

Mediator Qualifications Board
Southern Division

In Re: George J. Lawler

Case Number: QCC 2011-39

Panel: The Honorable Rodney Smith, Chair

Elinor Robin

Michael Kamen

Hal Wotitsky

Sal Gardino

Advisor to the Panel: Melvia B. Green, Esq.

APPEARANCES

Prosecutor: Irv. J. Lamel, Esq.

Mediator: George J. Lawler, Esq.-failed to appear either personally or through counsel after notice was duly provided.

Also Present: Janice Fleischer, Esq., Director of Dispute Resolution Center

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 August 30, 2012, in Miami, Florida pursuant to Rule 10.820, Florida Rules for Certified & Court-Appointed Mediators. Based upon the uncontroverted oral testimony and documentary evidence as specified in more particularity below, the Panel concludes that the applicant/mediator George J. Lawler, Esq. fails to possess good

moral character as required by Rule 10.110, Florida Rules for Certified & Court-Appointed Mediators as charged.

FINDINGS OF FACT

Based upon the un-rebutted oral and documentary evidence presented at the Formal Hearing, the Hearing Panel finds by clear and convincing evidence that:

1. The applicant/mediator was originally certified as a Florida Supreme Court county and family mediator in May 2005. His mediator number is #18409.
2. Since his original certification, the applicant/mediator sought and received the renewal of his mediator certification from the Florida Dispute and Resolution Center ("DRC") in April 2007 and April 2009. Further, the applicant/mediator currently has a pending renewal application for his certification as a family and county mediator.
3. The applicant/mediator is an attorney who is licensed to practice law in the states of Connecticut and New York. The applicant/mediator has had an extensive disciplinary history in the state of Connecticut which, with the exception of one instance, he has failed to disclose in his renewal applications for his mediator certifications, including the pending application:
 - A. In Grievance Complaint No. 88-0716, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on June 21, 1990, based on findings that the applicant/mediator falsely represented to a police officer during his client's child custody dispute that he had obtained a temporary custody order in favor of his client and that he attempted to intimidate the opposing party into withdrawing the grievance she filed against him.
 - B. In Grievance Complaint No. 89-0520, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on September 20, 1990, based on findings that the

applicant/mediator, while acting as a trustee for funds deposited with him by a prospective buyer of real estate from his client, released the funds to his client without the consent of the buyer/depositor and after he was advised that the buyer/depositor had terminated the contract due to a proposed change in terms.

- C. In Grievance Complaint No. 90-0935, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on May 21, 1992, based on findings that the applicant/mediator engaged in representing both parties to a loan transaction, without the consent of the lender, with the result that the lender thought it would be a secured creditor in second place but instead was a third loan on the property.
- D. In Grievance Complaint Nos. 93-0532 and 93-0552, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on September 22, 1994, based on findings that the applicant/mediator filed an appearance on behalf of defendants in a lawsuit but failed to file appropriate documents on their behalf such that defaults were entered against them, failed to pursue possible rights of appeal on their behalf, and failed to notify them of the defaults and otherwise keep them informed in response to their requests for information.
- E. In Grievance Complaint No. 97-0820, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on June 4, 1999, based on findings that the applicant/mediator failed to have included in a contract for purchase of real estate a provision making the contract contingent on his purchaser/client's sale of another property and failed to properly communicate with his client such that the contract went into default and his client lost his \$10,000 deposit.
- F. In Grievance Complaint No. 96-0344, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on January 20, 2000, based on findings the

applicant/mediator failed to pay a civil judgment entered against him based on a violation of his fiduciary duty which lawsuit was based on the facts contained in Grievance Complaint #89-0520.

- G. In Grievance Complaint No. 98-0928, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on March 16, 2000 based on findings that the applicant/mediator failed to obey a court order to return \$2,500.00 of his fees to an estate he represented.
- H. In Grievance Complaint No. 03-0105, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on March 16, 2000, based on findings that the applicant/mediator improperly filed a judgment lien in a divorce case against the properties of his client's ex-husband to secure future installment payments that were not yet due and failed to obtain judicial approval for filing the judgment lien.
- I. In Grievance Complaint No. 04-1139, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on March 16, 2000, based on findings that the applicant/mediator improperly filed a lis pendens against a defendant, failed to timely release that and another lis pendens despite demand and a court order, and filed a judgment lien to which his client was not entitled. In addition, as a result of the applicant/mediator's disciplinary history as a lawyer, the Statewide Grievance Committee directed the Disciplinary Counsel to file a complaint against the applicant/mediator in the Connecticut Superior Court which also found violations of the Connecticut Rules of Professional Conduct and imposed sanctions in Case No. cv 06-4016725 in an Order issued October 20, 2006. Since the applicant/mediator was also a member of the Bar of New York, the State of New York Supreme Court, Appellate Division, Third Judicial Department, reciprocally censured him in Case No. D-13-07 in an Opinion issued May 3, 2007.

