

MEDIATOR QUALIFICATION BOARD
CENTRAL DIVISION

In Re: Darlene J. Brower

Case No.: MQB 2013-015

Panel: Honorable Dee Anna Farnell (Chair)

 Michael Kamen

 Raymond McNeal

 Marie Joy

 Julie Hilton

**ORDER ACCEPTING ADMISSION TO FORMAL CHARGES AND
IMPOSING SANCTIONS**

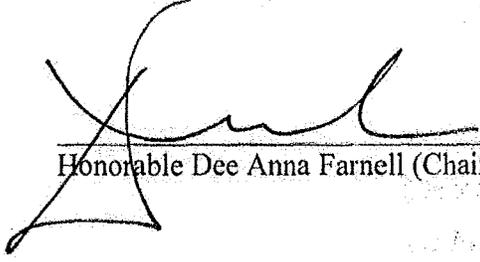
The Mediator Qualification Board by its duly designated five-member panel, upon considering the attached *Admission and Stipulation*, enters its ORDER in this matter pursuant to Rules 10.820(b) and 10.830, Florida Rules for Certified and Court Appointed Mediators, as follows:

1. The Panel, by unanimous decision, accepts Respondent/Darlene J. Brower's *Admission and Stipulation* filed in this cause and adopts all of its terms and conditions, which is fully incorporated herein by reference and made a part hereof as Appendix A. Accordingly, the Panel hereby imposes and adopts all sanctions and conditions as enumerated within the *Admission and Stipulation*.
2. The Mediator is permanently decertified as a Florida Supreme Court Certified Mediator. The Mediator is forever barred and estopped from ever applying for certification as a mediator in the State of Florida, in any certification area, by and through the Dispute Resolution Center, or its successors.
3. The MQB retains jurisdiction to ensure the compliance by the Mediator to the admission

and sanctions contained herein or incorporated as part of this Order and to enforce any breach of this Order.

4. Each party shall bear its own attorneys' fees and costs.
5. Pursuant to Rule 10.830(f) and (g), Florida Rules of Certified and Court Appointed Mediators, the Florida Dispute Resolution Center shall post on its website and publish the respondents name and a short case summary of the circumstances of this case, this ORDER and shall notify the Judicial Circuits of the Respondents sanctions and denial.

DONE AND ORDERED this the 29 day of Oct, 2015.



Honorable Dee Anna Farnell (Chair)

Copies to All Parties.

MEDIATOR QUALIFICATIONS BOARD

In Re: Darlene Brower

Case No.: MQB 2013-015

ADMISSION AND STIPULATION

WHEREAS, the Grievance Complaint Committee of the Mediator Qualifications Board found probable cause and brought formal charges against the above-referenced Mediator alleging violations of the following Rules for Certified and Court-Appointed Mediators:

1. Rule 10.220 Mediator's Role;
2. Rule 10.330 Impartiality;
3. Rule 10.340 Conflicts of Interest;
4. Rule 10.370 Advice, Opinions, or Information;
5. Rule 10.410 Balanced Process;
6. Rule 10.520 Compliance with Authority;
7. Rule 10.620 Integrity and Impartiality;
8. Rule 10.640 Skill and Experience;
9. Rule 10.670 Relationships with Other Professionals.

WHEREAS, a hearing on the formal charges against the Mediator is scheduled before a Hearing Panel, and

WHEREAS, the Mediator wishes to admit to the formal charges, waive the right to a hearing and agree to the imposition of sanctions without the necessity of a hearing;

NOW, THEREFORE, the parties agree as follows:

1. The Mediator admits to all of the allegations set forth in the Formal Charges and the Exhibits attached thereto, filed and fully incorporated herein by reference and attached hereto as Admission and Stipulation Exhibit A.
2. The Mediator accepts the imposition of the following Sanctions:

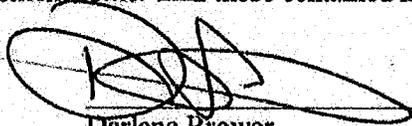
The Mediator is permanently decertified as a Florida Supreme Court Certified Mediator. The Mediator is forever barred and estopped from ever applying for certification as a mediator in the State of Florida, in any certification area, by and through the Dispute Resolution Center, or its successors. Should the Mediator ever apply again, the application will be summarily denied and the Provisions of Paragraph 3 will be applicable.

