

June 1, 2010

The Question

May a certified mediator designate mediation clients (parties) or attorneys who participate in mediations with the mediator as “friends” on a social networking site, and permit clients or attorneys to add the mediator as their “friend”?

Certified Circuit Mediator
Central Division

Authorities Referenced

rules 10.330 (a)-(b), 10.340(a)-(c), 10.340 Committee Note, Florida Rules for Certified and Court-Appointed Mediators

Summary

A certified mediator may designate mediation clients (parties) or attorneys who participate in mediations with the mediator as “friends” on a social networking site, and permit clients or attorneys to add the mediator as their “friend”. A mediator should keep in mind that doing so may limit the clients with whom the mediator may work in the future.

Opinion

Yes, a certified mediator may designate mediation clients (parties) or attorneys who participate in mediations with the mediator as “friends” on a social networking site, and permit clients or attorneys to add the mediator as their “friend”. However, the mediator should keep in mind that doing so may limit the clients with whom the mediator may work in the future.

As with all potential conflicts of interest, mediators need to be mindful of their ethical obligation “not to mediate a matter that presents a clear or undisclosed conflict of interest.” Rule 10.340(a). Additionally, the mediator has the obligation to disclose any potential conflict of interest as soon as practical after the mediator becomes aware of the interest or relationship that presents the potential conflict. Rule 10.340(b). “Disclosure is required with respect to any significant past, present, or promised future relationship with any party involved in a proposed mediation.” If circumstances or relationships involving the mediator cannot be reasonably regarded as allowing the mediator to maintain impartiality, the mediator **must not mediate** the matter. A conflict of interest which clearly impairs a mediator’s impartiality is not resolved by mere disclosure to, or waiver by, the parties. Committee Note to Rule 10.340, emphasis added.

The Committee Note further advises that mediators establish personal relationships with many attorneys, mediators, representatives, and other members of professional groups. While mediators should not be secretive about such friendships or acquaintances, disclosure is not required unless a particular feature of the relationship might appear to impair the mediator's impartiality.

In today's internet age, social networking sites are widely available and used to communicate both professional and personal information. It is possible that some people do not keep track of all those they have "friended" or who have "befriended" them. It is also possible that an individual visiting a mediator's social networking site (or a social networking site wherein the mediator is listed as a "friend") is able to view the other individuals who are designated as "friends". It is reasonable to believe that potential mediation clients and their attorneys viewing a mediator's social networking site (or a site wherein the mediator is listed as a "friend") would gain the impression that the "friend" is in a position to influence the mediator and therefore the mediator would lack, or be seen as lacking, mediator impartiality and neutrality. Rule 10.330 (a) requires that, "[a] mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual."

It is incumbent upon the mediator to disclose potential conflicts of interest. After the appropriate disclosure, the mediator may serve if all parties agree. Rule 10.340(c). However, if the conflict is clear or the mediator is not impartial, the mediator must withdraw from the mediation. (See Rules 10.330 (a)-(b) and 10.340 (a)-(b) on Impartiality and Conflicts of Interest.) Mediators are wise to err on the side of disclosure and withdrawal, when in doubt, to reflect the character, integrity and impartiality required of certified mediators.

Date

Fran Tetunic, Committee Chair