

MEDIATOR QUALIFICATIONS BOARD
Southern Division



In Re: Neal Jonathan Blaher

Case Number: QCC2015-014

Panel: The Honorable Ronald Flury, Chair
Andrea Reid
Rosezetta Bobo
Raymond McNeal
Heather Blanton

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

APPEARANCES

Prosecutor: Robert Ostrov, Esq.

Mediator: Neal J. Blaher did not appear

Counsel for Mediator: None

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 February 5, 2016.

FORMAL CHARGES

1) 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 circuit mediator.

2) The Mediator violated Rule 10.800 (b)(1), Florida Rules for Certified and Court Appointed Mediators, by failing to report to the Dispute Resolution Center that he was suspended from The Florida Bar.

HEARING

EXHIBITS

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

Exhibit A Subpoena to Neal J. Blaher

RECEIVED

FEB 19 2016

Supreme Court of Florida
Dispute Resolution Center

- Exhibit B PS Form 3811, US Postal Service Domestic Return Receipt for certified mail
- Exhibit C PS Form 3800, US Postal Service Certified Mail Receipt
- Exhibit D Formal Charges
- Exhibit E Notebook of The Florida Bar Exhibits 1 - 22 in The Florida Bar v. Neal J. Blaher, Case No. SC14-2241
- Exhibit F Notebook of The Florida Bar documents 1 - 48 in Second Amended Index to Record in The Florida Bar v. Neal J. Blaher, Case No. SC14-2241
- Exhibit G Neal J. Blaher's Notice of Unprofessional, Unethical, Dishonest, Abusive and Reprehensible Conduct, etc., with handwritten note

WITNESSES

Witnesses for Prosecution:

Janice M. Fleischer, Esq., Director of the DRC
Joann Marie Stallcup, Esq., Bar Counsel
Matthew D. Herdeker

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 Dispute Resolution Center [DRC] regularly reviews the Florida Bar News for information regarding lawyer discipline and checks information regarding lawyers who have been disciplined against the DRC's list of certified mediators. If a lawyer who has been disciplined is also a certified mediator, the DRC checks to see if the mediator has notified the DRC of the discipline as required by Rule 10.800 (b) (1). The DRC determined that Neal J. Blaher was suspended indefinitely from The Florida Bar but had failed to notify the DRC within 30 days of the suspension.

2. The DRC sent to the Mediator by certified and regular mail the Formal Charges with a cover letter, and subsequently a Notice of Panel Hearing. The only response received from the Mediator was a note handwritten on the top of his Notice, marked Exhibit G, indicating the DRC Director could add her name to the list of Florida Bar staff and Florida Supreme Court Justices he accused of unprofessional, unethical, dishonest, abusive and reprehensible conduct, and that no further mail would be accepted. The Mediator was sent a subpoena to appear at the Panel Hearing but did not appear.

3. The Florida Bar had received notice from the Mediator's bank that a check drawn on his IOTA Trust Account had been returned for insufficient funds. Based on that notice, the Bar requested from the Mediator his bank records for a 3 - 4 month period around the time of the returned check. Matthew Herdeker, a CPA and Florida Bar auditor, reviewed the records which had been provided and, as a result of his audit and findings,

the record request was expanded to cover a period of 15 months for the Mediator's Trust Account and Operating Account.

4. In summary, the audit shows that even before the Mediator received a payment from a client, he would transfer from his Trust Account to his Operating Account an amount of money he expected the client to pay and use the money to pay his operating expenses for his office or personal expenses. The money he transferred actually belonged to other clients who had money on deposit in his Trust Account. In some instances, the expected payment from the client did not materialize in the amount he had transferred from his Trust Account or by the date he expected and he had to make up the shortfall in his Trust Account with personal funds. In addition, the audit uncovered that the Mediator did not accurately post transactions to his journal in an attempt to conceal that he created shortages in his Trust Account by removing funds from his Trust Account in advance of the receipt of funds into his Trust Account. The amount of the shortage increased every month during the last four to five months of the audit. The following are specific examples of his procedures:

a. In the matter of Cortex USA: The Mediator's ledger showed that he deposited a payment in his Trust Account on January 21, 2014, in the amount of \$3,700 and wrote a check to his Operating Account on January 31, 2014, in the amount of \$2,450. The bank records showed that he received the payment on January 21, 2014, in the amount of \$3,700 but he actually wrote a check to his Operating Account on January 13, 2014, eighteen days earlier than his records showed, and in the amount of \$4,400, an amount larger than the expected payment from the client and larger than the amount ultimately deposited. He had to replace the missing funds from his Operating Account but did not do so until July 7, 2014.

b. In the matter of Andrew DeStefano: The Mediator's ledger showed that he deposited four payments in his Trust Account on January 24, 2014, in the amount of \$325, February 3, 2014, in the amount of \$325, February 7, 2014, in the amount of \$325, and February 10, 2014, in the amount of \$1,500 and wrote checks to his Operating Account on February 10, 2014, in the amounts of \$2,150 and \$325. The bank records showed that the dates of deposit were substantially correct but he actually wrote checks to his Operating Account on January 14, 2014, in the amount of \$2,150, and on January 31, 2014, in the amount of \$325.

5. On October 15, 2014, Florida Bar Counsel took a deposition of the Mediator who testified under oath. In his deposition (Tab 10 of Exhibit F), the Mediator agreed that his actions in taking an "advance" of fees from his Trust Account for work for a client who had not yet paid the fees resulted in using a different client's money for a purpose other than as intended by that client; in effect he was using the money of one client to pay the fees for a different client; and his records did not accurately reflect the transactions occurring in his Trust Account because, among other things, his journal entries for fee "advances" were dated up to 57 days after he actually took the funds from his Trust Account. In addition, he acknowledged that he had personal funds in a retirement account

which could have been used to pay office and personal expenses instead of using Trust Account funds.

6. On November 25, 2014, the Mediator was suspended from the practice of law on an emergency basis. On June 4, 2015, the Mediator was disbarred by the Florida Supreme Court.

CONCLUSIONS

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

A. Pursuant to Rule 10.110, Florida Rules for Certified and Court-Appointed Mediators, the Mediator has the burden of proving his good moral character.

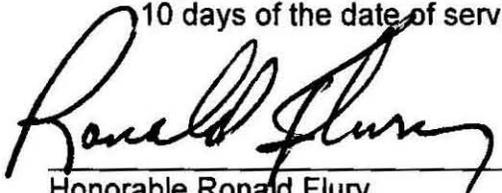
B. Counts 1 through 4 of the Formal Charges were proven. In addition, the Mediator's handwritten note on the Notice marked Exhibit G and his nonappearance at the Panel Hearing despite being served with a subpoena show his contempt for legal proceedings. The evidence as to each count individually, and as to all the counts collectively, shows that the Mediator lacks the good moral character required of a Florida Supreme Court Certified Mediator.

C. Count 5 was proven and, therefore, the Mediator violated Rule 10.800 (b)(1), Florida Rules for Certified and Court-Appointed Mediators.

D. The Panel imposes the following sanctions:

1. The Mediator is decertified and permanently barred from mediating under the Florida Rules of Civil Procedure.

2. 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 and the Mediator shall serve any response within 10 days of the date of service of the motion and affidavit..



Honorable Ronald Flury
Panel Chair

February 16, 2016

Date