3. Any default of this agreement by the Mediator will result in this matter returning to an assigned Hearing Panel for further disciplinary action. The Mediator understands and agrees that jurisdiction is reserved to ensure the

compliance by the Mediator to the admission and sanctions set forth in this document.

4. The Mediator waives all rights to a Final Hearing. The Mediator waives this right knowingly and voluntarily and understanding the waiver is complete and binding.
5. The Mediator was notified as to the members of the panel assigned to the case. The Mediator waives all rights to seek the disqualification of any member of the panel. The Mediator waives this right knowingly and voluntarily and understanding the waiver is complete and binding.
6. The Mediator authorizes the Hearing Panel to review and examine all investigative file materials concerning the Mediator in connection with the consideration of this Admission and Stipulation. The Mediator agrees that consideration of this Admission and Stipulation and other related materials by the Hearing Panel and/or the MQB shall not prejudice or preclude the Hearing Panel, the MQB, or any of their members from further participation, consideration, or resolution of this proceeding if the terms and conditions of this Admission and Stipulation are not deemed acceptable by the Hearing Panel. Furthermore, the Mediator understands that the final ORDER in this cause will be entered by the Hearing Panel and/or MQB and that ORDER is binding on the parties.
7. The Mediator understands the Dispute Resolution Center shall follow all of its normal practices and procedures regarding disclosure and publication of an Admission and Stipulation and Imposition of Sanctions and corresponding ORDER from the Hearing Panel and/or MQB and shall abide by any and all ORDERS by the Hearing Panel and/or MQB.
8. The Dispute Resolution Center and the Mediator agree that, upon acceptance of this Admission and Stipulation by the Hearing Panel, each party shall bear its own attorney's fees and costs.
9. The Mediator had sufficient time and opportunity to review this Admission and Stipulation. The Mediator had sufficient time and opportunity to consult with her attorney, Stephen Whalen, Esquire, regarding this Admission and Stipulation.
10. The Mediator had sufficient time and opportunity to review the Formal Charges and Exhibits attached thereto, filed and fully incorporated herein by reference and attached hereto as Admission and Stipulation Exhibit A. The Mediator had sufficient time and opportunity to consult with her attorney, Stephen Whalen, Esquire, regarding the Formal Charges and Exhibits attached thereto.

11. All waiver of rights as set forth herein are made knowingly and voluntarily and understanding the waivers are complete and binding.
12. The Mediator read each and every condition set forth herein. The Mediator enters into this Admission and Stipulation knowingly and voluntarily and understands this agreement is complete and binding. The Mediator understands that there are no agreements other than those contained herein.

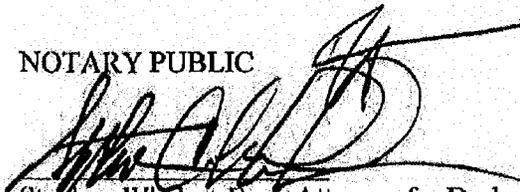

Darlene Brower

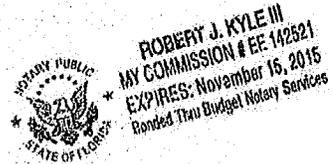
STATE OF FLORIDA)
COUNTY OF PASCO)

Before me, personally appeared Darlene Brower whose identity is known to me by the production of the following identification FL. DRIV. LICENSE, and who, under oath, sworn and subscribed, acknowledges that he executed this document freely, knowingly and voluntarily and for the purposes herein expressed.

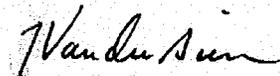
Sworn and subscribed before me this the 13TH day of OCTOBER, 2015.

NOTARY PUBLIC


Stephen Whalen, Esq., Attorney for Darlene Brower



Agreed, pending approval of the Hearing Panel.


