

MEAC OPINIONS RELATING TO CONFLICT OF INTEREST

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**"It takes 20 years
to build a
reputation and five
minutes to ruin it.
If you think about
that, you'll do
things differently."**

- Warren Buffet



Rule 10.340 Conflicts of Interest

(a) A mediator shall not mediate a matter that presents a clear or undisclosed conflict of interest. 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.

(b) Burden of Disclosure. The burden of disclosure of any potential conflict of interest rests on the mediator. Disclosure shall be made as soon as practical after the mediator becomes aware of the interest or relationship giving rise to the potential conflict of interest.

(c) Effect of Disclosure. After appropriate disclosure, the mediator may serve if all parties agree. However, if a conflict of interest clearly impairs a mediator's impartiality, the mediator shall withdraw regardless of the express agreement of the parties....

1. A mediator may conduct the mediation in Spanish.

TRUE

The mediator may conduct the mediation in Spanish as long as doing so does not involve interpreting. If the mediation is conducted in Spanish the Agreement must be written in Spanish.

2. If the mediator conducts that mediation in Spanish he/she may write the Agreement in English.

FALSE

If the mediator conducts mediation in Spanish the Agreement must be written in Spanish and the mediator should advise the parties that the agreement that is filed with the Court must be written in English and that someone other than the mediator must translate the agreement.

MEAC Op. 2017-002

3. If both of the parties speak Spanish and the mediator speaks Spanish the mediator may conduct the mediation in English but translate some of the communications into Spanish.

FALSE

The mediator may not serve in a dual role as the mediator and the interpreter or translator.

MEAC Op. 2017-002, MEAC Op. 2011-017

Rule 10.340 Conflict on Interest

(d) Conflict During the Mediation. A mediator shall not create a conflict of interest during the mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process.

Rule 10.330 Impartiality

(a) Generally. 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....

4. In a mediation, the interpreter is limited to strict translation/ interpretation of the discussions taking place during the mediation.

TRUE

If it is clear to the English Speaking mediator that more than strict translation is being discussed between the party and the translator the mediator must explain to the party and the interpreter that the mediator will need to ask the other party if they have an objection. If that approach does not work, the mediator could withdraw or adjourn or terminate the mediation.

MEAC Op. 2017-002

5. If an observer fulfilling the mentoring requirement is present in a mediation in which one of the parties needs translation services, the observer may translate for one of the participants.

FALSE

A trainee may not serve in the dual capacities of trainee and language interpreter or translator. An individual who serves as a translator or interpreter at a mediation is a mediation participant.

REAL INTEGRITY IS DOING THE RIGHT THING,
KNOWING THAT NOBODY'S GOING TO KNOW WHETHER
YOU DID IT OR NOT.

A handwritten signature in black ink on a light purple background. The signature reads "Paul Winfrey" in a cursive, flowing script. The letter "P" is large and loops back around itself. The name "Winfrey" is written in a similar cursive style with a prominent loop at the end of the "y".

Paul Winfrey

6. A mediator may notarize the agreement that the mediator prepared.

FALSE

A mediator is prohibited from taking on the dual role of mediator and notary.

MEAC OP. 2010-004 & 2011-004

7. An attorney who jointly represented a couple (in adoption or estate case) may serve as their mediator in a subsequent unrelated case.

TRUE

Under certain circumstances an attorney who conducted a **joint** representation of a couple, may upon both parties' request subsequently serve as their mediator in an **unrelated legal proceeding**.

Presuming that the clients in both scenarios had no adverse interests and the attorney had no reason to meet separately with either party. If so, it would appear that the previous legal relationship would not compromise the mediator's ability to be impartial.

MEAC 2012-006

8. If a mediator has mediated with the same attorney previously the mediator must disclose to the other parties that he/she has a prior working relationship with that attorney.

FALSE

Attorneys who attend mediation on numerous occasions and there is no other relationship besides that of attorney-mediator disclosure is not required.

MEAC OP. 1998-004

9. A mediator is precluded from mediating a case in which he/she sees one of the attorneys several times a year in social gathering and the mediator's daughter is engaged to the attorney's brother-in-law.

FALSE

A potential extended family relationship in which the mediator's daughter is engaged to marry one of the attorney's brother and sees the attorney at family gatherings such as dinners two or three times a year does not create a relationship which is a clear conflict of interest.

The burden to disclose the potential conflict of interest rests with the mediator and so mediator acted appropriately in disclosing the information.

10. An attorney mediator who conducted a divorce mediation may serve as an attorney to one of the party's from that mediation in a subsequent divorce case with a different spouse.

TRUE

Legal work on a different matter than was the subject of the mediation is permitted for the lawyer/mediator to accept.

MEAC Op. 1997-002.

11. A mediator is precluded from mediating a case in which his attorney daughter's firm is handling even if the daughter has no involvement in the case.

