



Professional Ethics Committee

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Accreditation with Better Business Bureau

You are considering applying for accreditation with the Better Business Bureau as a marketing vehicle. To be accredited you must affirm that you and your office meet and will abide by the standards described in the Bureau's "Code of Business Practices". Among those standards is a commitment to make good faith efforts to resolve all complaints and disputes, which may include participating in mediation if requested by the Bureau. You ask if agreeing to mediate through the Bureau would violate the Rules of Professional Conduct,¹ expressing your concern that disputes between attorneys and clients are generally resolved through arbitration arranged through the Bar Association.²

Although mediation and arbitration both involve the assistance of a neutral third party in an effort to resolve a dispute, mediation leads to a proposed resolution that is non-binding on the parties; whereas arbitration generally leads to a decision that is binding on the participants. Both procedures are voluntary, in the absence of a contract, statute or regulation making them mandatory. By agreeing to participate in the mediation of disputes, when the Bureau requests that you do so, you are simply agreeing, on behalf of yourself, to participate in that process. You are not committing your client to participate, as entry into the process would require the client's voluntary agreement to do so. You are not committing, on behalf of yourself or your client, to accept whatever proposed resolution results from the mediation effort. Although the Bureau may also recommend arbitration of disputes, presumably resulting in a binding decision, its standards do not require you agree to engage in that process.

¹ The Committee is responding only to the specific question you have asked. You should also review Rule 7.2 and determine whether this activity is permissible as advertising and/or is a permissible referral service as set forth in Rule 7.2 (c) (2). The Committee is not opining as to whether this arrangement is permissible under Rule 7.2.

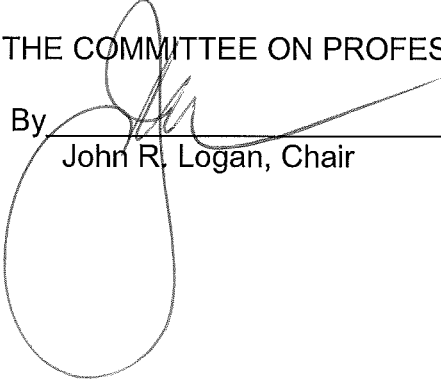
² The dispute resolution services offered by the Connecticut Bar Association include both mediation and arbitration, but they are limited to resolving disputes regarding legal fees. The Committee sees no conflict or ethical violation created by the existence of this alternative, also voluntary, process.

The Committee notes that the Bureau's complaint and dispute resolution provisions do commit you to submit "appropriate evidence and documents supporting" your position in a "professional" manner. This process might require the disclosure of facts, evidence or documents that are protected by the confidentiality provisions of Rule 1.6. Rule 1.6(d) permits disclosure of otherwise protected information by the lawyer in controversies concerning the lawyer's representation of the client, and would be applicable to this situation. See the section of the Commentary to Rule 1.6 entitled "Disclosure Adverse to Client."

In the Committee's opinion, the voluntary commitment to participate in a non-binding mediation process does not violate the Rules of Professional Conduct.

THE COMMITTEE ON PROFESSIONAL ETHICS

By



John R. Logan, Chair