

Supreme Court of Florida

No. AOSC15-29

Corrected

IN RE: LES PAUL STERNBERG v. MEDIATOR
QUALIFICATIONS BOARD

ADMINISTRATIVE ORDER

Les Paul Sternberg has submitted a Notice of Review of Mediator Disciplinary Action, seeking review of a decision issued by a hearing panel of the Mediator Qualifications Board (MQB), denying his application for mediator certification. This matter is before me as the Chief Justice pursuant to rule 10.880 of the Florida Rules for Certified and Court-Appointed Mediators (Mediator Rules). As set forth in this order, I find that the hearing panel's conclusion that Sternberg failed to present satisfactory evidence of good moral character, as required for mediator certification, is supported by competent, substantial evidence. However, I also find that the hearing panel's award of costs to the Florida Dispute Resolution Center is not authorized in this proceeding, and I disapprove that portion of its decision.

Sternberg filed an Application for Certification with the Florida Dispute Resolution Center (DRC). Because he disclosed in the application several criminal convictions, the DRC requested additional information, and later referred the

matter to the Qualifications Complaint Committee. Formal Charges were prepared, and Sternberg appeared for a formal hearing before a hearing panel. Following the hearing, the panel issued its “Decision Including Findings and Conclusions of the Panel,” finding that Sternberg does not possess good moral character and denying his application for certification.

The hearing panel found, and Sternberg admits, that he was formerly an attorney, admitted to The Florida Bar in 1981. In June 1994 and March 1995, Sternberg was charged in two separate cases with grand theft—the 1994 case alleged that Sternberg misappropriated \$90,000 from his trust account, and the 1995 case alleged that he misappropriated \$24,000 from the account. In each case, Sternberg entered a plea, adjudication was withheld, and he was ordered to serve ten years on probation (the terms of probation in each case to run concurrent) and make full restitution.

Thereafter, in November or December 2001, Sternberg was again charged with grand theft. This case alleged that Sternberg took \$50,773 from a business owned by his wife at the time. As a result of the new charges, Sternberg was charged with violations of probation in the 1994 and 1995 cases.

While Sternberg was in custody on the grand theft charge, in January 2002 the State brought additional charges against him for extortion by threat and tampering with a witness. The State alleged that Sternberg, in conversations and

letters with his then-wife, attempted to force her to inform the prosecutor that she did not wish to prosecute or be a witness in the case against him; Sternberg suggested that if she did not do so, he would report a tax matter to the IRS, she would be arrested and prosecuted, and she would lose custody of a minor child in her care. The hearing panel found that the extortion charge was nolle prossed, and Sternberg pled guilty to tampering with a witness. He was sentenced in all the pending cases (the 2001 and 2002 cases, and the violations of probation in the 1994 and 1995 cases) to 364 days in county jail, followed by one year of community control and five years probation, and ordered to pay restitution. Sternberg fulfilled the custodial obligations of his sentence and paid restitution as ordered by the court. His probation was terminated in March 2006, and his civil rights were restored in March 2008.

In addition to his criminal history, the hearing panel found that Sternberg was suspended from the practice of law on an emergency basis in 1993, based on the trust account violations that would become the subject of his 1994 and 1995 criminal cases. In lieu of disciplinary proceedings, Sternberg submitted a petition for disciplinary resignation. The Court granted the petition on May 26, 1994.

The hearing panel heard testimony as to Sternberg's good character from his current wife, and from his first wife. However, the panel noted that Sternberg did not call any "unbiased witnesses" to address his present employment, his level of

trustworthiness, or his good moral character. He also did not present any evidence of community or civic service, or other activities to demonstrate rehabilitation. In fact, Sternberg admitted to performing no community service in the past ten years.

After considering the evidence and testimony presented at the hearing, the hearing panel found by a preponderance of the evidence that Sternberg does not possess the good moral character required for mediator certification, and it denied his application. The panel also awarded costs to the Dispute Resolution Center, taxed against Sternberg, “in an amount to be determined based on the submission of Affidavit of Costs Incurred.”

As noted, Sternberg here seeks review of the hearing panel’s decision. The Mediator Rules provide: “The chief justice or designee shall review the findings and conclusions of the panel using a competent substantial evidence standard, neither reweighing the evidence in the record nor substituting the reviewer’s judgment for that of the panel.” See Fla. R. Med. 10.880(c)(1); see also In re: Edwin L. Ford v. Mediator Qualifications Board, Fla. Admin. Order No. AOSC07-50 (Sept. 7, 2007).

Although Sternberg challenges which party bears the burden of proof in a mediator certification proceeding, the Mediator Rules clearly provide that an applicant for certification must establish his or her good moral character. Rule 10.110(a) states: “No person shall be certified by this Court as a mediator unless

such person first produces satisfactory evidence of good moral character.” The applicant’s good moral character may be subject to inquiry “when the applicant’s . . . conduct is relevant to the qualifications of a mediator.” Fla. R. Med.

10.100(c)(1). The purpose of the good moral character requirement “is to ensure protection of the participants in mediation and the public, as well as to safeguard the justice system.” Fla. R. Med. 10.110(b).