Tim VanderGiesen, Prosecutor

**MEDIATOR QUALIFICATIONS BOARD GRIEVANCE
COMPLAINT COMMITTEE (GCC)**

In re: Darlene Brower

Case Number: **MQB 2013-015**

FORMAL CHARGES

Having examined the grievance complaint filed by Mary Ellen Borja, Esquire, and the results of an investigation to determine whether Darlene Brower (hereinafter referred to as "the mediator") has violated any of the Florida Rules for Certified and Court-Appointed Mediators, the Mediator Qualifications Board Grievance Complaint Committee assigned to this case finds that there is probable cause to believe that:

1. For each of the number charges (2 through 4) contained herein, the following allegations of fact apply with details provided in each charge:
 - (a) The mediator is a Florida Supreme Court Certified county and family law mediator who owns and operates Helping Hands Document and Mediation Services. In addition to mediation services, the mediator offers document preparation.
 - (b) The mediator was hired to provide mediation services for the parties (hereinafter referred to as "the parties" or "Wife" or "Husband") in their effort to obtain a divorce from one another.
 - (c) The mediator states in her response to the GCC that she was hired by the parties for "Pre Litigation Mediation" and the "Original Mediation Conference" was held on March 6, 2013. *See* Attachment A (Darlene Brower letter dated March 31, 2014 re: MQB 2013-015), incorporated by reference herein.
 - (d) The mediator prepared a Marital Settlement Agreement that was signed by Husband on May 18, 2013. *See* Attachment B (Marital Settlement Agreement), incorporated by reference herein. There were changes made to the Marital Settlement Agreement between the Original Mediation Conference on March 6, 2013, and the signing of the Marital Settlement Agreement on May 18, 2013 that were requested by Wife in an email to the mediator that did not include Husband who was not consulted prior to the changes being made.
 - (e) The "RECEIPT" provided by the mediator to Wife indicates that \$700 was paid on March 6, 2013 "For: Divorce & QDRO." The receipt clearly indicates the intention of the mediator to provide services not directly related to the mediation process. *See* Attachment C (Helping Hands Document & Mediation Services RECEIPT dated March 6, 2013), incorporated by reference herein.
 - (f) The mediator notarized the parties' signatures on documents during the course of the mediation. The Marital Settlement Agreement, Quitclaim Deed and the

Answer, Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage were all signed by Husband and notarized by the mediator on May 18, 2013. *See* Attachment B (Marital Settlement Agreement), Attachment D (Quitclaim Deed) and Attachment E (Answer, Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage), incorporated by reference herein.

- (g) The mediator prepared numerous legal documents not directly related to the mediation which included the Quitclaim Deed, Answer, Waiver and Request for Copy of Final Judgment of Dissolution of Marriage, Notice of Related Cases, Motion to Set Matter for Hearing or Status Conference, Motion to Deviate from Child Support Guidelines, Waiver of Mandatory Disclosure and Motion for Referral to General Magistrate. *See* Attachment D (Quitclaim Deed), Attachment E (Answer, Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage), Attachment F (Notice of Related Cases), Attachment G (Motion to Set Matter for Hearing or Status Conference), Attachment H (Motion to Deviate from Child Support Guidelines), Attachment I (Waiver of Mandatory Disclosure), Attachment J (Motion for Referral to General Magistrate), incorporated by reference herein.
 - (h) The mediator signed a Cease and Desist Order, on March 15, 2012, pursuant to a Florida Bar investigation in which she acknowledged various laws and rules relating to the unlicensed practice of law. In the Order, the mediator indicated that she understood what a nonlawyer can and cannot do relating to such services as document preparation and QDROs. *See* Attachment R (Cease and Desist Affidavit of Darlene Brower dated March 15, 2012), incorporated by reference herein.
2. The mediator violated Rule 10.220, Mediator's Role, Rule 10.330(a), Impartiality, and Rule 10.410, Balanced Process of the Florida Rules for Certified & Court-Appointed Mediators.

Rule 10.220 provides that: "The role of the mediator is to reduce obstacles to communication, assist in the identification of issues and exploration of alternatives, and otherwise facilitate voluntary agreements resolving the dispute. The ultimate decision-making authority, however, rests solely with the parties."

Rule 10.330(a) provides that: A mediator shall maintain impartiality throughout the mediation process. Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual.

Rule 10.410 provides that: A mediator shall conduct mediation sessions in an even-handed, balanced manner. A mediator shall promote mutual respect among the mediation participants throughout the mediation process and encourage the participants to conduct themselves in a collaborative, non-coercive, and non-adversarial manner.