- J. In Grievance Complaint No. 09-0803, the applicant/mediator was reprimanded by the State of Connecticut Statewide Grievance Committee on July 9, 2010, based on findings that the applicant/mediator deposited personal funds in his IOLTA (attorney trust account) and paid personal expenses from the IOLTA account, failed to keep complete records of the account, and failed to produce documents requested by the committee in connection with its investigation.
4. In his sworn application for family and county certification renewal dated April 15, 2009, applicant/mediator falsely answered "No" to Question 2 on Page 2 as follows:
- "Have you been sanctioned for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group since submitting your original or most recent renewal application for mediator certification?"
5. In his pending sworn application for family and county certification renewal dated April 14, 2011, the applicant/mediator truthfully answered "Yes" to Question 2 on Page 2 as follows:
- "Have you been sanctioned for a breach of ethics or unprofessional conduct by any court, administrative agency, bar association, or other professional group since submitting your original or most recent renewal application for mediator certification?"
- The applicant/mediator, however, referenced an attachment which provided details only about Grievance Complaint No. 09-0803, but omitted any information about any other sanction for breach of ethics or unprofessional conduct occurring since his original application.
6. In response to a letter from Janice Fleischer, Esq., Director of the DRC, the applicant/mediator falsely stated in a letter dated August 2, 2011, that his previously undisclosed disciplinary actions all concerned "grievance complaints...generated by adversaries who often disputed [his] zealous representation, and never by a client," when in fact, some of the complaints were from clients and concerned his representation.

Based on the foregoing findings of fact, the Hearing Panel finds by clear and convincing evidence that the applicant/mediator lacks the requisite good moral character for certification and continued certification as a Florida Supreme Court mediator in any area and in support thereof makes the following conclusions:

CONCLUSIONS OF LAW

7. The Formal Hearing was appropriately and timely scheduled and the applicant/mediator received proper and timely notice of the date, time and place of the hearing.
8. The applicant/mediator had the opportunity to be present and heard on the allegations contained in the Formal Charges.
9. The applicant/mediator failed to appear at the duly scheduled hearing either personally or through counsel and made no good-cause showing for his absence. The Formal Hearing proceeded in his absence pursuant to Rule 10.820(i), Florida Rules for Certified & Court-Appointed Mediators which provides that:

If the mediator or applicant fails to appear, absent a showing of good cause, the hearing shall proceed.

Accordingly, the Hearing Panel has jurisdiction to proceed with the hearing in the absence of the applicant/mediator.

10. Generally, Rule 10.700, Florida Rules for Certified & Court-Appointed Mediators outlines the scope and purpose of the Rules thusly:

Rule 10.700- Scope and Purpose

These rules apply to all proceedings before all panels and committees of the mediator qualifications board involving the discipline or suspension of certified mediators or non-certified mediators appointed to mediate a case pursuant to court rules. The purpose of these rules of discipline is to provide a means for enforcing the Florida Rules for Certified and Court-Appointed Mediators.

11. Rule 10.710 provides that certification as a mediator is a revocable privilege:

Rule 10.710-Privilege to Mediate

Certification to mediate confers no vested right to the holder thereof, but is a conditional privilege that is revocable for cause.

12. Rule 10.110 provides the standards by which to judge whether a Mediator has good moral character required to be a certified mediator:

Rule 10.110-Good Moral Character

(a) General Requirement. No person shall be certified by this Court as a mediator unless such person first produces satisfactory evidence of good moral character as required by rule 10.100.

(b) Purpose. The primary purpose of the requirement of good moral character is to ensure protection of the participants in mediation and the public, as well as to safeguard the justice system. A mediator shall have, as a prerequisite to certification and as a requirement for continuing certification, the good moral character sufficient to meet all of the Mediator Standards of Professional Conduct set out in rules 10.200-10.690.

