

Mediator Qualifications Board
Southern Division

In Re: Craig R. Steinberg

Case Number: MQB 2010-006

Panel: Judge Lee Schreiber
Salvatore Gardino
Sonia Caplan
Lawrence Saichek
Michael Kamen

Advisor to the Panel: Irv J. Lamel

APPEARANCES

Prosecutor: Angelica Zayas
Assistant State Attorney
Eleventh Judicial Circuit
1350 N.W. 12th Ave.
Miami, FL 33136-2102

Mediator: Craig R. Steinberg
Neither Mr. Steinberg nor his counsel appeared

Also Present: Janice Fleischer, Director of DRC
Leonard Helfand, Esq., Staff Attorney

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 19, 2011.

FORMAL CHARGES

The Mediator has violated Rules 10.600, 10.610(a), 10.310(c), and 10.610(d), and the Mediator fails to possess good moral character as required by Rule 10.110 for certification as a Circuit Court mediator.

SUMMARY OF FACTS

Based on the oral and documentary evidence presented at the hearing, which is un rebutted, the Hearing Panel makes the following findings:

1. On a procedural matter, on August 18, 2011, the Prosecutor received a fax containing an unsigned letter dated August 16, 2011, over the name of Mr. Steinberg's counsel, Ronald K. Smith, said letter containing only a partial letterhead indicating Mr. Smith's name, which stated that Mr. Steinberg resigned as a Certified Mediator and "the panel hearing for August 19, 2011 shall be canceled forthwith." Accompanying the letter was another letter addressed to Janice Fleischer at the Dispute Resolution Center, dated August 16, 2011, purportedly signed by Craig R. Steinberg, stating that Mr. Steinberg resigned as a Certified Mediator as of August 18, 2011. The letter contained the signature and stamp of a notary but contained none of the formalities or requirements of a notarization. All of the documents bore the fax legend as having been sent from a 480 area code, in the Phoenix, Arizona area.

2. Lauren Kimberly Ervin, Esq., responded to a job posting for employment with Meridian Mediation in April, 2010. The job posting indicated that the job involved working with "Honorable Craig Steinberg" and Ms. Ervin received an email confirmation of her appointment for an interview "with Judge Steinberg." The author of the appointment confirmation was Lauren Lapointe, identified in the email as "Assistant to Hon. Craig Steinberg." Ms. Ervin was interviewed and hired by Mr. Steinberg. During her employment, she attended mediations with Mr. Steinberg who regularly introduced himself to attorneys and parties as "Judge Steinberg". He stated that he had been a Judge in New York.

3. In October 2008, the Mr. Steinberg contacted ARC Mediation ("ARC") in order to establish a business relationship with ARC. He met with the owner of ARC, Kathleen Scott. During the application process, Mr. Steinberg introduced himself as a "retired judge." He submitted a resume stating that he had 1) served as a Judge at the Amherst Court, Amherst, New York; 2) served as an adjunct professor at Buffalo State College, Buffalo, NY; 3) obtained certification as a mediator in 2007; 4) obtained an MBA in Business Project Management from Canisius College, Buffalo New York; 5) obtained a JD from the Dickinson School of Law of the Pennsylvania State University, Carlisle, Pennsylvania; 6) received "Certification in International Mediation and Negotiations" from the London University School of Law; and 7) worked as a law clerk, managed a law firm, and performed other legal work. The mediator also presented certificates and proof of memberships in professional associations in a manner designed to affirm that he was a lawyer and a judge.

4. On or about October 7, 2008, the Mr. Steinberg entered into a mediator agreement with ARC wherein he agreed that he "shall be in good standing as a certified mediator and ... as a member of the Florida Bar, [and] keep in good standing all required licenses and permits."

