

FILED

AUG 27 2010

BEFORE THE
DISCIPLINARY BOARD
OF THE
WASHINGTON STATE BAR ASSOCIATION

DISCIPLINARY BOARD

In re)	Public No. 09# 00051
)	
Bakary Fansu Conteh)	FINDINGS OF FACT, CONCLUSIONS
)	OF LAW, AND HEARING OFFICER'S
Lawyer (Bar No. 35098)	RECOMMENDATION
)	
)	(Subject to Protective Order)

Pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (ELC), a hearing was held before the undersigned hearing officer on August 2 and 3, 2010. Kathy A. Cochran appeared for the Association and Responded appeared pro se.

FORMAL COMPLAINT

COUNT ONE

Respondent was charged in Count One of violating RPC 8.4 c) and former RPC 8.1(a) by misrepresenting his employment history on his applications to the Washington State Bar Association.

COUNT TWO

Respondent was charged in Count Two of violating RPC 8.4(1) and 8.4(k) by engaging in the private practice of law without legal authorization and contrary to the immigration laws of the United States.

COUNT THREE

Respondent was charged in Count Three of violating RPC 3.3(a)(1), 8.4(c) and RPC 8.4(d) by misrepresenting his employment history on his Application for Asylum and Withholding of Removal.

HEARING

At the hearing, witnesses were sworn and presented testimony and exhibits were admitted into evidence. Having considered the evidence and arguments, I make the following findings of fact, conclusions of law and recommendations:

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FINDINGS OF FACT

1. Respondent was admitted to the practice of law in the State of Washington on June 21, 2004. Prior to that time, in The Gambia, respondent had pursued a legal study and received a Bachelor of Law degree.
2. On or about June 30, 2002, Respondent entered the United States from The Gambia on a visa with G 2 status to represent the government of The Gambia at the Preparatory Commission of the International Criminal Court (PCICC). G 2 status enables a non immigrant to remain in the United States only for the duration of the time the non immigrant is providing services for or related to his or her function as an employee of the foreign government.
3. Respondent's visa category did not authorize him to undertake any employment in the United States not related to his official function as a representative of The Gambia.
4. The PCICC held its tenth and final session in New York on July 1-12, 2002. Respondent did not leave the United States and did not return to The Gambia.
5. Respondent came to the State of Washington on or about August 2002.
6. In 2002 and 2003 and continuing into 2005, respondent was employed as a nurses assistant for several health and home care companies in the Puget Sound area.
7. Respondent's employment in the health care field was contrary to the immigration laws as his B 2 status did not authorize him to be employed except as an incident to his employment by The Gambia as a representative of the government to the PCICC.
8. In March, 2003, respondent applied for the summer 2003 Washington Bar Examination.
9. Respondent's bar application informed him that he would be subject to discipline if he made a materially false statement or failed to disclose a material fact in connection with the application.
10. Respondent's bar application directed him to list "all employment, or employment status, for the past five years" and to give "all employer names, addresses and phone numbers, your job titles and dates employed."
11. Respondent disclosed only his employment with the government of The Gambia from July, 1999 through July, 2002. Respondent's explanation for omission of his health care employment is that he had to prove that he had

practiced in a common law country for three years in order to be eligible to take the bar examination and he was focused on that. As a result, he failed to properly list his other employment. Respondent stated his employment with The Gambia terminated in July, 2002.

12. Respondent signed his bar application on March 7, 2003, certifying under penalty of perjury that his statements were "full, true and correct." Respondent took the Summer bar examination and did not pass.
13. In December 2003, Respondent applied for the winter 2004 bar examination. On December 18, 2003, Respondent signed a declaration confirming that the information in his prior application was current and correct. That was not true as it did not disclose his health care employment.
14. The Association has failed to prove by a preponderance of the evidence that Respondent's failure to list his health care employment on the various application documents to the Washington State Bar Association was material. Jean McElroy, the Director, Regulatory Services of the Washington State Bar Association testified that the Association would not have processed Respondent's application any differently if Respondent had listed his health care employment. The association would not have contacted the unlisted employers or taken any other action if the employers had been listed. I also accept the Respondents explanation and find this omission was inadvertent.
15. On June 14, 2004, Respondent signed his Oath of Attorney which states, in part, "I am fully subject to the laws of the State of Washington and the laws of the United States and will abide by the same." Respondent, as is anyone in this state, was at that time subject to the laws of this State and the United States. The promise to abide by those laws is prospective and, standing alone, does not provide a basis for discipline. Discipline, if any, would depend on future violations of law and the classification of those events.
16. On or about July 1, 2004 Respondent began the practice of law as a sole proprietor and has practiced continually since then. His practice has been predominately immigration law. In May, 2010, Respondent was granted asylum, subject to a background check, and has been allowed to remain in the United States and be employed in any capacity. Prior to being granted asylum, Respondent's previous practice of law was beyond the scope of his G 2 status as it was not employment for or related to his duties for The Gambian government and, thus, was in violation of the United States immigration laws.
17. In July, 2004, Respondent filed an Immigrant Petition for Alien Worker seeking a change of status to an employment based immigrant which would

