

## **MEDIATION QUALIFICATIONS BOARD**

### *Central Division*

In Re: John R. Pollaert, Applicant

Case Number: QCC 2013-016

Panel Chair: The Honorable William Stone

Panel Member: Stephanie Murphy, Esq.

Panel Member: Rissette Posey

Panel Member: Marie Cameron Joy

Panel Member: Bonnie Marmor

### **APPEARANCES**

Prosecutor: Tim VanderGiesen, Esq.

Mediator Applicant: No appearance after due notice.

Complainant: Florida Dispute Resolution Center (“DRC”)

Also Present: Janice M. Fleischer, Esq.-Director, DRC

Susan Marvin, Esq.-Staff Attorney, DRC

## **FINAL PANEL DECISION**

The Mediator Qualifications Board, Central Division, by its duly designated five-member Panel, held a Formal Hearing in this matter on January 12, 2016 in Clearwater, Florida pursuant to Rule 10.820 of the Florida Rules for Certified & Court-Appointed Mediators. By a unanimous decision, the Panel concludes that a preponderance of the evidence adduced at the Final Hearing established that John R. Pollaert (“applicant”) lacks good moral character for mediator certification pursuant to Rule 10.110, Florida Rules for Certified & Court-Appointed Mediators based upon the findings and conclusions which follow.

### **FINDINGS**

Based upon the credible evidence presented at the Formal Hearing, the Panel makes the following findings:

1. The applicant is a former career police officer and federal agent. He also completed law school and holds a J.D. degree.
2. On or about January 18, 2013, the DRC received the applicant’s sworn and notarized Application for Mediator Certification as a Circuit Mediator. As part of the attestation for this Application, the applicant averred in relevant part, as follows: “...*I further certify that I will notify the Dispute Resolution Center (DRC), in writing, of any material change in circumstances or*

*condition stated in the application which takes place between the initial filing of the application and the final grant or denial of certification and which might affect the decision... ”*

3. On or about February 25, 2013, the applicant was arrested pursuant to an arrest warrant for falsifying records in violation of Section 839.13, Florida Statutes and official misconduct in violation of Section 838.022, Florida Statutes. The applicant did not notify the DRC of his arrest.
4. On or about March 21, 2013, the applicant was charged by criminal Information in the Circuit Court of the Fifth Judicial Circuit of the State of Florida in and for Lake County with: the felony of official misconduct in violation of Section 833.022(1)(a), Florida Statutes; the felony of grand theft in violation of Section 812.014(1) and 812.014(2)(c) 1, Florida Statutes; and six (6) misdemeanor counts of falsifying records in violation of Section 839.13(1), Florida Statutes. The applicant did not notify the DRC of this criminal Information filed against him.
5. The DRC conducted a background check of the applicant as part of the application process and discovered the applicant's February 25, 2013 arrest.
6. In a letter to the applicant dated April 16, 2013, the DRC notified the applicant of its discovery of his arrest and requested the applicant to explain

his failure to report the same; provide details regarding the charges; and advise whether The Florida Bar had been notified and if any resolution had been effectuated.

7. In a written response to the DRC dated April 30, 2013, the applicant stated that his failure to disclose his arrest and criminal Information was the result of his being distraught and traumatized over the criminal case against him; preoccupation with health and insurance issues; and efforts to procure criminal legal counsel. The applicant further stated that The Florida Bar had not been notified as he was not licensed by The Florida Bar and was not pursuing licensure as an attorney.
  
8. On or about December 5, 2013, the applicant entered into a Pre-Trial Intervention Contract or deferred prosecution contract with the State Attorney for the Fifth Judicial Circuit wherein it was agreed that the criminal prosecution of the applicant would be deferred based upon the applicant's admission of guilt of the crimes charged and completion of certain enumerated conditions. Upon the applicant's successful completion of the enumerated conditions, the State Attorney agreed to announce a Nolle Prosequi of the criminal case filed against the applicant.

