

MEDIATOR QUALIFICATIONS BOARD
Southern Division

In Re: Irwin R. Eisenstein

Case Number: QCC2014-063

Panel: The Honorable Rodney Smith, Chair
 Kimberly Mann
 Nancy Mag
 Carmen Stein
 Eugene Walker

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Advisor to the Panel: Irv J. Lamel, Esq.

APPEARANCES

Prosecutor: Melvia Green, Esq..

Mediator: Irwin R. Eisenstein

Also Present: Janice Fleischer, Esq., Director of DRC

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 January 21, 2016.

FORMAL CHARGES

The Mediator fails to possess good moral character as required by Rule 10.110, Florida Rules for Certified and Court Appointed Mediators, for continuing certification by the Florida Supreme Court as a county mediator.

HEARING

EXHIBITS

During the hearing, the following exhibits were admitted into evidence as exhibits for the prosecution:

Exhibit 1 - Application for Mediator Certification, dated July 10, 2006, Application for Mediator Certification Renewal, dated July 6, 2009, Application for Mediator Certification Renewal, dated July 19 2010, Application for Mediator Certification Renewal, dated November 20, 2012, Application for Mediator Certification Renewal, dated July 17, 2014.

Exhibit 2 - Kentucky Office of Bar Admissions , Character and Fitness Committee, Waiver dated February 13, 2012.

Exhibit 3 - Findings of Fact, Conclusions of Law and Recommendations of the Florida Board of Bar Examiners dated October 10, 2012.

Exhibit 4 - Corrected Order of the Supreme Court of Florida dated October 10, 2014
Exhibit 5 - Decision of Committee on Character and Fitness for the Third Judicial District of the New York Supreme Court, Appellate Division, Third Judicial Department, dated September 8, 2014.
Exhibit 6 - Memorandum and Order of the New York Supreme Court, Appellate Division, Third Judicial Department, dated December 24, 2014.
Exhibit 7 - Email exchange dated January 4 and 5, 2016, among Prosecutor Melvia Green, Mediator Irwin R. Eisenstein and Judicial Assistant, Alejandra Godoy.
Exhibit 8 - Email from Mediator Irwin R. Eisenstein to DRC Director Janice M. Fleischer, Honorable Rodney Smith, and Prosecutor Melvia Green dated January 12, 2016.
Exhibit 9 - Transcript of Telephone Hearing dated January 15, 2016.
Exhibit 10 - Email from Mediator Irwin R. Eisenstein to Prosecutor Melvia Green, DRC Director Janice M. Fleischer, Honorable Rodney Smith, etc., dated January 15, 2016.

During the hearing, the following exhibits were admitted into evidence as exhibits for the Mediator:

Exhibit 1 - Formal Charges dated July 20, 2015
Exhibit 2 - Mediator Grievance Complaint dated April 6, 2015

WITNESSES

Witnesses called by the prosecution:
Janice M. Fleischer, Esq., Director of the DRC
Irwin R. Eisenstein, Mediator

Witnesses called by the Mediator:
Lawrence Shamsid-Deen
Sarah Grimes

FINDINGS OF FACT

Based on the oral and documentary evidence presented at the hearing, the Hearing Panel makes the following findings of fact:

1. The Mediator applied for certification and was certified as a county mediator in July, 2006. Mediators are certified for two years and are required to renew the certification every two years in the mediator's month of certification. The Mediator applied to renew his certification one year late, in July, 2009; timely, in July, 2010; four months late, in November, 2012; and timely, in July, 2014. The Mediator's 2012 application for renewal disclosed that the Florida Bar denied his application for admission but no disciplinary procedures were commenced by the DRC until it received the Mediator's 2014 application for renewal.
2. The Mediator is 71 years old, obtained a Bachelor of Arts in economics from Brooklyn

College in 1966, a Masters in Business Administration in computer science from Baruch College in 1972 and a Juris Doctor from Barry University in 2008. The mediator took and passed the Florida Bar Examination in 2009, took and passed the New York Bar Examination in 2010, and took the Kentucky Bar Examination, the results for which have not been released because his eligibility has not been certified by the Kentucky Bar's Character and Fitness Committee.

3. The Mediator applied for admission to the Florida Bar and the Florida Board of Bar Examiners (FBBE) conducted an extensive investigation of his character and fitness. The findings and conclusions of the FBBE are contained in a detailed 62 page report dated October 10, 2012, which recommended that his application for admission to the Florida Bar be denied and that the Mediator be disqualified from reapplying for two years. Among the matters highlighted in the FBBE's report were the Mediator's filing of *pro se* lawsuits against individuals who were connected to litigation in which he had previously been involved or was presently involved, whether those individual were parties, related to parties, or attorneys or judges in prior or pending litigation. In addition, each and every lawsuit was dismissed because the lawsuit failed to comply with the applicable statutes, rules or instructions of the court in which it was pending. Further, the FBBE report described the Mediator's commission of a fraud on the court in a prior litigation. On October 10, 2014, The Florida Supreme Court approved the Findings of Fact, Conclusions of Law and Recommendations of the Florida Board of Bar Examiners but increased the period in which the Mediator was disqualified from reapplying to five years. The FBBE's findings and conclusions are extensive, specific and detailed such that it would serve no useful purpose to repeat them in this Decision except that the panel accepts and adopts the findings of the FBBE as the findings of this Panel.

