

Situations:

Opinions 1 and 2 of 2010

2010-001

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”?

2010-002

Parties to a family case were referred to the court mediation program.

The husband was represented by counsel and the wife was pro se. The mediation session was conducted and the mediator prepared a mediation agreement for the parties to review and sign if it met their approval. The parties were in caucus and reading the agreement separately.

After reading the agreement, the wife stated that she would like to take the agreement to have it reviewed by an attorney. The husband’s counsel stated that if she did not sign the agreement that day, there would be no agreement reached in mediation.

The mediation was declared an impasse and the wife asked if she could take a copy of the agreement, which was not signed by either party, with her for her own records. The husband’s counsel objected and so the mediator did not permit either party to take a copy of the unsigned agreement.

Did the mediator act appropriately by not permitting either party to take a copy with them or could either party have taken a copy of the unsigned agreement with them, even at the objection of the other party?

Year 1994

94-001

Occasionally, at the close of the mediation, a settlement is not reached but the mediator senses that the door has been slightly left open. The question is, absent a continuance of the mediation (which usually is resisted), may the mediator after mediation contact counsel by telephone in a further effort to resolve the matter, provided consent of counsel is obtained and provided further that confidentiality continues to be maintained.

94-002

A year or so ago, you were a mediator of a personal injury case, involving a substantial claim. The case mediated to an impasse and I heard nothing more about the case until recently. An attorney called last week and asked me to come in as co-counsel for a plaintiff. As he began to describe the circumstances, I mentioned to him I had mediated the case. We agreed that I would need to seek an opinion from the Florida Bar before I could accept possible representation as co-

counsel for the plaintiff. Please advise whether my efforts as a mediator a year or so ago would preclude me from being hired as co-counsel for the plaintiff in a personal injury suit in which I had attempted mediation.

Year of 1995

[95-002](#)

Douglas Stern, an authorized agent for Tough Financing, Inc., has brought an action in small claims court against Mary Naive for failure to make monthly payments as agreed in a contract and note executed several months ago. Both the contract and the note are standard documents used by the consumer lending company throughout the State of Florida. The claim is for \$1250. At a pre-trial session, Mary admits to owing the money. The judge asks the defendant if there is any reason why he should not award a judgment to the plaintiff. Mary responds that she would like to work out a payment schedule so the judge orders a session of mediation.

At the mediation session, Al Nicely, the mediator, scans the agreements and learns that Mary has obligated herself to pay interest at the rate of 29.5% per year if the payments are in arrears. The mediator also learns that Doug Stern told Ms. Naive in the hallway before the court session that she should avoid a judgment because it would hurt her credit. Mr. Nicely is aware that interest on judgments accrues at the rate of 8% per year. Ms. Naive states that she can afford to make payments of \$110 per month and the plaintiff quickly accepts the offer.

Would it be permissible for the mediator to ask:

Are you aware that the monthly payments do not cover the interest as it is accruing and you will be paying on this loan forever?

Would it be permissible for the mediator to ask:

Ms. Naive, are you aware that if a judgment were entered against you, the interest would be reduced from 29.5% to 8%?

Would a mediator be interfering with a contractual relationship by pointing out the above to the defendant?

While it is known that a mediator should not advise, can a question be asked even if the framing of the question tends to advise or inform one or both of the parties involved?

[95-005](#)

What is the duty of a mediator who is informed during a caucus of a family (dissolution of marriage) mediation that one spouse possesses an asset of which the other spouse has no knowledge?

What is the responsibility of the mediator when one of the parties discloses the intention to commit a crime or acts which will be done in order to complete commission of a crime?

Is a mediator who becomes aware that a plaintiff in a wrongful death action is making no claim for loss of consortium, which claim would appear to the mediator to be appropriate under the circumstances, bound to inform that party of this matter?

Do the mediation rules apply to non-certified mediators who are mediating pre-litigation and post-litigation cases?

96-005

Mediator is assigned a case involving a husband and wife suing the husband's ex-wife. In the course of mediation ex-wife jumps to feet and using a pencil (supplied by mediator) making stabbing motion and stated "I'll kill you." Mediator terminated mediation and had the case scheduled for trial.

Should mediator report threat?

Should or may the mediator voluntarily testify as to the threat made?

No actual physical violence took place, only verbal threat.

Is this communication and as such is protected.

What should the mediator do if subpoenaed?

10/14/2013

Two parties enter court ordered mediation. The facts of the matter are the landlord took longer than the statutory 30 days to provide the refund of the deposit and the accounting. There was a moderate amount of damage to the premises when the tenant moved in and the landlord is withholding a significant portion of the deposit for repairs.

The tenant is adamant that the statute gives him/her the right to ask for the entire deposit to be refunded if the deposit and accounting were not provided within the 30 days. The statute provides for treble damages. The tenant has filed suit and is the plaintiff.

Landlord is asking for \$500 for having to respond to the suit

Tenant is asking for the entire deposit returned times three, a sum of \$4500

After the facts are outlined the plaintiff, they then make an offer to end the suit for \$3000, the landlord rebuffs the offer and reiterates the request for \$500.

What do you do now?

How would you handle the issues?

What questions do you have?