9. The applicant successfully completed the conditions of his Pre-Trial Intervention Contract with the State Attorney and on March 5, 2014, the State Attorney announced a Nolle Prosequi of the criminal charges against the applicant. The applicant notified the DRC by letter dated March 10, 2014 of the Nolle Prosequi of his criminal charges, stating among other things, that this had been a “wrongful criminal prosecution which resulted from a situation of employment retaliation.” The applicant also requested in this letter that his application for mediation certification be processed in his “continuing effort to become a certified circuit civil court mediator.”

10. On or about October 23, 2015, the Mediator Qualifications Board Qualifications Complaint Committee (“QCC”) found probable cause to support Formal Charges that the applicant lacks good moral character as required for mediator certification pursuant to Rule 10.110 of the Florida Rules for Certified and Court-Appointed Mediators based upon: (a.) his failure to disclose the criminal case against him as part of the DRC application process; (b.) his failure to notify the DRC in writing of the criminal charges against him which constituted a material change in the circumstance and condition of his application for mediation certification; and (c.) the underlying conduct that gave rise to the criminal charges.

11. The applicant was served with the Formal Charges in the DRC's letter dated October 26, 2015 by Certified Mail, Return Receipt Requested and regular mail.
12. The applicant acknowledged receipt of the Formal Charges in his November 7, 2015 letter to the DRC wherein he stated, among other things, that he "...would decline being placed in an adversarial position with the DRC."
13. On or about December 2, 2015, a Notice of Panel Hearing was scheduled for January 12, 2016 at 1:00p.m. EST in Clearwater, Florida. The DRC adduced competent proof of a subpoena served on the applicant for his appearance at this Panel Hearing; Notice of Hearing dated December 2, 2015; Notice of Assignment of Panel dated November 9, 2015; and Letter from Janice Fleischer notifying the applicant of a replacement of a panel member dated December 18, 2015.
14. In a letter dated December 24, 2015 and received by the DRC on December 28, 2015, the applicant reiterated his desire "not to be placed in an adversarial position with the DRC" and to terminate this QCC 2013-016 proceeding.
15. The Formal Hearing herein proceeded as scheduled on January 12, 2016. Despite due notice and the absence of any showing of good cause, the applicant failed to appear for the hearing. Accordingly, the Formal Hearing

was conducted pursuant to Rule 10.820(i) of the Florida Rules for Certified & Court-Appointed Mediators.

16. The Panel finds that there was competent substantial evidenced introduced at the Formal Hearing which established that:

- (a.) The applicant lacks good moral character based upon his failure to disclose the criminal case against him as part of the DRC application process.
- (b.) The applicant lacks good moral character based upon his failure to notify the DRC in writing of the criminal charges against him which constituted a material change in the circumstance and condition of his application.
- (c.) The applicant lacks good moral character based upon his admission of guilt to the following criminal offenses as part of his Pre-Trial Intervention Contract with the State Attorney for the Fifth Judicial Circuit of Florida:

- 1. Count I. (Official Misconduct): the applicant unlawfully and with corrupt intent to obtain U.S. currency falsified an official record or official document in violation of Florida Statute 838.022.

2. Count II. (Grand Theft-\$300 or More But Less Than \$20,000): On or about September 1, 2012-November 30, 2012, the applicant unlawfully and knowingly obtained, used or endeavored to obtain or use property belonging to the State of Florida, namely, U.S. currency, of the value of three hundred dollars (\$300) or more, but less than twenty thousand dollars (\$20,000), with the intent to either temporarily or permanently deprive the State of Florida of a right to the property or a benefit thereof, or did appropriate the said property to his own use or the use of any person not entitled thereto in violation of Florida Statute 812.014 (1) and 812.014(2)(c) 1.
3. Count III (Falsifying Records): On or about September 1, 2012-September 30, 2012, the applicant unlawfully falsified documents, namely a travel voucher, belonging to any public office within the State of Florida, in violation of Florida Statute 839.13.
4. Count IV (Falsifying Records): On or about October 1, 2012-October 31, 2012, the applicant unlawfully falsified documents, namely a travel voucher, belonging to any public office within the State of Florida, in violation of Florida Statute 839.13.