have allowed him to work in the United States at any lawful job. The Petition was denied. Respondent's appeal was dismissed in January, 2007.

18. In November, 2007, Respondent's wife filed an Application for Asylum listing Respondent as her husband who would presumably benefit by being able to stay within the United States if asylum were granted to Respondent's wife. Very soon it became apparent that his wife's Petition may be denied on the basis that a Petition for Asylum ordinarily must be filed within one year of entry into the United States or, if later, within one year of a status change which would subject the person to removal.
19. Exhibit 42 purports to be a letter from the Republic of the Gambia dated December 17, 2007 on printed government letterhead addressed to Respondent as Sr. State Counsel at the Attorney Generals Chambers in The Gambia. It states in relevant part "... your service with The Gambia has been terminated with immediate effect. This termination is based on your personal disrespect towards the President of the Gambia... and your criticism of the human rights records of his government." The letter indicates a copy of the letter was sent to four places, including the Director of Treasury whose received stamp is on the letter. Respondent acquired the letter soon after its date. Respondent provided a copy of this letter to the United States Citizenship and Immigration Services (USCIS). The USCIS accepted the letter and in subsequent pleadings indicated Respondent's employment with The Gambia terminated in December 2007. Respondent used this letter in his asylum proceedings to assert that his Application for Asylum was timely because it was within one year of his change of status. This assertion was accepted and Respondent's asylum application was processed and he was granted asylum, subject to a later background check.
20. Asylum proceedings are confidential. The USCIS and the Bar Association are prohibited from contacting the government of The Gambia to verify the authenticity or lack thereof of the letter of December 17, 2007.
21. Respondent states that in December 2007 he contacted a relative who works in the Directorate of Treasury of The Gambia and asked him to look at Respondent's employment records with The Gambian government. The relative purportedly found this letter and sent a copy to Respondent.
22. The Respondent has had no contact of any kind with the government of The Gambia or any of its agencies since July of 2002. On his Bar application, Respondent stated under penalty of perjury that his employment with The Gambia ended in July, 2002. Respondent has not filed any documents with The Gambia or reports to it or to others on its behalf. He has not been paid by The Gambia. He has, during this time, been fearful of what the government of The Gambia would do to him if he ever reentered the country and he has spoken at events criticizing the government. Respondent has

never advised The Gambia of his address and does not want the government of The Gambia to know his address. Respondent now claims his employment was on an "inactive status."

23. In February 2008, Respondent was placed in removal proceedings, the first step towards securing his deportation.
24. On March 25, 2008, respondent filed an Application for Asylum and for Withholding of Removal. The application directed Respondent to provide information about his "employment" during the past five years and the name and address of each "employer". In response, Respondent stated he was employed as an attorney from June 2004 to the present and as a "Sr. State Counsel" for Gambia from February 2002 to December 2007. Respondent did not disclose that he had been employed as a health care provider during the past five years which employment extended into 2005. On March 25, 2008, Respondent signed the application under penalty of perjury certifying that it was true and correct.
25. Whatever Respondent's status might be determined to be in The Gambia, he was not employed by the government of The Gambia in any usual sense of the word since July of 2002. Without the determination of employment by The Gambia, The Asylum Application would have likely been denied.
26. Respondent's failure to disclose his health care employment was material.
27. The practice of law arguably could be related to Respondent's work for the government of The Gambia. Health care work would not. Disclosure of health care work may have triggered further investigation by the immigration authorities of Respondent's claimed employment by The Gambia.
28. Intentional misrepresentation on papers submitted to the immigration authorities may be prosecuted criminally. The immigration laws involving overstaying a valid entry into the United States and being employed outside of ones status are civil in nature. The remedy for violation of these laws is removal. The civil laws are arranged, among other things, to provide a means for a non immigrant such as Respondent to seek status to stay in the United States and be employed if a proper change of status is granted.
29. Respondent in July, 2004 (See Finding of Fact 17) attempted to change his status to avoid removal. In doing so, he disclosed that he had been and was practicing law. At no time has Respondent attempted to hide his location or his work as a lawyer.