4. The Mediator applied for admission to the New York State Bar and the New York Supreme Court, Appellate Division's Character and Fitness Committee similarly reviewed the Mediator's character and fitness for admission. The Committee reviewed the Findings of Fact, Conclusions of Law and Recommendations of the Florida Board of Bar Examiners as well as additional matters, including more recent *pro se* litigation which the Mediator had commenced on October 15, 2013, against the United State of America, the Internal Revenue Service Commissioner, and other IRS officials. The Committee expressed its concern for the "[Mediator's] judgment, view of the legal system, and apparent tendency to use the courts as a tool for personal vindication and retribution rather than the redress of legitimate grievances founded upon established legal principles, honesty and good faith."

5. During the proceedings prior to the Panel hearing in this matter, a telephonic hearing was held on January 15, 2016, on various motions filed by the prosecutor and by the Mediator. The transcript of the hearing reflects the following statement by the Mediator on pages 20-21: "Now, if you're going to continue to have the hearing, Judge, I'm going to question you also because you've been given judicial notice of the cases that I've cited, you've been given judicial notice of the failure of the prosecutor to investigate further, and **I will bring you up on charges also.**" [Emphasis added]

6. The Mediator's testimony was partly composed of explanations of the wrongdoing of

those whom he filed suit against in relation to his divorce proceedings and his inability to present evidence to the Florida Bar and the Florida Supreme Court on rehearing. The Mediator also testified that he presently possesses good moral character. He described how he helps people by teaching them how to conduct legal research, assisting them by editing their work, and in other ways. In addition, he has invested many volunteer hours in preparing videotapes for use in connection with mediator training.

7. The Mediator presented two witnesses. Lawrence Shamsid-Deen attended Barry Law School with the Mediator and has been friends with him since 2003. He testified that the Mediator has helped people with outlines, advice, a place to stay and in other ways. He has not charged for such services. He acknowledged that he read the FBBE findings and the New York Bar findings, and a person should not fail to follow the law or file baseless lawsuits. Sarah Grimes was not a student at Barry Law School but also met the Mediator at Barry Law School when she was visiting the library. She has observed him help law students and lawyers, give law outlines and books to people, and allow people who have no place to stay live with him without charge.

CONCLUSIONS

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

A. The Mediator's actions show that he sees only one side of any dispute, is not receptive to the views and positions of others, and that anyone who does not agree with his view is wrong and subject to attack. His actions reflect the opposite of what is required of a mediator.

B. As indicated by the findings and conclusions of the FBBE, and the statements of the New York Bar Committee on Character and Fitness, the Mediator's view of the legal system is that things should be done his way.

C. The Mediator's actions indicate he has little regard for the legal system, the rules of Court, or the decorum which should govern legal proceedings and mediations as a part of legal proceedings.

D. The threat that the Mediator made, that he will "bring [the Panel Chair] up on charges" for ruling against him on a procedural motion, indicates that the Mediator's past actions are continuing and that the reasons which underlie the FBBE and New York Bar's findings that he does not possess the character and fitness to be admitted to the Bar persist.

E. Pursuant to Rule 10.110, Florida Rules for Certified and Court-Appointed Mediators, the Mediator has the burden of proving his good moral character: "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." Although the Prosecutor is not required to do so, she proved the Mediator's lack of good moral character and the Mediator did not prove otherwise.

Rule 10.110 further provides factors relevant to a determination of lack of good moral character:

(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.

Applying the factors set forth in the rule to the evidence presented at the Panel hearing, the Panel concludes that the conduct in which the mediator has engaged in the past and continuing into the present would interfere with his duties and responsibilities as a mediator, and especially as a mediator in county court cases where parties often appear pro se; the Mediator is a mature, well educated individual who has engaged in purposeful conduct, which is serious and which has impacted the courts and the proceedings in which he been involved; the conduct has resulted in the denial of his applications for bar admission in at least two states, including Florida; and the evidence of any rehabilitation is insignificant, especially when weighed against his recent commission of the same kind of conduct which has occurred over many years.

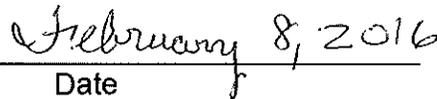
F. As a result of all of the foregoing , the application for certification is denied due to a lack of good moral character.

G. The Mediator is permanently barred from applying for any certification as a Florida Supreme Court Certified Mediator or serving as a mediator under the Florida Rules of Civil Procedure.

H. The Dispute Resolution Center is awarded its reasonable costs, such costs to be determined by the Panel Chair. The Dispute Resolution Center shall submit and serve on the Mediator its motion and affidavit for such costs within 30 days of the date of this Decision.



Honorable Rodney Smith
Panel Chair



Date