In determining whether an applicant’s conduct demonstrates a “present lack of good moral character,” the Board and hearing panel are directed to consider a number of factors, including the seriousness of an applicant’s conduct as it relates to mediator qualifications and any evidence of rehabilitation. See Fla. R. Med.

10.110(c)(4). In reviewing the evidence, I find guidance in the Court’s case law pertaining to applicants for admission to The Florida Bar. In such cases, the Court has made clear that the nature of an applicant’s misconduct must be weighed against the evidence of rehabilitation; the more serious the misconduct, the greater the showing of rehabilitation that will be required. See Fla. Bd. of Bar Exam’rs re J.J.T., 761 So. 2d 1094, 1096 (Fla. 2000). The Court has explained the types of activities that may be offered to show rehabilitation:

[W]hile we have recognized that activities which benefit the applicant as well as the community are not necessarily unacceptable for purposes of rehabilitation, . . . such activities are certainly not the type of broad-based community or charitable activities which this Court

views as strong evidence of positive action showing rehabilitation. The rules contemplate and we wish to encourage positive actions beyond those one would normally do for self benefit, including, but certainly not limited to, working as a guardian ad litem, volunteering on a regular basis with shelters for the homeless or victims of domestic violence, or maintaining substantial involvement in other charitable, community, or educational organizations whose value system, overall mission, and activities are directed to good deeds and humanitarian concerns impacting a broad base of citizens.

Fla. Bd. of Bar Exam'rs re M.L.B., 766 So. 2d 994, 998-99 (Fla. 2000).

The primary evidence against Sternberg in this proceeding is his admitted criminal history. As noted, Sternberg was charged with grand theft in 1994, 1995, and 2001. While he was in jail on the 2001 grand theft charge, Sternberg was charged in a separate case with, and ultimately convicted of, witness tampering. Sternberg's criminal history is significant because it includes multiple convictions, over a number of years, for the same types of offenses. Furthermore, I agree with the hearing panel's conclusion that Sternberg's witness tampering charge is particularly concerning because it shows his willingness to utilize threats and coercion to manipulate the legal system.

Sternberg presented very little evidence of rehabilitation. He has been consistently employed since leaving jail in 2002, he has earned positions of trust within the companies he works for, and he has provided financially for his two children and planned for his own retirement. However, Sternberg did not present any evidence to show the type of positive action in the community that would

demonstrate rehabilitation. Accordingly, I find the hearing panel's conclusion that Sternberg did not present satisfactory evidence of good moral character is supported by competent substantial evidence, and I approve the panel's decision to deny his application for mediator certification.

The hearing panel also awarded costs to the DRC, to be taxed against Sternberg. The DRC has submitted a Statement and Affidavit of Taxable Costs, indicating that it is requesting \$4,066.15 in costs. While the Mediator Rules are somewhat unclear on this issue, I find the panel's award of costs is not authorized.

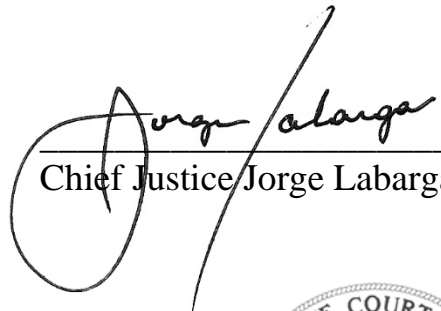
Mediator Rule 10.830 outlines the types of sanctions that the hearing panel may impose in its decision, including the costs of the proceeding. See Fla. R. Med. 10.830(a)(1). However, it is not apparent that rule 10.830 applies when a hearing panel denies an application for certification (as opposed to when the panel sanctions an already certified mediator). Rule 10.800(a)(4) provides that the hearing panel "shall take appropriate action on the issue of good moral character by dismissing the charges, denying the application in relation to an applicant, or imposing sanctions against a certified mediator pursuant to rule 10.830."

(Emphasis added.) This rule indicates a distinction between the hearing panel's decision as to an application for certification, and its decision as to a certified mediator whose conduct demonstrates a lack of good moral character; only a currently certified mediator is subject to sanctions under rule 10.830. Additionally,

rule 10.820(n) provides: “If, after a hearing, a majority of the panel finds by preponderance of the evidence that an applicant should not be certified as a mediator, the panel shall deny the application and report such action to the [DRC].” This provision does not authorize the panel to impose a sanction (including costs).

Based on these Mediator Rules, I find that the hearing panel’s award of costs was not authorized in this proceeding, where Sternberg sought mediator certification. Accordingly, I disapprove that portion of the panel’s Decision. Sternberg shall not be made to pay the DRC’s costs.

DONE AND ORDERED at Tallahassee, Florida, on September 11, 2015.



Chief Justice Jorge Labarga

ATTEST:



John A. Tomasino, Clerk of Court

Served:

LES PAUL STERNBERG
IRV J. LAMEL, MEDIATOR QUALIFICATIONS BOARD
JANICE M. FLEISCHER, DIRECTOR, DISPUTE RESOLUTION CENTER

