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**FILED**

MAR 28 2011

**DISCIPLINARY BOARD**

BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

Young S. Oh,

Lawyer (Bar No. 29692).

Public No. 05#00203

FINDINGS OF FACT, CONCLUSIONS OF  
LAW AND HEARING OFFICER'S  
RECOMMENDATION

In accordance with Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), the undersigned Hearing Officer held a hearing on October 12, 13, 14, and 18, 2010 in the above entitled matter. Respondent appeared at the hearing, represented by Scott E. Collins. Disciplinary Counsel Francesca D'Angelo appeared for the Washington State Bar Association (the Association).

FORMAL COMPLAINT FILED BY DISCIPLINARY COUNSEL

The Third Amended Formal Complaint filed by Disciplinary Counsel charged Young S. Oh with the following counts of misconduct:

Count 1 - By assisting and/or inducing and/or permitting one of his employees to forge one or more documents to be submitted to INS, Respondent violated former RPC 8.4(a), former

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1 RPC 8.4(c), and/or former RPC 8.4(d).

2 Count 2 - By failing to place and/or keep client funds in a client trust account,  
3 Respondent violated former RPC 1.14(a) and/or former RPC 1.14(b).

4 Count 3 - By failing to maintain adequate and/or complete records to be able to  
5 determine ownership of client funds in his possession, Respondent violated former RPC  
6 1.14(b)(3).

7 Based on the pleadings in the case, the testimony and exhibits at the hearing, the Hearing  
8 Officer makes the following:

9 FINDINGS OF FACT

10 1. Respondent was admitted to the practice of law in the State of Washington on  
11 November 22, 1999.

12 2. Before his admission to the Bar, Respondent, received an accounting degree from  
13 the University of Washington and received a license to practice as a Certified Public Accountant  
14 ("CPA"). In 1993, Respondent opened his own accounting practice in Edmonds, Washington  
15 where he served primarily Korean-American businesses. In 2000, Respondent opened his law  
16 office where he complimented his accounting (CPA) practice with legal and escrow services.

17 Respondent's practice grew to where, during the time period at issue in this proceeding, he was  
18 providing accounting services to over 300 businesses, serving as escrow for over ten business  
19 sales per month, and maintaining an active law practice that, among other areas, prepared  
20 multiple visa applications each month. The accounting services that Mr. Oh provided to his  
21 accounting clients included payroll, bookkeeping, and monthly, quarterly and annual federal  
22 and state tax returns, including income, excise and B&O tax returns that required client

1 signatures. Mr. Oh's visa application services included the completion and submission of  
2 multiple forms on which client signatures were/are required.

3 3. At times, Respondent employed associate attorneys and non-lawyer staff to assist  
4 him in his law practice, including immigration matters.

5 4. From August 2001 to January 2003, Respondent employed lawyer Cindy Toering  
6 in his law office.

7 5. During all other times relevant to this proceeding, Respondent was a sole  
8 practitioner. The majority of his law practice was immigration and escrow.

9 **Count 1**

10 6. Card Data Systems, Inc. (CDS) was one of Respondent's legal clients. John Yeum  
11 is the president of CDS, Inc.

12 7. In 2002, CDS, Inc. hired Respondent to prepare and submit an H-1B visa  
13 application for an employee the company wished to sponsor, Ae Sun Moon.

14 8. An H-1B visa is an employment visa that allows the holder to live and work in the  
15 United States for the sponsoring employer for a specific period of time. To obtain an H-1B visa,  
16 both the proposed employer as "petitioner/sponsor" and the alien as "beneficiary" must submit  
17 an application and supporting papers to the United States' immigration agency (at the time, that  
18 agency was the Immigration and Naturalization Service "INS"). The form for submitting an H-  
19 1B application was INS Form I-129, Petition for Non-Immigrant Worker ("I-129").

20 9. CDS, Inc. had engaged Respondent twice previously to process H-1B visa  
21 applications for employees CDS wished to sponsor. Both previous H-1B visa applications had  
22 been granted.

23 10. The I-129 form was a several-page application that required the petitioner to  
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1 certify under penalty of perjury that the petition and the supporting documentation submitted  
2 with it was true and correct.

3 11. Mr. Yeum's signature, as President and/or representative of CDS, Inc., was forged  
4 in eight separate places in the application and in the supporting and related documents that were  
5 submitted to the INS. Three of those forged signatures were certifications under the penalty of  
6 perjury.

7 12. The forged signatures were traced from other forgeries of Mr. Yeum's signature.

8 13. Respondent exerted control over the work of his non-lawyer employees in all  
9 aspects of his law and accounting office.

