

MEDIATOR QUALIFICATIONS BOARD
Southern Division

In Re: G. Enrique Pena Case Number: QCC2013-036

Panel: The Honorable Angelica Zayas, Chair
 Lawrence Saichek
 Oscar Franco
 Reginald Clyne
 Heather Blanton

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

APPEARANCES

Prosecutor: Avery Chapman, Esq.

Applicant: G. Enrique Pena

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 August 17, 2015.

FORMAL CHARGES

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

HEARING

At the commencement of the hearing, the following exhibits were admitted by stipulation of the parties:

Exhibit A - Application for Mediator Certification, dated June 27, 2013 - 29 pages

Exhibit B - Conditional Guilty Plea and Consent Judgment for Discipline, dated August 26, 2004 - 6 pages

Exhibit C - Invoice of Guillermo Pena & Associates, P.L., dated April 9, 2004 - 3 pages

Exhibit D - Correspondence from Susan Anhalt, Esq., dated January 22, 2004, and correspondence from Guillermo Pena & Associates, P.L., undated - 2 pages

Exhibit E - Correspondence from Guillermo E. Pena, dated February 6, 2004 - 2 pages

Exhibit F - Affidavit of Louis K. Nicholas II, dated December 14, 2004 - 2 pages

Exhibit G - Stipulation of Admissibility, dated August 17, 2015 - 1 page

The sole witness was the Applicant, G. Enrique Pena.¹

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 Applicant was an attorney and member of The Florida Bar who was suspended from the practice of law by the Supreme Court of Florida on September 24, 2003.

2. On November 12, 2004, the Applicant petitioned the Supreme Court for reinstatement and the Florida Bar filed a Petition for Order to Show Cause alleging that during the period of suspension the Applicant had continued to practice law.

3. A hearing was held before a Referee appointed by the Supreme Court. The Referee made specific findings of fact, concluded that the Applicant violated the Supreme Court's Order suspending him from practicing law and recommended that he be disbarred. The Applicant was disbarred on January 19, 2007.

4. During the period of his suspension, the Applicant went to work for Call Center Express (CCE), a former client of his law practice. This client, as well as his other clients, knew that he had been suspended from practicing law because he was required by the Supreme Court Order suspending him to notify them of his suspension. He worked for CCE as a "compliance officer".

5. The Applicant admitted during the Panel hearing that during his employment with CCE, he held himself out as a lawyer or allowed those with whom he dealt to believe he was a lawyer in the following ways:

a. He issued an invoice to CCE on letterhead for Guillermo Pena & Associates, P.L., Attorneys at Law, referencing "Fee for Legal Representation" and describing in the invoice various legal services and the time spent on such services, as well as using the title "Esquire" after his signature and printed name. (Exhibit C). The Applicant indicated that he issued the invoice at the request of his client for "internal purposes".

b. In response to a letter received by CCE from a lawyer concerning an issue with CCE's product, he wrote a letter on letterhead for Guillermo Pena & Associates, P.L., using the title "Esquire" after his signature and name. (Exhibit D).

c. He wrote a letter to a lawyer representing a client in a dispute with CCE using Guillermo E. Pena letterhead and the title "Esquire" after his signature and name. (Exhibit E).

6. The Applicant denied that during the suspension period he made any oral

¹Janice Fleischer, Director of the Dispute Resolution Center, testified upon the re-opening of the prosecution's case, without objection, to answer a procedural question from the Panel.

statements representing that he was a lawyer. However, the Panel finds that testimony not credible. Based on the affidavit of Louis K. Nicholas II, Esquire, admitted into evidence by stipulation as Exhibit F, the Applicant introduced himself during a telephone call as "Bill Pena", in house counsel for CCE, and stated that he was going to file a motion for an extension of time to answer a complaint filed by Mr. Nicholas against CCE. The litigation stopped and no such motion nor any appearance was filed by the Applicant. The Applicant testified that he did not remember the telephone call, but admitted that during his suspension, he knew that persons with whom he spoke often assumed that he was a practicing attorney based upon his demeanor and manner of speech and that he knowingly failed to correct the false assumption.

7. The Applicant currently works as a teacher for the Miami Dade School Board as a certified teacher. He is eligible to reapply for admission to the Florida Bar but does not intend to do so as he enjoys teaching. He has never been arrested, had his drivers' license suspended or filed bankruptcy.

CONCLUSIONS

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

- A. The Applicant has demonstrated an inability or refusal to abide by rules and Court Orders as indicated both by his activities that led to his suspension from The Florida Bar and his disbarment due to continuing to practice law while suspended.
- B. The Applicant has applied to be certified as a County Court mediator and County Court mediation often involves unrepresented parties where the Applicant's failure to follow rules and Court orders would likely go unreported.
- C. The Applicant's conduct was serious and continuing in nature.
- D. The Applicant's actions were willful, deliberate, and knowing, and were done based on his belief that no one would find out about his activities.
- E. Although some of the events were remote in time and the Applicant professed remorse for his actions, the Applicant's responses to questions from the Panel indicate a lack of complete candor and a lack of remorse.
- F. The Applicant provided no evidence of rehabilitation other than that he has become a teacher.
- G. As a result of all of the foregoing, the application for certification is denied due to a lack of good moral character.
- H. The Dispute Resolution Center is awarded a maximum of \$2000.00 for costs which are shown to be reasonable and justified, such costs to be determined by the Panel Chair, The Honorable Angelica Zayas. The Dispute Resolution Center shall submit its motion and affidavit for such costs within 30 days of the date of this Decision.



The Honorable Angelica Zayas, Chair



Date