

FLORIDA SUPREME COURT Mediator Ethics Advisory Committee

Opinion Number: 2013-004
Date of Issue: December 3, 2013

The Question

I am a county mediator and was recently approached by a candidate for Judge (someone I know socially). If elected the candidate would be presiding over the County court where I mediate. The candidate asked if I would sign a petition on behalf of his candidacy and solicited financial support for his campaign. The situation was awkward and after deliberating for a few days I declined due to concerns about compromising impartiality. Was this decision ethically correct?

Although impartiality is promised to defendants and plaintiffs not to judges, it seemed that publically supporting a judge who was then elected (or having publically supported the opponent of a judge sitting on the bench) could compromise the judge's relationship with the mediator in question and/or compromise the *perception* of impartiality in the eyes of defendants/plaintiffs.

Submitted by a Certified County Mediator
Northern Division

Authorities Referenced

Rules 10.330(a), 10.530, and 10.620, Florida Rules for Certified and Court-Appointed Mediators

Summary

If a mediator believes that financially contributing to a judicial campaign or signing a petition supporting a candidate for judge who would preside over the court in which the mediator mediates would compromise or could have the appearance of compromising the mediator's impartiality or the relationship with the judge, it is ethically correct for the mediator to decline to do so.

Opinion

The question posed to the MEAC concerned whether the mediator's decision and actions were ethically correct.

Pursuant to rule 10.620, Florida Rules for Certified and Court-Appointed Mediators, "a mediator shall not accept any engagement, provide any service, or **perform any act** that would

compromise the mediator's integrity or impartiality.” (Emphasis added.) In the instant case, the mediator is asking if the mediator’s actions were ethically correct.

With regard to the mediator’s concern regarding impartiality: Rule 10.330(a), Florida Rules for Certified and Court-Appointed Mediators states: “A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or **appearance** . . .” (Emphasis added)

With regard to the mediator’s concern regarding the relationship with the judge: Rule 10.530, Florida Rules for Certified and Court-Appointed Mediators, states: “a mediator shall refrain from any activity that has the **appearance** of improperly influencing a court to secure an appointment to a case.” (Emphasis added)

When evaluating the ability to be impartial, the first question the mediator should ask is, “Do I feel that I can be impartial if I take this action?” The second question to consider is, “Would a reasonable person regard this action as one that may have the **appearance of partiality**?” (Emphasis added) If a mediator believes that the activities described in this question would compromise or could have the appearance of compromising the mediator’s impartiality or could have the appearance of attempting to improperly influence the court to secure appointment to cases, it is ethically correct for the mediator to decline to engage in these activities.

 December 3, 2013
Signed and Dated by Beth Greenfield-Mandler, MEAC Committee Chair