10 14. The forged signatures were made on documents that were in possession of and/or  
11 under the control of the Respondent or his staff.

12 15. Many of these forgeries would have been apparent upon cursory review. Mr.  
13 Yeum's name was misspelled and the name used was not Mr. Yeum's legal name with which he  
14 signed legal documents.

15 16. The forged signatures were made without Mr. Yeum's permission.

16 17. Neither Mr. Yeum nor anyone at CDS, Inc. was given an opportunity to review the  
17 I-129 before it was filed.

18 18. Respondent had signed three separate documents that contained forged signatures  
19 which were subsequently submitted to the INS.

20 19. Respondent's testimony that he did not review these documents and that he did not  
21 know that the immigration documents were forged before submitting them to the INS was not  
22 credible.

23 20. Respondent knew that the documents that he submitted to the INS contained  
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1 | forged signatures.

2 | 21. The purpose of the forgeries was to expedite the application process and to conceal  
3 | from Mr. Yeum that Respondent was late in filing the petition.

4 | 22. Lawyer Cindy Toering witnessed employees sign clients' signatures on documents  
5 | on multiple occasions.

6 | 23. Toering informed Respondent on at least one occasion that she observed an  
7 | employee signing a client's signature on a document. Respondent told Toering that the  
8 | employee should have called the client first.

9 | 24. Respondent offered several alternate theories as to how the signatures could have  
10 | been forged on the documents. None of those theories was plausible or credible.

11 | 25. Respondent submitted the false signatures with conscious disregard for the  
12 | integrity of documents submitted by an attorney to the tribunal.

13 | 26. Respondent's conduct constituted a violation of practice norms.

14 | 27. Respondent's conduct exposed his clients and INS to potential injury and to  
15 | potential adverse effect on the legal proceeding.

16 | **Counts 2 and 3**

17 | 28. Prior to mid-2002, Respondent did not utilize a lawyer trust account for client  
18 | funds.

19 | 29. Between 2001 up through and including August 2002, Respondent placed client  
20 | funds into his general business checking account at Bank of America on multiple occasions  
21 | ("BOA account 4717").

22 | 30. During this period of time, the client funds were not protected from Respondent's  
23 | creditors.

1 31. During this time period, Respondent had 12 overdraft or insufficient funds  
2 incidents on BOA account 4717.

3 32. During this time period, the account had frequent negative balances.

4 33. Because this account was not an IOLTA account, the Association was not notified  
5 of these overdrafts.

6 34. Some of the overdrafts were due to Respondent's failure to wait until deposits  
7 cleared the bank before making disbursements on behalf of clients.

8 35. As a result, funds belonging to some clients were used on behalf of other clients,  
9 causing injury and potential injury.

10 36. Between January 2001 and the end of 2003, Respondent kept a trust account for  
11 his escrow clients. Respondent kept individual client ledgers for funds in his escrow accounts.

12 37. On at least one occasion, Respondent transferred client money from his escrow  
13 trust account into his business account in order to cure overdrafts in that account before  
14 disbursing the money as directed by the client.

15 38. Between January 1, 2001 and August 2002, Respondent maintained a check  
16 register for BOA account 4717.

17 39. In mid-2002, Respondent opened a client trust account at Bank of America ("BOA  
18 trust account").

19 40. Between mid-2002 and the end of 2003, Respondent maintained a combined check  
20 register for BOA account 4717 and the BOA trust account.

21 41. This register reflected no beginning or periodic balancing and it was not possible  
22 to determine how much client money was in the account at any given time.

23 42. Between mid-2002 and the end of 2003, Respondent did not adequately reconcile  
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1 | this check register with the bank statements from either BOA account 4717 or the BOA trust  
2 | account.

3 |       43. Between mid-2002 and the end of 2003, Respondent's business records did not  
4 | permit identifying many checks by client or client matter.

5 |       44. Between January 2001 and the end of 2003, Respondent did not maintain client  
6 | ledgers.

7 |       45. Between January 2001 and the end of 2003, Respondent's record-keeping system  
8 | was not adequate to determine ownership of client funds in his possession.

9 |       46. Respondent did not maintain his records in substantial compliance with former  
10 | RPC 1.14(c). Respondent was unable to adequately identify client funds in the check register at  
11 | the hearing.

12 |       47. Respondent knew that he was dealing improperly with client funds when he failed  
13 | to place client funds in a trust account and when he failed to keep adequate records of client  
14 | funds in his possession.

15 |       48. Respondent's failure to adequately identify client funds in his possession resulted  
16 | in potential injury to his clients.

