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ABA closes loophole: Lawyer-mediators prohibited from misrepresenting facts to secure settlements

The American Bar Association (ABA) has issued a critical new ruling that decisively shuts a perceived ethical loophole for lawyer-mediators. In a significant mandate, which may eventually have widespread effects in the dispute resolution sphere across the country, the ABA has confirmed that a lawyer acting as a third-party neutral is strictly prohibited from making misrepresentations to secure a settlement.

By Shawn Shaffie
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This ruling forces lawyer-mediators to directly con front the tension between their core professional duty of honesty and the practical goal of achieving an agreement.

This decisive guidance comes from the ABA's Standing Committee on Ethics and Professional Responsibility, which issued Formal Opinion 518 on Oct. 15, 2025, entitled "A Lawyer's Duties to Avoid Misleading Communications When Acting as a Third-Party Neutral Mediator."

While ABA Opinion 518 is not binding on California lawyers, the close relationship between the ABA's Rule 8.4(c) and California Rule of Professional Conduct 8.4(c) suggests that California may in the future issue an opinion reflecting the ABA's conclusion, establishing that lawyer-mediators in the state are prohibited from engaging in misrepresentation.

The ethical conflict: honesty prevails over settlement

The central question addressed by Opinion 518 is whether a mediator, who might increase the chances of settlement by making false statements, is ethically permitted to do so if they are a lawyer.

Rule 4.1 (The Client Rule): The ABA Model Rule, which runs akin to California Rule of Professional Conduct 4.1, already forbids a lawyer, while representing a client, from making a false statement of material fact or law to a third person. However, some argued this rule did not apply to a lawyer-mediator because the mediator is not representing a client. This created the "loophole."

Rule 8.4(c) (The Professional Conduct Rule): This broader rule, which also runs akin to California Rule of Professional Conduct 8.4(c), prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. The new ABA opinion hinges entirely on this rule and may set an ethics opinion trend which other states, including California, may decide to follow.

ABA's ruling acts as an ethical hammer

Opinion 518 establishes that Rule 8.4(c) applies not only when a lawyer represents a client but also to the lawyer's professional conduct outside of the practice of law, including when they act as a third-party neutral mediator.

The opinion confirms that the goal of a mediator – to achieve a settlement – is subordinate to the absolute ethical duty imposed by Rule 8.4(c). Even if dishonesty would increase the probability of a settlement, it is professional misconduct for a lawyer-mediator.

Practical implications: Negotiation tactics now banned

The opinion draws a clear line, directly prohibiting controversial negotiation tactics often employed in the mediation room. For instance, a lawyer-mediator should not make misrepresentations, particularly those about the finality of an offer

or the underlying case strength. The opinion specifically prohibits statements known to be false, such as: "This is the best offer the opposing party will make."

The opinion goes on to say that a lawyer-mediator must be precise and avoid any inappropriate gloss when describing one party's position to the other. While they may accurately convey statements from one party that may contain falsehoods, the mediator may not lend credence to those statements if they know them to be false. They must avoid misleading statements about the strength or weakness of a party's case.

Conclusion

Opinion 518 from the ABA represents a decisive ethical correction that standardizes integrity across the mediation sphere for lawyers. By affirming that the broad professional misconduct rule, Model Rule 8.4(c), applies to a lawyer even when they are not representing a client, the ABA has eliminated the perceived ambiguity that might have otherwise shielded lawyer-mediators who employed, what some may call "deceit" to force a settlement.

The practical impact is clear: While the ultimate aim of mediation is resolution, the lawyer-mediator's fundamental duty of honesty and fairness is paramount. This ruling underscores a critical message: For lawyers, professional integrity is not a selective duty confined to the attorney-client relationship.

As the Opinion is a significant statement, other states, including California, will likely confront the same issue, putting pressure on them to affirm this important ethical standard and ensure trust remains central to the dispute resolution process.

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