5. Mr. Steinberg assisted the staff of ARC, including the Director of Marketing, Anna Oberleitner, in the preparation of the biography of the mediator posted on the ARC website for marketing purposes. The resulting ARC website indicated that Mr. Steinberg

was a "certified mediator," an "Adjunct Professor" who "has taught Graduate courses in Criminal Justice." The web page also indicated that Mr. Steinberg "attended the Pennsylvania State School of Law and earned his Masters from Canisius College in Project Management, Business Law and Negotiations." Mr. Steinberg was referred to as a "former Magistrate" and member of the American Judges Association, the "International Bar Association where he is a member of the international Judges Committee," and the American Bar Association.

6. During his association with ARC, Mr. Steinberg represented himself to others as a law school graduate, a certified mediator, a former judge, and an attorney. He would refer to himself as "judge" and even used the email address "appealsjudge@gmail.com."

7. Mr. Steinberg's association with ARC was terminated in late September, 2009 when his bar membership or commission as a judge could not be verified. ARC's attempts to confirm the with the State of New York that Craig Steinberg was a judge were met with indications that there was no record of him as a judge.

8. Mr. Steinberg was mentored by attorney Richard Smuckler. He introduced himself to Mr. Smuckler as "Judge Steinberg." He represented that he was appointed as a Judge by "President Bush." In the presence of Mr. Smuckler, he introduced himself as "Judge Steinberg" to attorneys and parties to mediations, and other attorneys and mediators. In addition, he used the title of Judge to gain complementary admission to a mediation organization's function and wore a name tag with the title of "Judge Steinberg" on it.

9. On or about February 2, 2010, Mr. Steinberg indicated on his application to become a certified mediator, submitted to the DRC under oath, that he is a former or retired judge by answering the question "Before becoming a mediator, what is/was your *primary* occupation? (check one that applies)" by selecting both "Judge" and "Government Employee/ Administrator."

10. Mr. Steinberg's repeated representations to persons associated with the legal profession and the practice of mediation, including lawyers, mediators, members of other organizations in Florida, and persons seeking mediation services, have been consistently false and/or misleading, inaccurately suggesting that the mediator possesses qualifications that he does not possess.

Based on the foregoing findings of fact, the Hearing Panel concludes as follows:

CONCLUSIONS OF LAW

1. The hearing was appropriately and timely scheduled, and the Mediator and his counsel received proper notice of the hearing, and the time and place of the hearing.

2. The Mediator and his counsel had an opportunity to be heard on the allegations contained in the Formal Charges.

3. The Mediator and his counsel failed to appear at the duly scheduled hearing.

4. The Mediator's purported resignation was not accepted by the Dispute Resolution Center and was not accepted by the Hearing Panel, and, therefore, it was not valid and does not divest the Hearing Panel of jurisdiction to proceed with the hearing.

5. The Mediator's counsel did not have authority to cancel the hearing by his letter dated August 16, 2011, faxed on August 18, 2011.

6. Rule 10.700 defines the scope and purpose of the Rules for Certified and Court Appointed Mediators:

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.

The rule makes clear that the rules govern both certified and non-certified mediators and, therefore, a resignation, if effective at all, does not prevent the Hearing Panel from proceeding with the hearing.

7. 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.

8. Rule 10.820(i) provides that the hearing shall proceed in the absence of the Mediator without good cause:

Rule 10.820 Hearing Procedures

(i) Mediator's or Applicant's Absence. If the mediator or applicant fails to appear, absent a showing of good cause, the hearing shall proceed.

9. Neither the Mediator nor his counsel showed good cause for the Mediator's absence and the Rule is mandatory that the Hearing Panel proceed.

10. The Hearing Panel has jurisdiction to proceed with the hearing in the absence of the Mediator and his counsel and despite the purported resignation of the Mediator and attempted cancellation of the hearing by his counsel.

11. Rule 10.600 provides that the Mediator has a responsibility to the profession:

Rule 10.600 Mediator's Responsibility to the Mediation Profession

A mediator shall preserve the quality of the profession. A mediator is responsible for maintaining professional competence and forthright business practices, fostering good relationships, assisting new mediators, and generally supporting the advancement of mediation.