17 |       49. Respondent's continued failure to adequately identify client funds in his possession  
18 | over a period of more than two years constitutes a pattern of misconduct.

19 |       50. Respondent's conduct in making payments on behalf of his clients before funds  
20 | were deposited into his trust account was part of a pattern of misconduct in regard to  
21 | Respondent's trust account.

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2 **CONCLUSIONS OF LAW**  
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4 The Association has the burden of proving charges of lawyer misconduct by a clear  
5 preponderance of the evidence. ELC 10.14(b); *see also In re Disciplinary Proceeding Against*  
6 *Allotta*, 109 Wn.2d 787, 792, 748 P.2d 628 (1988). “Clear preponderance’ is an intermediate  
7 standard of proof ... requiring greater certainty than ‘simple preponderance’ but not to the  
8 extent required under ‘beyond reasonable doubt.’” *Allotta*, 109 Wn.2d at 792. Accordingly, “a  
9 clear preponderance of all the facts proved must support a finding of misconduct.” *In re*  
10 *Disciplinary Proceeding Against Botimer*, 166 Wn.2d 759, 767, 214 P.3d 133 (2009).  
11 Sanctions may not be imposed against a lawyer based upon “slight evidence.” *In re Little*, 40  
12 Wn.2d 421, 430, 244 P.2d 255 (1952) (“The privilege ... to practice his profession cannot be  
13 lost to the practitioner upon slight evidence.”). Conclusions of law must be supported by the  
14 factual findings. *In re Poole*, 156 Wn.2d 196, 209, 125 P.3d 954 (2006) (“*Poole*”).<sup>1</sup>  
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16 **Violations Analysis**

17 The Hearing Officer finds that the Association proved the following by a clear  
18 preponderance of the evidence:

19 **Count 1:**

20 51. By permitting one or more of his employees to forge a client’s signature on one or  
21 more documents to be submitted to the INS and, by submitting the forged signatures to the INS,  
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23 <sup>1</sup> The RPCs were revised effective September 1, 2006. The Association’s Complaint is based upon  
24 violations of the RPC in effect as of the date or dates of the acts set forth therein.



1 Respondent violated former RPC 8.4(a), former RPC 8.4(c), and former RPC 8.4(d).

2 Former RPC 8.4 stated in relevant part:

3 It is professional misconduct for a lawyer to:

4 (a) Violate or attempt to violate the Rules of Professional Conduct,  
5 knowingly assist or induce another to do so, or do so through the acts of another;

6 (c) Engage in conduct involving dishonesty, fraud, deceit or  
7 misrepresentation;

8 (d) Engage in conduct that is prejudicial to the administration of justice . .

9 The ultimate duty for the integrity of the documents submitted to a tribunal rests with the  
10 attorney submitting the said documents. Notwithstanding the testimony of Ms. Shannon Koh,  
11 the evidence shows that the Respondent signed the documents bearing the forged signatures of  
12 the petitioner and subsequently submitted them to the INS. Respondent's theories of pointing  
13 fingers to others who may have forged the signatures or who may have had an opportunity or a  
14 possible motive to do so would not change the ultimate responsibility of the Respondent with  
15 regard to the documents that he submitted to the INS. By submitting the blatantly forged  
16 signatures (some had wrong spelling of the name) Respondent engaged in conduct involving  
17 dishonesty, fraud, deceit or misrepresentation and engaged in conduct that is prejudicial to the  
18 administration of justice. The charges against the Respondent were not solely based on  
19 "circumstantial evidence" in this case. The documents admitted into evidence include  
20 documents bearing the Respondent's signature as well as the petitioner's forged signatures on  
21 the same documents and on the same page.

22 The forged signatures of the petitioner were blatant as even the spelling of the name was  
23 wrong.

24 Respondent's claim of "lack of knowledge" as to Petitioner's signatures being forged on  
the documents submitted to the INS is not credible.

1 **Count 2:**

2 52. By failing to place and keep client funds in a client trust account, Respondent  
3 violated former RPC 1.14(a) and former RPC 1.14(c).

4 **Count 3:**

5 53. By failing to maintain complete and adequate records as required by former RPC  
6 1.14(b)(3) in order to be able to determine ownership of client funds, Respondent violated  
7 former RPC 1.14(b)(3).

