

Mediator Qualifications Board
Southern Division

In Re: Jason T. Banks

Case Number: MQB 2010-001

Panel: The Honorable Lauren L. Brodie, Chair
 Andrea Reid
 Risette Posey
 Oscar J. Franco
 Rodney Romano

APPEARANCES

Prosecutor: Irv J. Lamel
 2541 SW 27 Ave, Suite 300
 Miami, FL 33133

Mediator: Jason T. Banks/Not Present

Counsel for the Mediator: Martin Simkovic, Esq.
 The Simkovic Law Firm
 175 S.W. 7th Street, Suite 2009
 Miami, FL 33130

DECISION INCLUDING FINDINGS AND CONCLUSIONS OF THE PANEL

The Mediator Qualifications Board, Southern Division, by its duly designated five-member panel, held a formal hearing in this matter on October 19, 2011.

FORMAL CHARGES

The Mediator was charged with having violated Rule 10.300, Rule 10.340(a)(b), Rule 10.600, Rule 10.620 and Rule 10.800, Florida Rules of Certified and Court Appointed Mediators.

The matter came on to be heard before the panel at which time the panel was provided an **Admission to Charges and Stipulation to Sanctions and Relinquishment of Certification.**

In addition, the parties moved as documentary evidence the investigative file pertaining to MQB2010-001 for its consideration and admission. Removed from that file, pursuant to the agreement of the parties, were the text messages and telephone calls.

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The panel reviewed the **Admission to Charges and Stipulation to Sanctions and Relinquishment of Certification** and investigative file in MQB 2010-001. The panel then requested counsel for the mediator additional stipulations and considerations. Counsel for the mediator, after having spoken to the mediator via telephone, confirmed that in addition to those matters before the panel that the mediator was likewise understanding that the costs of the proceedings would be awarded to the Dispute Resolution Center and taxed against the mediator in an amount to be determined based upon submission of an affidavit of costs incurred. The mediator, also through counsel, further understood that this matter would be referred to the Florida Bar.

The panel voted unanimously on all matters before it, adopted the **Admission to Charges and Stipulation to Sanctions and Relinquishment of Certification**, a copy of which is attached to this Decision and its stipulated verbal amendments.

Disposition

There is clear and convincing evidence that Jason T. Banks violated Rule 10.300, Rule 10.340(a)(b), Rule 10.600, Rule 10.620 and Rule 10.800, Florida Rules of Certified and Court Appointed Mediators. Therefore, the panel imposes the following sanctions.

1. The mediator, Jason T. Banks, is de-certified and barred from serving as a mediator under the Rules for Certified and Court Appointed Mediators.
2. That the mediator shall never conduct a mediation in the State of Florida.
3. That the mediator waives any and all rights to seek review under the Florida Rules for Certified and Court Appointed Mediators and to otherwise challenge or contest the validity of the final order entered in this regard.
4. This decision shall be disseminated to the Florida Bar and any other entity or person the Dispute Resolution Center deems appropriate for the protection of the consumers of mediation services and the general public.

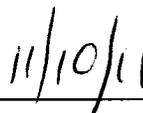
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5. Costs are awarded to Dispute Resolution Center and taxed against Jason T. Banks in the amount to be determined based upon submission of an affidavit of costs incurred.

6. Jurisdiction is reserved for the entry of further decision or orders as may be necessary.



Lauren L. Brodie, Circuit Judge
Hearing Panel Chair



Date

MEDIATOR QUALIFICATIONS BOARD

Hearing Panel
In Re: Jason T. Banks

Case No. MQB 2010-001

ADMISSION TO CHARGES, AND STIPULATION TO SANCTIONS AND RELINQUISHMENT OF CERTIFICATION

Respondent, Jason T. Banks, hereby admits and stipulates as follows:

A. Respondent admits to the violations stated below:

I. The Mediator has violated Rule 10.300, Florida Rules for Certified and Court-Appointed Mediators, by failing to maintain impartiality and avoid conflicts of interest, and maintain business practices that reflect fairness, integrity and impartiality.

This finding is based on the following allegations of fact:

1. Subsequent to the mediation, the Mediator had a conflict of interest due to his friendship with one of the participants in the mediation.
2. The Mediator assumed an adversarial position to one of the participants to the mediation and continued to give advice and counsel to the other participant prior to the institution of legal proceedings.
3. The Mediator failed to avoid a conflict of interest by establishing a friendly relationship with one of the participants while legal proceedings continued for the matter for which mediation had begun.

II. Mr. Lamel, with respect to the charges in paragraph two, Jason Banks cannot admit to a violation of this Rule. Prior to the mediation, Banks had not met Elis. Therefore, there was no impermissible conduct when the mediation started. Once Mr. Banks first became friendly with Elis, he immediately advised Carlos that he could no longer mediate or represent either party.

