MEAC Opinion

Josephine Tauoa

[Institutional Affiliation(s)]

Author Note

MEAC Opinion

Opinion #2019-01

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# Case

Jane Doe and John Buck are the parents of an 18-month old child, Bambi. The couple did not wed and later decided to separate. The separation led them to become involved in a custody dispute over their daughter, with each expressing desire to gain custody and parent their child themselves. Since separation, both Individuals are residing with their parents who took on the role of an intermediary to enable Bambi to interact continually with both of her parents. However, the grandparents do not support their child acquiring a permanent resident status within their household and thus remain neutral on the issue. Nevertheless, the grandparents, in concern for their granddaughter, have encouraged Jane and John to settle a custody agreement.

The marital status of the couple restrict their right to fully utilize the court and, at the same time, the couple have refused any joint parenting or custody plan. Moreover, the couple is unable to afford an attorney to handle the complex nature of the case, and have instead opted to access mediation services at their local CRC in order to gain entry to the family court. The mediation services are solely used by both parties to gain access to the family court to settle their custody case, and thus do not demonstrate any willingness at the mediation sessions to come to an agreement. The mediator is requested to personally appear in the court to explain that the parties could not reach an agreement and state that in a formal document on the CDRC’s letterhead.

The mediator is well aware of the fact that he cannot appear before the court to serve the couple’s purpose, and in doing so would be relieved of his duties as a mediator by the CDRC. However, the mediator decides to advise John and Jane on a workaround due to his familiarity with the recent amendments to the FCA. According to this suggestion, the parties will agree to a joint parenting plan before moving on to a more individualized parenting plan. As the matter is brought before the CDRC, the organization is displeased with the suggestion offered by the mediator to the parties, as the suggestion violates the regulations and bounds set by the organization. The Center Director has decided to approach the MEAC to provide the CDRC an opinion on the issue.

# The Questions

1. Has the mediator pushed beyond the boundaries of their duties by providing information about the FCA?
2. Has the mediator blatantly violated the quality of process by doing so?
3. Has the mediator, by suggesting a resolution for the parties to agree to, violate the Standards and ethics of a mediator?

# Summary of the Opinion

The MEAC advises the CDRC to restrict the mediator from providing the two parties any document on the organization’s letterhead which states that they could not arrive at an agreement regarding their daughter’s custody, as the parties did not even attempt at resolving the matter through mediation and only used it to gain access to the court. In addition, the mediator stepped outside the bounds of mediation when he attempted to offer an alternate suggestion to the involved parties. Furthermore, the mediator is to be restricted from appearing before the court in any such cases in violation of the CDRC’s regulation, and be immediately relieved from duty if found to be doing so.

# Authority Referenced

The NYC CDRC Standard I. Self-Determination (A, and Comment 3); NYC CDRC Standard VI. Quality of the Process (A, and Comment 5, 7); Rules 10.330(a) and 10.310(a) Florida Rules for Certified and Court-Appointed Mediators; AFCC Standard VIII

# Opinion

The inquiry received from the CDRC asked for guidance regarding the actions of one of their members who mediated on behalf of John Buck and Jane Doe. The committee will examine whether the CDRC mediator violated organizational regulations by making alternative suggestions concerning amendments to the FCA.

The MEAC Committee will refer to the AFCC Divorce Mediation Standard, the CDRC Standards, and the Florida Rules for Certified and Court-Appointed Mediators. The Florida Rules Section 10.330(a), clearly states that “A certified mediator does not have an ethical obligation to advise a party without an attorney in a family mediation where an agreement in signed to take the signed agreement to an attorney”, and secondly, “is prohibited from giving "a personal or professional opinion intended to coerce the parties, unduly influence the parties, decide the dispute, or direct a resolution of any issues” in section 10.310(a) (MEAC, 2003; MEAC, 2007). The AFCC Standards pertain to mediating family disputes and the role of third party professionals oversee the settlements and agreements, while also defining the relevant competencies needed to serve the role of the mediator. The AFCC Standard VIII states that when the mediator is faced with a dispute which involves protecting the best interest and self-determination of the child, then the family mediator is responsible to assist the involved parties in determining ways which promote the child’s best interests. In this regard, the CDRC Standard I (A) on self-determination provides clear insights with regards to the mediator’s role in child custody cases (AFCC, 2000).

The Committee further considers the NYC CDRC Standard VI (A) which describes the Quality of the Mediation Process in forming an opinion with regards to the question. It states in comment 7 that “A mediator shall conduct a quality mediation process that is consistent with these Standards of Conduct.” Besides an obligation to meet the CDRC’s Standards of Conduct, the mediator’s role is substantially different from attorney client relationships. Standard VI defines the purpose of the mediator as one responsible “to help the parties communicate, negotiate, and/or make decisions” as stated in comment 5 (ADR, 2009).

Thus, the CDRC mediator mixed his role with that of an attorney in providing advice to the two parties in a way which attempted to direct a resolution, influence the two parties, exceed the stated role of the mediator defined by the CDRC and in doing so exhibits an inability to demonstrate the competency expected from a mediator according to AFCC standards. Therefore, the mediator should be restricted from appearing before the court, delivering the document, or assisting the parties in a way which goes beyond the boundaries of mediation established by the CDRC. Once, it is clear that the parties are not interested in seeking mediation but rather exploiting the mediation center as a loophole, the mediator should direct the parties to seek professional advice outside his services to resolve their dispute. In case, the mediator is found committing these violations, he may be immediately relieved of his position

# Review and Agreement

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the June 25 and 2019 first written above. The parties hereto agree that facsimile signatures shall be as effective as if originals.

**Signature Date Signature Date**

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# References

ADR. (2009). *Standards of conduct for New York State community dispute resolution center mediators.* Retrieved June 25, 2019, from New York State Unified Court System: Division of Professional and Court Services: http://ww2.nycourts.gov/sites/default/files/document/files/2018-07/Standards\_of\_Conduct.pdf

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