For certified mediators, the applicability of the Standards to any given situation will depend on whether the activity is “mediation.” For example, the act of “assisting two neighbors in resolving a dispute over a barking dog” may be covered if the activity was mediation. Alternatively, if one were to negotiate, on behalf of a spouse, the local town council, or a state representative, one would be in the role of advocate, not third party neutral, and thus the mediation standards would not be applicable.

The Committee notes several qualifications to the general rule that the standards’ applicability depends on whether the activity is mediation. First, some of the standards are general in nature and thus applicable to all certified mediators. For example, rule 10.620, Integrity and Impartiality, states that a mediator “shall not accept any engagement, provide any service, or provide any act that would compromise the mediator’s integrity or impartiality.” See also rule 10.610 (Advertising). In addition, all certified mediators are required to possess, “as a requirement for continuing certification, the good moral character sufficient to meet all of the Mediator Standards of Professional Conduct...”. Rule 10.110(b). Finally, a mediator may be subject to other standards of conduct and those ethical standards to which a mediator may be professionally bound “are not abrogated by these rules.” Rule 10.650.

Date

Fran Tetunic, Committee Chair