

Ethics Advisory Opinions

The Conference

- 1 – must hold conference
- 2 – can attend by phone, in person preferred
- 5 – mediator can continue to assist parties after initial impasse
- 8 – duty to schedule mediation
- 10 – who else can attend, by agreement or mediator decision
- 18 – file report (AND 39)
- 32 – use of an interpreter
- 35 – ask if participants have authority
- 41 – parties to contact lienholder, not mediator
- 43 – no recording of conference

Signing Agreement

- 11 – an agreement must be written and signed
- 28 – cannot draft agreement for pro se parties, may craft memorandum of understanding
- 31 – when mediating with a pro se and a represented party, that party's attorney may draft a settlement agreement, but the mediator should not
- 42 – remote signing of agreement, duty to arrange, disclose

Jurisdiction

- 7 – report a bankruptcy to the state court judge and await instructions
- 26 – if case is on appeal, parties or mediator should seek clarification from trial judge

Practice of Law

- 24 – out of state lawyer, mediate with who comes
- 25 – corp rep is owner, not lawyer, mediate with who comes, mediator not gatekeeper, refer questions to judge, mediating is not facilitating unauthorized practice of law
- 28 – see also in re mediator not acting as attorney

Administration

- 4 – retaining files is at the discretion of mediator, consider confidentiality
- 12 – retainer agreement cannot change the Rules of the program, in re payment of fees
- 14 – a pro bono panel is OK
- 19 – charging a retainer is OK, but cannot condition holding the conference upon payment
- 21 – can review documents in advance, can charge, must inform all sides of doc review and pay
- 27 – fees from an indigent party rule clarified, mediator became overly focused on getting his fee
- 33 – cannot give de minimis gifts as advertising
- 36 – can sponsor CLE/CME program or speaker or related social event
- 37 – mediator may not file designation of mediator with court

39 – mediator is case manager and must conduct conference within deadline and must report results

Conflict of Interest or Roles

6 – after conducting a divorce mediation the mediator can have no further role in the divorce

15 – mediator cannot become administrator of estate that is subject of dispute

17 – mediator can serve as arbitrator if mediation fails

20 – mediator may act as notary

28 – see also in re mediator not acting as attorney

34 – mediator cannot conduct two mediations at the same time

40 – mediator cannot become a parenting coordinator

Neutrality

13 – mediator should watch language carefully to maintain neutrality, not accuse party of lying

Confidentiality

3 – do not testify or give affidavit

9 – warn parties if data is stolen

16 – if party is hiding material fact, mediator should withdraw if fact not revealed

22 – parties are not bound by confidentiality and mediator must give correct notice

23 – must testify at state bar hearing, but only under subpoena and not talk to investigator

29 – confidentiality and inadmissibility are different, mediator must discuss with parties, attorneys advise parties as applied to facts, testimony may be required in a criminal case

30 – mediator should not testify in action to enforce agreement without subpoena and notifying court of duty of confidentiality

38 – mediator notes are not available to support motion for attorney's fees

43 – no recording of conference

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