The mediator caused, if not the reality of, at a minimum, the appearance of partiality and failed to conduct the mediation in a balanced manner. Furthermore she failed to facilitate a voluntary agreement by not encouraging the parties to conduct themselves in a collaborative manner or by reducing obstacles to communication which is all evidenced by the following actions:

- (a) A chain of emails from April 25, 2013 through May 1, 2013, discussing the QDRO, includes only Wife and the mediator. A chain of emails from May 13, 2013, relating to the completion of the QDRO and a change to the Marital Settlement Agreement, in which Wife asks the mediator to, "update the house info.... I have sole and exclusive use of the house" includes only Wife and the mediator. See Attachment K (Emails between Wife [REDACTED] and mediator info@hhdm services.com), incorporated by reference herein.
- (b) An affidavit by Husband states, "After signing the Marital Settlement Agreement dated May 13, 2013, I learned that it did not include certain terms that I agreed to. For example, it was my understanding that I would remain in the home that I had been living in after the divorce but I found out later that I would have to move." See Attachment L (Affidavit of [REDACTED]), incorporated by reference herein. The mediator failed to ensure that Husband was aware of the changes and understood the changes, which occurred as a result of communication between only Wife and the mediator, to the Marital Settlement Agreement. By communicating exclusively with Wife regarding substantive changes to the Marital Settlement Agreement the mediator failed to reduce obstacles to communication and encourage the parties to work in a collaborative manner. Consequently, when the mediator did not verify that Husband was aware of and understood the changes, she failed to ensure that the mediation was conducted in a balanced manner which would result in a voluntary agreement in violation of rule 10.220 and Rule 10.410.
- (c) By not including both parties in the correspondence and decision making relating to the QDRO and Marital Settlement Agreement, the mediator created an appearance of favoritism or bias toward one party, Wife, and Wife's interests in violation of Rule 10.330, which was a detriment to the other party.

Note: Each instance alleged in 2(b) and 2(c) constitutes a separate violation with the aggregate of the two being a major violation.

3. The mediator violated Rule 10.340(d), Conflicts of Interest and Rule 10.620, Integrity and Impartiality.

Rule 10.340(d) provides that: "A mediator shall not create a conflict of interest during mediation. During a mediation, a mediator shall not provide any services that are not directly related to the mediation process."

Rule 10.620 provides that: "A mediator shall not accept any engagement, provide any service, or perform any act that would compromise the mediator's integrity or impartiality."

The mediator created conflicts of interest when she blurred the lines between her mediation services and her document preparation business by preparing numerous legal documents not directly related to the mediation process and notarizing documents for the parties which compromised the mediator's integrity and impartiality by:

- (a) All correspondence between the parties and the mediator relating to the completion the QDRO occurred prior to the signing of the marital settlement agreement. Therefore, the mediator provided a service not directly related to the mediation process during the pendency of the mediation and, in doing so, created a conflict of interest in violation of Rule 10.340(d). *See* Attachment N (Two emails dated March 11, 2013, and March 12, 2013, from Wife to mediator discussing Husband's pension), Attachment O (Fax from Wife's work, dated March 11, 2013, containing QDRO Instructions) and Attachment P (Letter from Department of Management Services, Bureau of Retirement Calculations faxed from Wife's work to the mediator in March of 2013 re: Husband's pension) incorporated by reference herein.
- (b) When the mediator in the instant case received compensation for preparing the QDRO and blurred the lines between her mediation services and document preparation services, she compromised her integrity or impartiality by providing a service not directly related to the mediation in violation of Rule 10.620.
- (c) Since the mediation process was not complete until the Marital Settlement Agreement was signed and notarized on May 18, 2013, the mediator created a conflict of interest by providing document preparation services and preparing legal documents not directly related to the mediation process in violation of Rule 10.340(d).
- (d) The mediator created a conflict of interested in violation of Rule 10.340(d) by notarizing the Marital Settlement Agreement, Quitclaim Deed and the Answer,

Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage. *See* Attachment B (Marital Settlement Agreement), Attachment D (Quitclaim Deed) and Attachment E (Answer, Waiver, and Request for Copy of Final Judgment of Dissolution of Marriage), incorporated by reference herein.

Note: Each instance alleged in 3(a), 3(b), 3(c) and 3(d) constitutes a separate violation with the aggregate of the four being a major violation.

4. The mediator violated Rule 10.220, Mediator's Role, Rule 10.370 Professional Advice or Opinions, Rule 10.520, Compliance with Authority, Rule 10.640 Skill and Experience and Rule 10.670 Relationships with Other Professionals.

Rule 10.370 provides that: "(a) Consistent with standards of impartiality and preserving party self-determination, a mediator may provide information that the mediator is qualified by training or experience to provide.

