



Advisory Opinion of the NC Dispute Resolution Commission

Advisory Opinion No. 33

(Adopted and Issued by the Commission on November 18, 2016)

N.C. Gen. Stat. §7A-38.2(b) provides, “[t]he administration of mediator certification, regulation of mediator conduct, and certification shall be conducted through the Dispute Resolution Commission, established under the Judicial Department.” On August 28, 1998, the Commission adopted an Advisory Opinions Policy encouraging mediators to seek guidance on dilemmas that arise in the context of their mediation practice. In adopting the Policy and issuing opinions, the Commission seeks to educate mediators and to protect the public.

Concern Raised

Certified attorney mediator requests advice concerning her plan to mail a holiday card to many of the attorneys in her geographic area and to include a mouse pad with the mediator’s website printed thereon. The mouse pads have already been purchased at a cost of approximately \$1.60 each. If the mediator is not allowed to distribute the mouse pads as an advertising tool in this way, she asks if she may donate the mouse pads to an organization of attorneys which may be made available to attendees at a meeting of the organization.

ADVISORY OPINION

(1) May the mediator distribute items of small monetary value, such as mouse pads, pens, calendars, calculators or post-it notes, as an advertising tool, either by mail or otherwise?

The inquiry occurs with regular frequency and has a broad application for mediators who contemplate making gifts to prospective clients as a part of their

promotional efforts or to regular clients as a “thank you” for previously selecting them to mediate their cases.

In responding to this inquiry, the Commission first looks to Standard VII.H of the Standards of Professional Conduct for Certified Mediators.

VII.H. A mediator shall not give or receive any commission, rebate or other monetary or non-monetary form of consideration from a party or representative of a party in return for referral or expectation of referral of clients for mediation services, except that a mediator may give or receive de minimis offerings such as sodas, cookies, snacks or lunches served to those attending mediations conducted by the mediator and intended to further those mediations or intended to show respect for cultural norms.

A mediator should neither give nor accept any gift, favor, loan or other item of value that raises a question as to the mediator’s actual or perceived impartiality.

Based on the facts of the inquiry, the mediator is using the mouse pads as an advertisement for mediation services. Therefore, the mouse pads will be given in return for referral or expectation of referral of clients for mediation services. Such gifts are not permitted under Standard VII.H, regardless of their monetary value.

Section VII.H carves out an exception to the rule against gift-giving, as follows:

VII.H...except that a mediator may give or receive de minimis offerings such as sodas, cookies, snacks or lunches served to those attending mediations conducted by the mediator and intended to further those mediations or intended to show respect for cultural norms.

The facts presented to the Commission in this Advisory Opinion do not fall within the exception set out in Standard VII.H and, thus, the giving of the mouse pads is not permissible.

The Commission cautions certified mediators that the giving or receiving of gifts or other items of monetary value outside the context of the mediation may be perceived by participants or the general public as affecting the mediator’s

impartiality. The purpose of Standard VII is to emphasize the responsibility each mediator has to protect the impartiality necessary to serve in that capacity.

(2) May the mouse pads be donated to an organization of attorneys which may be made available to attendees at a meeting of the organization?

Again, the Commission looks to Standard VII of the Standards of Professional Conduct for Certified Mediators and determines that the result is the same. The Commission concludes that the mouse pads are intended to be an advertising tool regardless of whether they are distributed by mail or donated to an attorney organization.

The people who would receive the mouse pads at the conference are attorneys and as such are in a position to exercise significant influence over the selection of mediators for their clients' cases. The Commission concludes that the mouse pads to be donated to an attorney organization and made available to attendees at a conference of that organization are things of value creating an expectation of referral of clients for mediation services, and further, that they do not fall within the exception set out in Standard VII.H.