

May 31, 2005

The Question

I am certified by a Florida state agency as a private mediator of homeowners' association disputes under its legislatively authorized Mandatory Mediation Program (HOA Program). A HOA Program case is initiated upon application of a Petitioner and payment of a filing fee of \$200.00.

The HOA Program states "private mediators shall bill the parties directly, who shall share the expenses and fees of the mediator equally, unless the parties agree to a different arrangement. In addition, the mediator will deduct \$100 from the Petitioner's invoice and add \$100 to the Respondent's invoice, in order for parties to equally share the initial cost of filing the Petition for Mediation, in accordance with Chapter 720, F.S."

Under [Florida Supreme Court] Rules, is it appropriate for a certified mediator to adopt the HOA Program billing practice in order to insure compliance with the Florida Statutes?

Submitted by a Certified County and Family Mediator
Central Division

Authority Referenced

Rules 10.330, 10.380, and 10.520, Florida Rules for Certified and Court-Appointed Mediators
Section 720.311, Florida Statutes
61B-82.004, Florida Administrative Code.

Summary

The HOA Program billing procedures do not present any *per se* ethical concerns related to fees, expenses, or impartiality for a Florida Supreme Court certified mediator who participates in this program so long as the fees and their allocation between the parties are disclosed in advance of the mediation to the parties or their counsel, and the parties are given the option of agreeing to that arrangement or negotiating a different one.

Opinion

A mediator is required to give parties or their counsel a written explanation of fees and costs prior to mediation. Rule 10.380(c). In setting those fees, a mediator shall be guided by the general principles enumerated in Rule 10.380, including subdivision (a), which states that “[f]ees charged for mediation services shall be reasonable and consistent with the nature of the case,” and subdivision (b)(3) which states that “all fees and costs shall be appropriately divided between the parties.”

Additionally, a mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation. Rule 10.520. In this particular situation, the mediator is working pursuant to a statutory framework. Section 720.311, Florida Statutes. In order to implement this statute, the Department of Business and Professional Regulation adopted Administrative Rules of Procedure which provide that “[i]f a private mediator is used, the mediator shall bill the parties directly who shall share the expenses and fees of the mediator equally, unless the parties agree to a different arrangement.” 61B-82.004, Florida Administrative Code. The Department requires participating mediators to collect the responding party’s half of the filing fee by adjustment of the mediator’s bills to the parties, absent contrary agreement of the parties, since the party requesting mediation is required to advance the entire filing fee.¹

The Committee opines that the procedures as outlined above do not present any *per se* ethical concerns related to fees, expenses, or impartiality for a Florida Supreme Court certified mediator who participates in this program so long as the fees and their allocation between the parties are disclosed in advance of the mediation to the parties or their counsel, and the parties are given the option of agreeing to that arrangement or negotiating a different one. Rules 10.330 and 10.380. However, as with any other ethical matter, a mediator should decline to mediate if the mediator believes the facts and circumstances might impair the mediator’s ability to follow the Florida Rules for Certified and Court-Appointed Mediators.

Date

Fran Tetunic, Committee Chair

¹ The letter of referral to mediation by the Homeowners’ Association Mediation and Arbitration Program contains the following language:

As the mediator, you are responsible for the direct billing to each of the parties. As section 720.3011(2), F.S., requires that both parties share the costs of mediation equally, this includes the initial \$200 filing fee. Therefore, in your final billing, you must subtract a total amount of \$100 from Petitioner invoice(s) and bill Respondent an additional \$100 for their half of the filing fee.