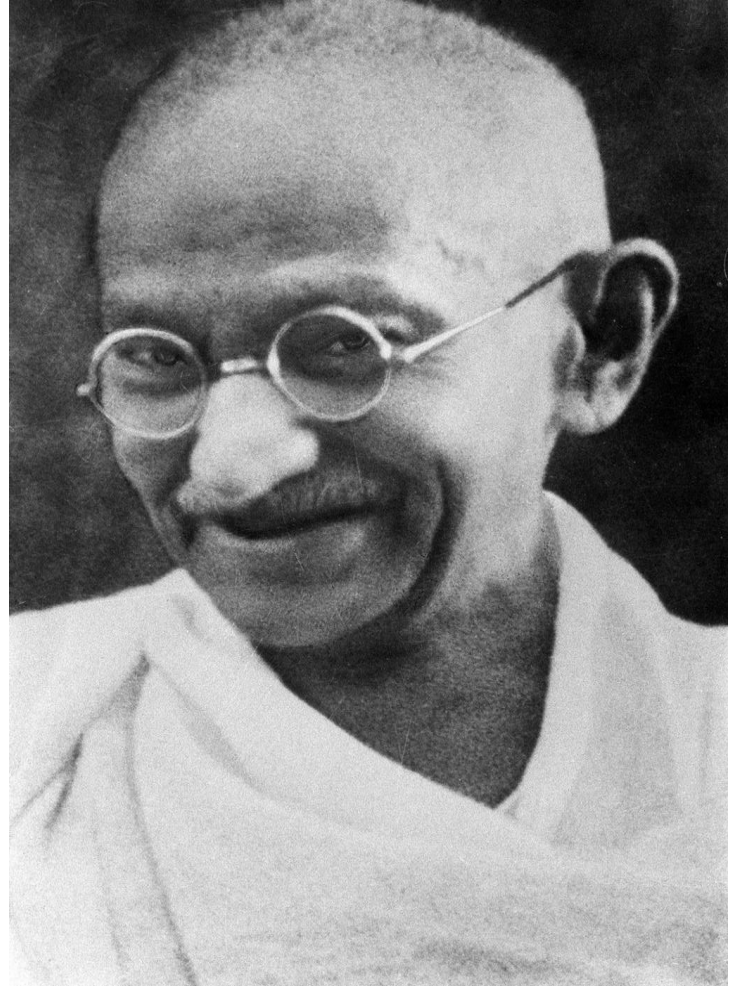
FALSE

A case in which the mediator's daughter is personally handling would be a nonwaivable, clear conflict, while her firm's case with which she has no involvement, is a clear conflict of interest which may be waivable after disclosure.

MEAC Op. 2004-008

THE GREATNESS OF A NATION AND ITS
MORAL PROGRESS CAN BE JUDGED BY THE
WAY ITS ANIMALS ARE TREATED.

- MAHATMA GANDHI



12. A mediator is precluded from mediating a case in which his/her law firm is representing one of the parties.

TRUE

If the mediator is a partner in a law firm where the mediator's law firm is representing one of the parties to the case, the conflict is not waivable. A clear conflict of interest exists whenever a law firm in which the 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 the other cases, or the mediator's lack of personal involvement.

MEAC Op. 2017-015

13. A mediator who previously represented the wife in a dissolution of marriage case as an attorney may mediate a modification case with the same parties 20 years later if each of the parties is represented by a new attorney, the mediator has no recollection of the case and the parties agree to waive the conflict.

FALSE

Having once acted as an advocate for one party, it would be unethical for a mediator to subsequently conduct a mediation, irrespective of waivers from all the parties, as there would be a clear conflict of interest.

14. A mediator who met with both of the parties for 30-45 minutes to discuss the pro se divorce mediation and only discussed limited personal information with the parties may subsequently be hired by one of the parties as an attorney if the parties decide not to move forward through the pro se mediation process and choose to proceed with litigation.

FALSE

The first meeting with the husband and wife was part of the mediation process and thus it is ethically inappropriate for that mediator to become counsel of record for either of the parties' in their pending divorce.

MEAC Op. 2001-011

15. A mediator may mediate a case in which his/her daughter or ex-husband/ex-wife is the attorney in the case if the mediator discloses the relationship and all parties agree to waive the conflict.

FALSE

This scenario is considered a clear conflict of interest and an mediator may not mediate a case that poses a clear conflict of interest. Mediator should withdraw or refuse to mediate the case.

16. If one of the party's objects to the mediator serving as a mediator, the mediator may not report the results of that mediation as an "impasse."

TRUE

If a Mediator is conflicted from handling a case or an attorney requests that another mediator be assigned the Mediator may not declare an "impasse." The attorney should withdraw from the mediation upon request from a party.

"Impasse" is a term used in mediation to signify negotiation occurred and no resolution could be reached"

In this scenario indicating an "impasse" is in violation of 10.510 as not "candid, accurate or fully responsive to the court."

17. The mediator may put language in the Agreement that if the parties disagree over the interpretation of the Agreement then the mediator will be the final arbiter and interpreter of the settlement agreement.

FALSE/TRUE

The Rules do not contain a specific prohibition, however, such language raises serious ethical concerns.

First, a mediator is prohibited from using the mediation to solicit or attempt to procure future professional services.

Second, a mediator has an obligation to see that the agreement is memorialized appropriately. If the parties are concerned about potential future disagreement regarding the interpretation, the mediator should assist the parties in addressing those concerns by helping them draft a clear, thorough and precise agreement.

MEAC Op. 2009-002

18. A mediator may not include the following language in a settlement agreement:

The mediator is and has remained a neutral, impartial facilitator for (a) the parties throughout the mediation; (b) although the mediator is a licensed attorney in Florida and may have used their experience to make observation or play “devil’s advocate” during the course of the mediation, nothing the mediator did or stated during the mediation was relied upon by the parties or their counsel as legal services, legal advice, or a legal opinion of the mediator; (c) the mediator did not make any decisions for the parties regarding whether to settle their dispute and/or on what terms to settle; (d) the mediator did not render any legal services or legal advice in connection with the drafting of this agreement, except as scrivener; and (e) the parties have solely relied upon the advice of their counsel for the drafting and execution of this agreement.

TRUE

Such language inserted into the Agreement does not promote or respond to the needs and interests of the parties, may create an obstacle to the parties signing the agreement and may result in the parties feeling coerced to agree to additional language extraneous to their dispute.

MEAC Op. 2018-001

THE NEEDS OF A SOCIETY
DETERMINES ITS ETHICS.

- MAYA ANGELOU

