

The Committee on Ethics of the Georgia Commission on Dispute Resolution

Advisory Opinion 5

The Committee on Ethics of the Georgia Commission on Dispute Resolution received a request for an advisory opinion concerning the following practices in a juvenile court-connected mediation program:

- Mediation program staff members contact a juvenile's school, identifying themselves as mediation staff affiliated with the juvenile court, to request updated contact information for the juvenile. The information requested is limited to asking to speak with the juvenile or seeking contact information, such as confirmation of a correct address and/or telephone number. The contact might include leaving a reminder message for the juvenile regarding scheduling of the mediation session or confirming attendance at the session.
- Mediation program staff members contact a parent's place of employment, identifying themselves as affiliated with the juvenile court mediation program, for the purpose of attempting to reach the parent to discuss scheduling of the mediation or to confirm attendance.
- The same individuals contact the juvenile's relatives or emergency telephone contacts in the same manner as above, for the purpose of attempting to contact the juvenile or parents or confirming scheduling.

The reason for the contacts is to provide reminders or confirmation of a scheduled mediation session, or to schedule a session. Staff members indicate that it is sometimes difficult to reach juveniles and their parents with the information provided to them by the court. Additionally, they may need to contact parties within a time frame for which mail would not be practicable. In all of the above-described activities, the contact could involve speaking with more than one person before reaching the party or a person who could provide the information. By identifying herself or himself as a staff member with the juvenile court mediation program, the caller necessarily discloses that the juvenile is involved in a mediation process, and thus is in some way involved in a juvenile court case.

Issue: Confidentiality

Rule VII of the Georgia Supreme Court Alternative Dispute Resolution Rules provides in pertinent part:

Any statement made during a court-annexed or court-related mediation or case evaluation or early neutral evaluation conference or as part of intake by program staff in preparation for a mediation, case evaluation or early neutral evaluation is confidential, not subject to disclosure, may not

be disclosed by the neutral or program staff, and may not be used as evidence in any subsequent administrative or judicial proceeding. Rule VII, A.

The issue posed is whether confidentiality is violated by contacts to school personnel, employers, or relatives or other third parties for the purpose of confirming contact information or scheduling matters.

Discussion

The contacts described above are for the purpose of confirming or clarifying information about scheduling to increase the likelihood that the juvenile and his or her parent(s) will attend the mediation session. This discussion assumes that the contact is limited to asking to speak with the juvenile or parent to confirm attendance at the mediation or to confirm contact information. It is assumed that the caller does not disclose anything about the subject matter of the mediation. However, the mere fact that the caller self identifies as a juvenile court mediation program staff member discloses to a third party that the juvenile is somehow involved with the juvenile court process. In the case of a juvenile who is the subject of the proceedings, this disclosure could lead to speculative and negative inferences by school personnel, parents' employers or other third party contacts. In the case of a juvenile who is simply a participant in a mediation as a victim or witness, any such inferences would be particularly damaging.

The provisions on confidentiality, ADR Rule VII and Appendix C, Chapter 1, A., II, are directed toward statements made by the parties during the mediation or the intake process. There is no provision that confidentiality extends to the fact that a party is involved in mediation. However, it is noted that juvenile court proceedings are different from other court proceedings in that they are closed, confidential proceedings.

The Committee concludes that the contacts described herein are not a violation of the confidentiality provisions of the ADR Rules. However, the Committee cautions that whether such contacts may violate juvenile court confidentiality provisions is a matter for those courts, and staff and practitioners are advised to seek appropriate guidance from their courts.

The Committee recognizes that juvenile court mediation programs have an interest in ensuring that juvenile parties and their parents attend scheduled mediation sessions. Furthermore, the Committee recognizes that juvenile court programs experience difficulties in maintaining effective contact with these parties. However, while such contacts do not violate the ADR Rules, there are obviously negative consequences to revealing that a juvenile is involved in juvenile court proceedings. In concern for the parties' privacy as well as the confidentiality that generally attaches to all juvenile court proceedings, it is recommended that the best practice is to use the contacts very sparingly in situations in which there is no other practicable way to contact the parties to confirm scheduling.

Conclusion

Contacts by juvenile court mediation program staff and mediators to school personnel, parents' employers, and third party contacts for the limited purpose of attempting to contact a juvenile party or parent to confirm scheduling or attendance at the a mediation session do not violate the confidentiality provisions of the Georgia Supreme Court Alternative Dispute Resolution Rules. Such contacts should not disclose anything about the subject matter of the mediation or the underlying juvenile court case, and should only be resorted to when effort to contact to the parties directly has repeatedly failed. This opinion does not address whether or not such contacts may violate any other confidentiality provisions regarding juvenile court proceedings.

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