

October 6, 2008

The Question

I am a circuit-civil mediator in Orlando, with a focus on large commercial disputes between businesses. Often, I am approached to mediate a case where one of the parties to the lawsuit, typically a large business entity, is involved as an adverse party to unrelated litigation involving one of my partners in my firm. Many times the case is in another city in of Florida and I have not had any involvement in the adverse case.

Provided I make a full and fair disclosure to the parties to the mediation of my firm's involvement in the unrelated but adverse case, may I proceed with the mediation if all parties waive the conflict?

Submitted by
Certified Circuit Civil Mediator
Central Division

Authorities Referenced

Rule 10.340, Florida Rules for Certified and Court-Appointed Mediators
MEAC Opinion 2002-005

Summary

A clear conflict of interest exists whenever a law firm in which a mediator is a partner is part of an adversary process involving a party to the mediation regardless of the size of the law firm, the location of other cases, or the mediator's lack of personal involvement.

Opinion

No. The Committee believes proceeding with the mediation under the circumstances described, even upon waiver by the parties, is inconsistent with rule 10.340, Florida Rules for Certified and Court-Appointed Mediators. Specifically, rule 10.340(a) provides “[a] mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest.” Such a conflict arises “when any relationship between the mediator and the mediation participants or the subject matter of the dispute compromises *or appears to compromise* the mediator’s impartiality.” Rule 10.340(a) (emphasis added).

The Mediator Ethics Advisory Committee previously determined a clear conflict of interest exists whenever a law firm in which a mediator is a partner is part of an adversary process involving a party to the mediation. MEAC 2002-005. The Committee observed that, as a partner in the law firm, the mediator held a monetary interest in the pending litigation. Citing Rule 10.340(c) and paragraph four of the *Committee Notes* to the rule, the Committee concluded that any conflict which cannot reasonably be regarded as allowing the mediator to maintain impartiality requires the mediator to withdraw “regardless of the express agreement of the parties.” The Committee retains confidence in the correctness of MEAC 2002-005 regardless of the size of the law firm, the location of other cases, or the mediator’s lack of personal involvement.

Date

Fran Tetunic, Committee Chair