III. The Mediator has violated Rule 10.600, Florida Rules for Certified and Court-Appointed Mediators, by engaging in business practices that do not reflect fairness and integrity.

This finding is based on the following allegations of fact:

1. The Mediator continued to give advice and counsel to one of the participants in the mediation to the possible detriment of the other prior to their legal proceedings.

2. The Mediator failed to avoid a conflict of interest by establishing a friendly relationship with one of the participants while legal proceedings continued for the matter for which mediation had begun.

3. In his response to the Florida Dispute Resolution Center, the Mediator incorrectly stated that he did not mediate the matter between the parties. After reviewing the relevant emails, the Mediator acknowledges that the initial meeting on November 4, 2009 was, in fact, a mediation, and that the statement was untruthful.

4. The Mediator improperly attempted to influence one of the parties to the mediation to obtain the dismissal of the complaint that he filed with the Florida Dispute Resolution Center.

IV. The Mediator has violated Rule 10.620, Florida Rules for Certified and Court-Appointed Mediators, by accepting an engagement, providing a service and performing acts which compromise the mediator's integrity or impartiality.

This finding is based on the following allegations of fact:

1. Subsequent to the mediation, the Mediator had a conflict or potential conflict of interest due to his friendship with one of the participants in the mediation.

2. Mr. Lamel, for the same reasons discussed above, Mr. Banks cannot admit to this because he did disclose the fact that he could not mediate the matter as soon as he developed a friendship with Elis.

3. The Mediator gave advice and counsel to the one of the participants in the mediation prior to their legal proceedings.

4. The Mediator failed to avoid a conflict of interest by establishing a friendly relationship with one of the participants while legal proceedings continued for the matter for which mediation had begun.

5. In his response to the Florida Dispute Resolution Center, the Mediator incorrectly stated that he did not mediate the matter between the parties. After reviewing the relevant emails, the Mediator acknowledges that the initial meeting on November 4, 2009 was, in fact, a mediation, and that the statement was untruthful.

6. The Mediator improperly attempted to influence one of the parties to the mediation to obtain the dismissal of the complaint that he filed with the Florida Dispute Resolution Center.

V. The Mediator has violated Rule 10.800, Florida Rules for Certified and Court-Appointed Mediators, by evidencing a lack of good moral character.

This finding is based on the following allegations of fact:

1. Subsequent to the Mediation the Mediator had a conflict or potential conflict of interest due to his friendship with one of the participants in the mediation.

2. Mr. Lamel, Cannot be admitted for reasons above.

3. The Mediator continued to give advice and counsel to the one of the participants in the mediation prior to their legal proceedings.

4. The Mediator failed to avoid a conflict of interest by establishing an friendly relationship with one of the participants while legal proceedings continued for the matter for which mediation had begun.

5. In his response to the Florida Dispute Resolution Center, the Mediator incorrectly stated that he did not mediate the matter between the parties. After reviewing the relevant emails, the Mediator acknowledges that the initial meeting on November 4, 2009 was, in fact, a mediation, and that the statement was untruthful.

6. The Mediator improperly attempted to influence one of the parties to the mediation to obtain the dismissal of the complaint that he filed with the Florida Dispute Resolution Center.

B. Respondent stipulates to the following sanctions:

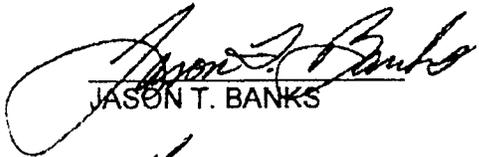
1. Respondent relinquishes his certification as a Florida Supreme Court Certified Mediator Number 20581 F, and will never reapply for certification as a mediator in the State of Florida.

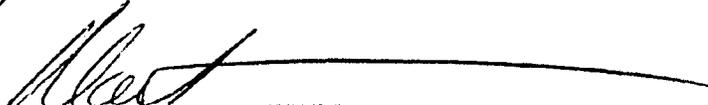
2. Respondent will never conduct a mediation in the State of Florida

3. Upon the acceptance of this admission and stipulation, Respondent waives all rights to seek review under the Florida Rules for Certified and Court-Appointed Mediators or to otherwise challenge or contest the validity of this admission and stipulation and of any final order to be entered by the Hearing Panel or Mediator Qualifications Board..

4. Respondent authorizes the Hearing Panel and the Mediator Qualifications Board to review and examine all investigative file materials concerning Respondent in connection with the consideration of this admission and stipulation. Respondent agrees that consideration of this admission and stipulation and other related materials by the Hearing Panel and/or the Mediator Qualifications Board shall not prejudice or preclude the Hearing Panel, the Mediator Qualifications Board, or any of their members from further participation, consideration, or resolution of these proceedings if the terms of this admission and stipulation are not accepted by the Hearing Panel and/or the Mediator Qualifications Board.

Dated this 14 day of OCTOBER, 2011.


JASON T. BANKS


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