(c) Certification. The following shall apply in relation to determining the good moral character required for initial and continuing mediator certification:

(1) The applicant's or mediator's good moral character may be subject to inquiry when the applicant's or mediator's conduct is relevant to the qualifications of a mediator.

...

(4) In assessing whether the applicant's or mediator's conduct demonstrates a present lack of good moral character the following factors shall be relevant:

(A) the extent to which the conduct would interfere with a mediator's duties and responsibilities;

(B) the area of mediation in which certification is sought or held;

- (C) the factors underlying the conduct;
- (D) the applicant's or mediator's age at the time of the conduct;
- (E) the recency of the conduct;
- (F) the reliability of the information concerning the conduct;
- (G) the seriousness of the conduct as it relates to mediator qualifications;
- (H) the cumulative effect of the conduct or information;
- (I) any evidence of rehabilitation;
- (J) the applicant's or mediator's candor; and
- (K) denial of application, disbarment, or suspension from any profession.

(d) Decertification. A certified mediator shall be subject to decertification for any knowing and willful incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.

13. The applicant/mediator lacks the good moral character required by Rule 10.110, as demonstrated by his: (1) false and/or incomplete statements made on sworn applications for mediator certification renewals; (2) false and/or incomplete statements made to the Director of the Florida Dispute Resolution Center in a letter dated August 2, 2011; and (3) extensive disciplinary history as a practicing attorney within the state of Connecticut.
14. In reaching its conclusion that the applicant/mediator fails to possess good moral character for certification and continued certification as a Florida Supreme Court mediator in any area, the Hearing Panel has considered and evaluated the criteria set forth in Rule 10.110(c)(4):

- (A) The conduct leading to the applicant/mediator's sanctions demonstrates an inability or unwillingness to comply with laws, rules, and court orders relevant to the practice of mediation as required by Rule 10.520 which would necessarily interfere with the mediator's duties and responsibilities as considered under Rule 10.110(c)(4)(A).

- (B) The applicant/mediator's conduct was serious, cumulative and continuing in nature. The conduct leading to the sanctions was not isolated. Rather, the applicant/mediator's conduct reflects an ongoing pattern and attempt to hide the conduct to the present. When considered in light of Rule 10.110(c) (4) (A), (C), (E), (G), and (H), the applicant/mediator's conduct supports the conclusion that the applicant/mediator lacks the good moral character required for certification.
- (C) The applicant/mediator was not candid with the DRC in his prior renewal, his current renewal or in his response to the Director of the DRC as shown by the undisclosed sanctions and his characterization of them. Considered in light of Rule 10.110(c) (4) (J), the applicant/mediator's lack of candor supports the conclusion that he lacks good moral character.
- (D) The applicant/mediator was a mature adult at the time of the matters set forth herein and has been an attorney since 1983. Considered in light of Rule 10.110(c) (4) (D), the applicant/mediator's age at the time of the actions which led to bar disciplinary sanctions and the false statements in applications and correspondence to the DRC, as well as his educational background, support that he was of sufficient age and education that his actions were deliberate and indicate a lack of good moral character.
- (E) The information concerning the mediator/applicant is reliable as made relevant by Rule 10.110(c) (4) (F).

DISPOSITION

Based upon the foregoing findings and conclusions that the applicant/mediator George J. Lawler fails to possess good moral character as required by Rule 10.110, the Hearing Panel imposes the following sanctions:

1. The applicant/mediator George J. Lawler is permanently decertified as a Florida Supreme Court family and county mediator and is further permanently barred from certification in any other area.
2. The applicant/mediator's pending application for the renewal of his mediation certification is denied.
3. This Decision shall be published.
4. This Decision shall be disseminated to the Chief Judge of every Circuit, the Court Administrator of every Circuit, and any other entity or person the Dispute Resolution Center deems appropriate for protection of the consumers of mediation services and the general public.
5. Costs are awarded to the Dispute Resolution Center and taxed against George J. Lawler in an amount to be determined based on the submission of an affidavit of costs incurred.
6. Jurisdiction is reserved for the entry of further orders as may be necessary.



Hon. Rodney Smith, Circuit Judge
Hearing Panel Chair



Date