

FILED

SEP 29 2011

DISCIPLINARY BOARD

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

In re

YOUNG SUK OH,

Lawyer (WSBA No. 29692)

Proceeding No. 05#00203

DISCIPLINARY BOARD ORDER
MODIFYING HEARING OFFICER'S
DECISION

This matter came before the Disciplinary Board at its September 16, 2011, meeting, on automatic review of Hearing Officer Susan Amini's March 22, 2011, decision recommending a one-year suspension following a hearing.

Having heard oral argument, reviewed the materials submitted by counsel, and considered the applicable case law and rules,

IT IS HEREBY ORDERED THAT the Hearing Officer's decision is modified as follows:¹

- (1) Count 1 is dismissed.
- (2) The remaining counts (2 and 3), and the recommended sanction are affirmed.

COUNT 1

Count 1 alleged, "By assisting and/or inducing and/or permitting one or more of his employees to forge one or more documents to be submitted to INS, Respondent violated former RPC 8.4(a), former RPC 8.4(c), and/or former RPC 8.4(d)." Paragraph 41, Third

¹ The vote on this matter was unanimous. Those voting were: Barnes, Bray, Butterworth, Handmacher, Ivarinen, Lombardi, Ogura, Stiles, Trippett and Wilson.

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Amended Complaint. Count 1 fails because a clear preponderance of the evidence did not establish, and the Hearing Officer did not find, that Respondent assisted an employee to forge a document, that Respondent induced an employee to forge a document, or that Respondent permitted an employee to forge a document.²

The Hearing Officer concluded, however, "By permitting one or more of his employees to forge a client's signature on one or more documents submitted to the INS, and by submitting the forged signatures to the INS, Respondent violated former RPC 8.4(a), former RPC 8.4(c) and former RPC 8.4(d)." Paragraph 51, Conclusions of Law. The portion of this Conclusion stating that Respondent permitted an employee to forge a signature on a document was in error because it was not supported by any finding of fact to that effect made by the Hearing Officer.³ The Board notes that the Hearing Officer prefaced this and other paragraphs under the Conclusions of Law heading with a recitation that the following were proven by a clear preponderance of evidence, however the Board interprets the quoted portion of Paragraph 51 as a conclusion of law rather than a finding of fact. The findings of fact are set forth specifically in Paragraphs 1 through 50 under the Finding of Facts heading; those findings do not include a finding that Respondent permitted an employee to forge a document.

The Hearing Officer did find that many of the forgeries would have been apparent on cursory review (Paragraph 15, Findings of Fact), that Respondent's denial of knowledge that he was submitting forged documents was not credible (Paragraph 19, Findings of Fact), and

² Paragraph 51 of the Hearing Officer's decision is stricken. The Board reverses this conclusion and finds that Count 1 was not proven.

³ The Hearing Officer found Ms. Koh's testimony that she saw Mr. Lee forge Mr. Yeum's signature not credible. TR 13:16, 15:4 and TR 648-654. The Hearing Officer did not make findings that the Yeum forgery was done by Oh or his employees, that the forgery was done in Respondent's office, or that Respondent recognized Yeum's signature at the time he signed the documents.

that Respondent knew he was submitting forged documents to the INS (Paragraph 20, Findings of Fact), concluding that Respondent violated former RPC 8.4(a), (c) and (d) (Paragraph 51, Conclusions of Law). The Board agrees with the proposition that knowing submission of forged documents to a tribunal constitutes serious misconduct under the above rules, however observes in this case that the Association at no time charged Respondent with knowing submission of forged documents to the INS. The Board also finds it significant that the Association did not charge Respondent with violation of RPC 3.3(a), the rule relating to making a false statement to a tribunal.

The Association in this case had ample opportunity to articulate a knowing submission charge—the hearing that led to the findings and conclusions under review was based on the fourth version of the Association’s complaint (original followed by three amended versions); the Association had the opportunity prior to, or during, the first or second hearing to move to amend its complaint to include a knowing submission charge had the Association believed that the evidence would support that charge. Although the question whether Respondent knew or didn’t know that submitted documents had forged signatures may have been the subject of testimony and argument during the hearing, the Board is sympathetic with Respondent’s basic due process argument that he was not given notice and opportunity to defend that charge. ELC 10.3(a)(3); *In re Poole*, 156 Wn2d 196, 125 P.3d 954 (2006); *In re Romero*, 152 Wn.2d 124, 94 P.3d 939 (2004).

The Board recognizes that it may have the authority under ELC 10.1(a) incorporating Civil Rules including CR 15, *sua sponte* to amend the complaint to conform to the evidence, i.e. to include a charge that Respondent knowingly submitted a forged document to the INS. *In re Bonet*, 144 W.2d 502, 29 P.3d 1242 (2001). The Board, however, will not exercise that

authority considering the due process concern discussed above. Further, the Board determined that the Association at the hearing did not establish by a clear preponderance of evidence that Respondent knowingly submitted forged documents to the INS, i.e. the Hearing Officer's finding on that subject did not satisfy the substantial evidence test.

COUNTS 2 AND 3

Counts 2 and 3 are adopted.

SANCTION

The Board recommends that the Court impose the 1 year suspension, as explained in the Hearing Officer's decision, with the following amendments.

PARAGRAPH 55

This paragraph is stricken.

PARAGRAPH 60(b)

This paragraph is amended as follows:

~~(b) dishonest or selfish motive: Respondent submitted documents containing forged signatures to a tribunal (INS) without permission or knowledge of the 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;~~

PARAGRAPH 61(f)

The last sentence of this paragraph is stricken.⁴

⁴ The stricken language is "With regard to Count 1, inexperience in the practice of law does not mitigate the submission of documents with forged signatures to the INS."

RECOMMENDATION

The Board adopts the Hearing Officer's sanction recommendation of a one year suspension.

Dated this 29th day of September, 2011.


H.E. Stiles, II
Disciplinary Board Chair

CERTIFICATE OF SERVICE

I certify that I caused a copy of the DB Order Modifying HO's Decision
to be delivered to the Office of Disciplinary Counsel and to be mailed
to Scott Collins Respondent/Respondent's Counsel
at 1001 4th Ave, Ste. 4100 Seattle, WA 98104 by Certified/first class mail,
postage prepaid on the 29th day of September, 2011


Clerk/Counsel to the Disciplinary Board