5. Count V (Falsifying Records): On or about November 1, 2012-  
November 30, 2012, the applicant unlawfully falsified documents,  
namely, a travel voucher belonging to any public office within the  
State of Florida, in violation of Florida Statute 839.13.
6. Count VI (Falsifying Records): On or about September 19, 2012-  
September 21, 2012, the applicant unlawfully falsified documents,  
namely a daily inspection summary belonging to any public office  
within the State of Florida, in violation of Florida Statute 839.13.
7. Count VII (Falsifying Records): On or about October 22, 2012-  
October 23, 2012, the applicant unlawfully falsified documents,  
namely, a daily inspection summary, belonging to any public  
office within the State of Florida, in violation of Florida Statute  
839.13.
8. Count VIII (Falsifying Records): On or about November 26,  
2012-November 27, 2012, the applicant unlawfully falsified  
documents, namely, a daily inspection summary belonging to any  
public office within the State of Florida, in violation of Florida  
Statute 839.13.

17. There are no notable factors underlying the applicant's conduct to mitigate the seriousness of his actions. His actions were crimes of dishonesty for financial gain. Additionally, he was a public employee who took money to which he was not entitled. When the conduct occurred, the applicant was a twelve (12) year State of Florida employee with a law enforcement background and a law degree. There is no evidence that he suffered from impaired judgment or had any pressing financial need that would explain why someone with his accomplishments would engage in such behavior. His acts of dishonesty were therefore knowing, intentional, repetitive, and would have continued had he not been caught.

18. The applicant was approximately fifty-six (56) years old when the conduct occurred that resulted in the criminal charges and when he submitted his application for mediator certification. His maturity and experience at the time should have given him the wisdom not to consider such conduct.

19. The applicant's criminal conduct and failure of disclosure of the same to the DRC was very recent as it occurred in late 2012-early 2013.

20. The information relating to the applicant's admission to the criminal conduct and failure of disclosure of the same on his DRC application for certification is reliable and unassailable.

21. Both the applicant's criminal conduct and failure of disclosure of the same to the DRC are very serious as they go to his honesty, an essential element of good moral character.
22. The cumulative effect of the applicant's criminal conduct and failure to disclose the same to the DRC is significant because it was an ongoing course of conduct that continued for several months.
23. There was no evidence adduced of any rehabilitation by the applicant. The applicant's continuing pattern of denying responsibility for his conduct that resulted in criminal charges and failure to timely disclose the criminal allegations against him to the DRC exhibits an ongoing pattern of conduct and a significant lack of candor during the application process.

### CONCLUSIONS

24. The Panel initially concludes that it has jurisdiction over this matter pursuant to Rule 10.740(c) of the Florida Rules for Certified & Court-Appointed Mediators which provides, in relevant part, as follows: "*Panel. Each panel shall have such jurisdiction and powers as are necessary to conduct the proper and speedy adjudication and disposition of any proceeding.*" Further, the Panel concludes that the applicant cannot unilaterally divest the Panel of its jurisdiction to adjudicate and dispose of this matter by announcing the

withdrawal of his application for mediator certification. Rule 10.820(c) of the Florida Rules for Certified & Court-Appointed Mediators specifically provides that a dismissal of this proceeding shall occur “*Upon the filing of a stipulation of dismissal signed by the complainant and the mediator, and with the concurrence of the panel...*” Neither the DRC as the complainant nor the Panel ever agreed to applicants’ requested dismissal of this proceeding.

25. The mediator was charged herein with the lack of good moral character as required for mediator certification by Rule 10.100 of the Florida Rules for Certified & Court-Appointed Mediators based upon his failure to disclose his arrest and criminal case to the DRC during his application process as well as the underlying conduct which gave rise to the criminal charges.

26. The Panel unanimously concludes that the applicant’s failure to disclose his criminal arrest and criminal case to the DRC as well as the underlying conduct which gave rise to the criminal case evidences the applicant’s lack of candor and good moral character for mediator certification.

### **DISPOSITION**

Accordingly, based upon the foregoing findings and conclusions, the Panel concludes that the applicant’s application for mediator certification shall be permanently denied and the applicant is hereby permanently barred from

applying or otherwise seeking any further Florida Supreme Court mediator certification(s).



Hon. William Stone  
Hearing Panel Chairperson

FEB - 3 2016  
Date