



ADVISORY OPINION OF THE THE NORTH CAROLINA DISPUTE RESOLUTION COMMISSION

Opinion Number 33 (2016)

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

Concerns 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 7(h) of the Standards of Professional Conduct for Certified Mediators.

7(h) A mediator shall not give or receive any commission, rebate or other monetary or non-monetary form of consideration to a party, or representative of a party, in return for a referral or due to an expectation of referral of clients for mediation services.

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 impartiality. However, a mediator may give or receive de minimis offerings such as sodas, cookies, snacks, or lunches served to those attending a mediation conducted by the mediator, that are intended to further the mediation or show respect for cultural norms.

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 7(h), regardless of their monetary value.

Section 7(h) carves out an exception to the rule against gift-giving, as follows:

7(h) ...However, a mediator may give or receive de minimis offerings such as sodas, cookies, snacks, or lunches served to those attending a mediation conducted by the mediator, that are intended to further the mediation or 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 7(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 7 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 7 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 7(h).

N.C. Gen. Stat. §7A-38.2(b) provides, “[t]he administration of the certification and qualification of mediators and other neutrals, and mediator and other neutral training programs 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. Later, the Policy was revised to provide that an Opinion be issued in instances where a mediator is disciplined publicly. In adopting the Policy and amendments thereto and issuing opinions, the Commission seeks to educate mediators and to protect the public.