

**Advisory Opinion****MEAC 2012-003**

Mediator Ethics Advisory Committee

c/o Florida DRC, Supreme Court Building, 500 S. Duval Street, Tallahassee, FL 32399

June 18, 2012

**The Question:**

To provide a little background, I am a county court mediator with 18 years experience in mediation. I am currently employed at a law school as a Professor as well as the head of the law school's Mediation Clinic. The Mediation Clinic is part of the law school civil clinics which also includes a Youth Dependency Clinic, a Full Representation Clinic and a Domestic Violence Clinic. The clinics provide students the opportunity to practice as attorneys under the supervision of an admitted attorney. The civil clinics operate as one "firm" for all intents and purposes. Each case handled by the clinic is generally compartmentalized to its respective clinic, and as such, I am not usually privy to the cases handled by the other clinics. All services offered by each of the Clinics is Pro Bono therefore there is no apparent financial conflict.

A student enrolled in the Full Representation Clinic approached me and requested that I mediate a case that he is litigating as part of his clinic work. While this student is not a student in my Mediation Clinic, he is a student in my Mediation Class (no relation to the clinic). This student was approached by the opposing attorney on his case, for whom I have mediated cases in the past, who specifically requested that I mediate this case. The student informed the opposing counsel of his enrollment in my class, and the fact that we are technically part of the same "firm". Despite the disclosed relationship, the opposing attorney reaffirmed his request for my services. The opposing attorney has expressed his belief that I would be able to remain unbiased throughout the mediation.

It is important to note that my only relationship with the student is one of student/professor in class and we exchange pleasantries when we see each other around the campus. The proposed mediation would be pro-bono, and the parties have expressed the unavailability of other mediation resources within the community for their particular case. Additionally, I believe that I am able to remain unbiased if permitted to mediate this case. Furthermore, I have no knowledge with respect to the issues involved in the case, the case name, or the parties involved other than the legal representatives for the parties.

In light of the above, the question I present to the advisory committee is threefold. In light of the concept of self determination:

(1) Does the student's enrollment in my Mediation class create a clear conflict that cannot be waived?;

(2) If not, does my affiliation with the law school civil clinics create a clear conflict that cannot be waived?; and an overarching question,

(3) In the spirit of self-determination and party empowerment, if all parties and the mediator do not feel a conflict clearly impairs a mediator's impartiality, such as in this case, wouldn't the conflict be resolvable by appropriate disclosure and waiver?

Submitted by a Certified County, Family, Circuit, Dependency & Appellate Mediator  
Northern Division

**Authorities Referenced:**

Rule 10.340 (a)-(c) with Committee Note, Florida Rules for Certified and Court-Appointed Mediators

**Summary**

In this example, the conflict is resolvable with appropriate mediator disclosures and party agreement as outlined in the Committee Note to Rule 10.340, Conflicts of Interest, Florida Rules for Certified and Court-Appointed Mediators.

**Opinion**

This opinion deals with questions of conflicts of interest when the nature of the relationship between mediator and one party's legal counsel is that of professor and student. This relationship is different from the relationships between mediators and their own law firms which has been the back drop for many of the past MEAC opinions on conflicts of interests.

As stated in Rule 10.340 (a), "A conflict of interest 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."

In this case example, the MEAC affirms that the relationship of professor and student *may* appear to compromise the mediator's impartiality. If the mediator believes that s/he can remain impartial, then full disclosure must be made to all participants and parties to the mediation. If

the parties agree to proceed after full disclosure of the relationship, the mediator may proceed.

The MEAC emphasizes that the mediator must personally evaluate whether this type of relationship would impair their impartiality and neutrality. If the mediator concludes that it does, then full disclosure does not remedy that bias. In that event, the mediator should not mediate the case.

Specific answers to the questions posed are contained below.

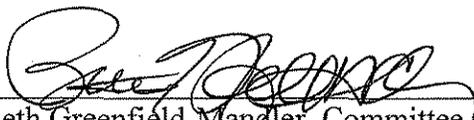
Answers to one through three:

One: Student enrollment in your mediation class does not create a clear conflict of interest (non waivable) and therefore, can be waived upon full disclosure to and agreement of the parties.

Two: Your affiliation with the law school civil clinics does not create a clear conflict of interest (non waivable) and therefore can be waived upon full disclosure to and agreement of the parties.

Three: This potential conflict may be waived upon mediator full disclosure and party informed agreement.

June 18, 2012  
Date

  
Beth Greenfield-Mandler, Committee Chair