12. The Mediator violated Rule 10.600 by his repeated misrepresentations about his background and qualifications that implied, if not stated, that he was an attorney and member of the Florida Bar, that stated that his prior occupation was a judge and that he was a retired judge.

13. Rule 10.610 provides numerous ethical prohibitions regarding marketing and advertizing practices, as described in the following relevant paragraphs:

Rule 10.610 Marketing Practices

(a) False or Misleading Marketing Practices. A mediator shall not engage in any marketing practice, including advertising, which contains false or misleading information. A mediator shall ensure that any marketing of the mediator's qualifications, services to be rendered, or the mediation process is accurate and honest.

...

(c) Other Certifications. Any marketing publication that generally refers to a mediator being "certified" is misleading unless the advertising mediator has successfully completed an established process for certifying mediators that involves actual instruction rather than the mere payment of a fee. Use of the term "certified" in advertising is also misleading unless the mediator identifies the entity issuing the referenced certification and the area or field of certification earned, if applicable.

(d) Prior Adjudicative Experience. Any marketing practice is misleading if the mediator states or implies that prior adjudicative experience, including, but not limited to, service as a judge, magistrate, or administrative hearing officer, makes one a better or more qualified mediator.

14. The Mediator violated Rule 10.610 by misrepresenting in resumes, on web sites, in other marketing and advertising materials, and in his statements to the public and other professionals that he was a certified mediator before he was certified, that he was or had been a judge, and that he was an attorney.

15. Rule 10.110 provides the standards by which to judge whether the Mediator has the 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.

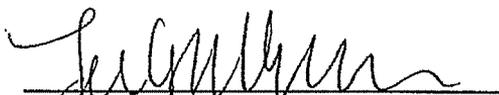
(d) Decertification. A certified mediator shall be subject to decertification for any knowing and willful incorrect material information contained in any mediator application. There is a presumption of knowing and willful violation if the application is completed, signed, and notarized.

16. The Mediator lacks the good moral character required by Rule 10.110, as shown by his repeated misrepresentations that he was a certified mediator before he was certified, that he was a judge, that he was an attorney, and that he was a member of various organizations as a judge, and his willfully taking a financial benefit to which he was not entitled by misrepresenting that he was a judge in order to attend a professional function on a complementary basis available only to Judges. In addition, as part of the mediator's pattern and practice of misrepresenting his background and qualifications, the mediator knowingly and willfully misrepresented on his application for certification as a mediator that one of his two primary occupations was as a judge, and this information, as well as all information on the application, was under oath and notarized.

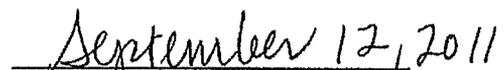
DISPOSITION

There is clear and convincing evidence that Craig R. Steinberg violated Rules 10.600, 10.610(a), 10.310(c), and 10.610(d), and the Mediator fails to possess good moral character as required by Rule 10.110. Therefore, the Panel imposes the following sanctions:

1. The Mediator, Craig R. Steinberg, is decertified and barred from serving as a mediator under the Rules for Certified and Court-Appointed Mediators.
2. If Craig R. Steinberg applies for recertification as a mediator, the Dispute Resolution Center must conduct an extensive background investigation especially in light of the repeated misrepresentations in the existing application and in his conduct and misrepresentations before and after becoming certified.
3. This Decision shall be published and shall operate as a written reprimand.
4. This Decision shall be disseminated to The Florida Bar, the Judicial Qualifications Commission, 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. Further, this Decision should be forwarded to the State Attorney for the Fifteenth Judicial Circuit for Palm Beach County, Florida.
5. Costs are awarded to the Dispute Resolution Center and taxed against Craig R. Steinberg in an amount to be determined based on the submission of an affidavit of costs incurred
6. Jurisdiction is reserved for entry of further decisions or orders as may be necessary.



Lee Schreiber, Circuit Judge
Hearing Panel Chair



Date