8 **Sanction Analysis**

9 54. The following standards of the American Bar Association's Standards for  
10 Imposing Lawyer Sanctions ("ABA Standards") (1991 ed. & Feb. 1992 Supp.) are  
11 presumptively applicable in this case:

12 55. ABA Standards 6.1 is the most applicable to Respondent's violations of former  
13 RPC 8.4(a), 8.4(b), and 8.4(c) as charged in Count 1. Standard 6.12 provides that "[s]uspension  
14 is generally appropriate when a lawyer knows that false statements are being submitted to the  
15 court ... and takes no remedial action, and causes . . . a potential adverse effect on the legal  
16 proceeding." In immigration matters at the relevant times, the INS was the equivalent of a  
17 tribunal and submission of false documents to the INS was the equivalent of submitting false  
18 documents to a tribunal. RPC 1.1(m).

19 56. ABA Standard 4.1 applies to Respondent's violations of former RPC 1.14 as  
20 charged in Counts 2 and 3. Standard 4.12 provides that "[s]uspension is generally appropriate  
21 when a lawyer knows or should know that he is dealing improperly with client property and  
22 causes injury or potential injury to a client."

23 57. When multiple ethical violations are found, the "ultimate sanction imposed should  
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1 at least be consistent with the sanction for the most serious instance of misconduct among a  
2 number of violations.” In re Petersen, 120 Wn.2d 833, 854, 846 P.2d 1330 (1993).

3 58. Based on the Findings of Fact and Conclusions of Law and application of the ABA  
4 Standards, the appropriate presumptive sanction is Suspension.

5 59. Six months is the generally accepted minimum term of suspension. In re Cohen,  
6 149 Wn.2d 323, 339, 67 P.3d 1086 (2003).

7 60. The following aggravating factors set forth in Section 9.22 of the ABA Standards  
8 are applicable in this case:

9 (b) dishonest or selfish motive: Respondent submitted documents containing  
10 forged signatures to a tribunal (INS) without permission or knowledge of the  
11 client and to cover his/his office’s delay in submitting the packet; Respondent  
failed to use a trust account for client funds in order to conceal overdrafts in  
his account and to use the funds for his own purposes without oversight;

12 (d) multiple offenses.

13 61. The following mitigating factors set forth in Section 9.3 of the ABA Standards are  
14 applicable in this case:

15 (a) absence of prior disciplinary record. Respondent received an Admonishment in  
16 March 2007 with regard to his 2003 representation of a client in an immigration proceedings  
17 and he received a Reprimand in October 2010 with regard to 2005-2006 trust account  
18 violations. The facts that were the basis of the 2007 and 2010 Disciplinary Rulings stemmed  
19 from Respondent’s actions/inactions during a time period that was after the time period for the  
20 charges in the present matter.

21 It is improper to use the Disciplinary Rulings retroactively and apply them as an  
22 “aggravating factor” i.e. “prior disciplinary record” for actions that predated those rulings. The  
23 existence of “prior disciplinary records” is relevant when the Respondent has received a  
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1 disciplinary ruling and continued to violate the RPCs afterward. In this case, prior to the  
2 relevant time period of "2001 through 2003" the Respondent had not received any "disciplinary  
3 rulings" and had no history of "prior disciplinary offenses".

4 The mitigating factor of "absence of prior disciplinary offenses" applies to the facts and  
5 timeline contained in this case.

6 (f) inexperience in the practice of law: The charges under Counts 2 and 3 stem from  
7 Respondent's actions (or inactions) during 2001, 2002 and 2003. Respondent was admitted to  
8 the practice of law in the State of Washington in November 1999. The incidents giving rise to  
9 the above counts were committed within the early years of the Respondent's law practice.  
10 Therefore the mitigating factor of "inexperience in the practice of law" applies to this case.  
11 Balancing the inexperience in the practice of law with Respondent being a trained accountant  
12 and a practicing CPA, where he maintained a trust account and kept client ledgers for his  
13 escrow clients but failed to do so properly for his legal practice, reduces the weight given to this  
14 mitigating factor. With regard to Count 1, inexperience in the practice of law does not mitigate  
15 the submission of documents with forged signatures to the INS.

16 **Recommendation**

17 62. Based on the ABA Standards and the applicable aggravating and mitigating  
18 factors, the Hearing Officer recommends that Respondent Young S. Oh be suspended for a  
19 period of one year.

20  
21 Dated this 22 day of March 2011.

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24 Susan Amini, Bar No. 19808  
Hearing Officer

CERTIFICATE OF SERVICE

I certify that I caused a copy of the PDF, Col & Ho's Recommendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Sarah Collins Respondent/Respondent's Counsel  
at 1001 4th Ave Ste 4200 Seattle WA 98104 by Certified/first class mail  
postage prepaid on the 29th day of March 2011

[Signature]  
Clerk/Counsel to the Disciplinary Board