(b) When a mediator believes a party does not understand or appreciate how an agreement may adversely affect legal rights or obligations, the mediator shall advise the party of the right to seek independent legal counsel."

Rule 10.520 provides that: "A Mediator shall comply with all statutes, court rules, local court rules, and administrative orders relevant to the practice of mediation."

Rule 10.640 provides that: "A mediator shall decline an appointment, withdraw, or request appropriate assistance when the facts and circumstances of the case are beyond the mediator's skill or experience."

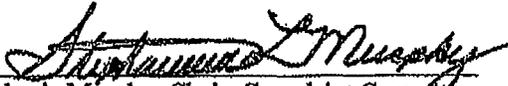
Rule 10.670 provides that: "A mediator shall respect the role of other professional disciplines in the mediation process and shall promote cooperation between mediators and other professionals."

The mediator made decisions for the parties without their input, prepared documents that were beyond her skill, level and experience and failed to respect the roles of other professional disciplines while engaging in the practice of law through the preparation of the QDRO (*See* Attachment M (QDRO), incorporated by reference herein) and the following actions:

- (a) Husband stated in an affidavit that the mediator identified herself as a paralegal, which she is not. In making the representation, she failed to respect the role of other disciplines in violation of Rule 10.670 and compromised her integrity in violation of Rule 10.620 (as previously defined in Number 3).
- (b) Email between the mediator and representatives of the Department of Management Services along with emails between the mediator and Wife indicate that the mediator made changes to the QDRO that exceeded merely "offering a typing service" to the parties. See Attachment N (Two emails dated March 11, 2013, and March 12, 2013, from Wife to mediator discussing Husband's pension), Attachment Q (Email dated May 13, 2013, from Theresa U. Kalu, Department of Management Services, to the mediator), incorporated by reference herein.
- (c) Correspondence between the mediator and representatives of the Department of Management Services, indicate that clarification was needed regarding how the benefit amount was calculated and the valuation date. See Attachment Q (Email dated May 13, 2013, from Theresa U. Kalu, Department of Management Services, to the mediator). The inquiry by the representative of the Department of Management Services required input from the parties. However, the mediator made changes to the QDRO without input or clarification from the parties. In doing so, the mediator put herself in a position where the parties relied on the mediator for legal advice in properly filling out the QDRO. This is considered the unlicensed practice of law and a violation of Florida Statute 454.23. As such, the mediator failed to comply with the statute prohibiting the unlicensed practice of law during the course of her work as mediator in violation of Rule 10.520. Furthermore, by substituting her decision making for that of the parties the mediator impeded on the parties' right to self-determination in violation of Rule 10.370(a) and compromised her ability to facilitate a voluntary agreement between the parties in violation of Rule 10.220 (as previously defined in Number 2).
- (d) Husband stated in his affidavit that the mediator did not tell him that he should speak to an attorney before signing the Marital Settlement Agreement. The mediator violated Rule 10.370(b) by not advising Husband, prior to signing the Marital Settlement Agreement, that he may need to seek independent legal counsel.
- (e) The complainant, an experienced family law attorney, observed numerous errors in the documents prepared by the mediator and that the Marital Settlement Agreement was of "abysmal quality, ambiguous and contradictory."
- (f) Instead of holding herself out as a paralegal, engaging in the unlicensed practice of law by preparing the QDRO and preparing legal documents that were "abysmal quality, ambiguous and contradictory," the mediator should have declined to provide the services that were beyond her skill and experience or

requested appropriate assistance in accordance with Rule 10.640. By not doing so, the mediator violated Rule 10.640.

Note: While numerous instances alleged in 4(a) through 4(f) constitute separate violations, the aggregate of the individual violations constitute major violations.



Stephanie Murphy, Chair, Complaint Committee

3/13/15
Date

MQB 2013-015

CEASE AND DESIST AFFIDAVIT

TFB Case No. 20122031(06B)

March 15, 2012, by **DARLENE J. BROWER**, individually and d/b/a **Helping Hands Document and Mediation Services**, who is personally known to me or has produced FL. Drivers License as identification.


Notary Public,  MY COMMISSION # EE 057909
EXPIRES: March 26, 2015
Bonded Thru Budget Notary Services

Printed Name of Notary
My Commission Expires:
My Commission Number:

**ATTACHMENTS TO FORMAL
CHARGES AVAILABLE UPON
REQUEST**