CONCLUSIONS OF LAW

Count One

- (1) Count I of the Formal Complaint against respondent has not been proven. Respondent's failure to list his employment as a health care provider on his Bar applications did not involve fraud, deceit or misrepresentation as those terms are used in RPC 8.4 (c). The omitted facts were not material as required for a violation of the former RPC 8.1 (a).

Count Two

- (2) Count 2 alleges a violation of RPC 8.4 (i) based on Respondent's practice of law in violation of the immigration laws of the United States, a fact proven by the Association. As a G 2 status, Respondent was not allowed to work other than directly or indirectly for the government of The Gambia. This work outside one's status is a civil infraction under immigration law. The immigration laws allow a non immigrant to seek permission to remain in the United States through various potentially lengthy procedures. The non immigrant is not required to leave the United States during the course of these proceedings. Presumably the non immigrant must do something while here for sustenance during the time required to process various applications. The relevant question is whether working outside the scope of Respondent's G 2 status is an "act involving moral turpitude, or corruption... or any other act which reflects disregard for the rule of law." I find that it is not.
- (3) Count 2 also alleges a violation of RPC 8.4 (k) which states that it is professional misconduct for a lawyer to "violate his or her oath as an attorney." Presumably this is based in part on the portion of the oath affirming one is subject to the laws of the State and the United States. There is no violation here as Respondent was subject to those laws. To the extent that it relies on the portion of the oath agreeing to "abide by the same," I find no violation as that is prospective and already covered by RPC 8.4 (i).

Count Three

- (4) Count 3 alleges a violation of RPC 3.3(a)(1), RPC 8.4(c) and RPC 8.4(d) by Respondent's misrepresentation of his employment history in his Application For Asylum and Withholding of Removal.
- (5) RPC 3.3(a)(1) provides that "A lawyer shall not knowingly ... make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact... previously made to the tribunal by the lawyer.... Under RPC 1.0(f) knowingly "denotes actual knowledge of the fact in question." Respondent's assertion of his employment through December 2007 by the government of The Gambia was false and was knowing. The Washington comment states that RPC 3.3 (a) (1) applies to a "lawyer who is representing a client...." However, the rule does not so limit its application and I apply it to this situation.

- (6) RPC 8.4(c) provides that it is professional misconduct "to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondents conduct had a purpose to deceive and, is therefore, fraudulent. See RPC 1.0 (d).
- (7) RPC 8.4 (d) provides that it is professional misconduct to "engage in conduct that is prejudicial to the administration of justice." Respondents conduct was prejudicial as his false and incorrect statements likely influenced the tribunal to reach a decision which it otherwise would not have made.

PRESUMPTIVE SANCTIONS

The ABA Standards for Imposing Lawyer Sanctions establish presumptive disciplinary sanctions for violation of the Rules of Professional Conduct. Standard 6.1 is relevant to the sanction that should be imposed for the conduct which I have determined to be subject to discipline in Count 3. This standard applies to "conduct that is prejudicial to the administration of justice or that involves dishonesty, fraud, deceit or misrepresentation to a court." While the Standard speaks primarily to situations where a lawyer represents a client in a court proceeding, it is relevant here where the conduct is by the lawyer pursuing the lawyer's own interest.

Suspension is generally appropriate "when a lawyer knows that false statements or documents are being submitted to the court... and causes an adverse or potentially adverse effect on the legal proceeding."

AGGRAVATING CIRCUMSTANCES

Aggravating circumstances include the following:

- (1) Prior disciplinary offense for negligent misrepresentation on behalf of a client resulting in a reprimand. Review No. 08#00003.
- (2) Selfish motive.
- (3) Refusal to acknowledge wrongful nature of conduct.

MITIGATING CIRCUMSTANCES

Mitigating circumstances include the following:

- (1) Cooperative attitude towards disciplinary proceedings.
- (2) Significant pro bono work for persons without funds to retain a lawyer.

RECOMMENDATION

My recommendation is suspension for a period of 60 days. I recognize that suspension should normally be for at least six months. This is too harsh. Protection of the public and

the administration of justice requires no more. Respondent has a plausible argument that his status with The Gambian government remained until December 2007, even though it did not constitute employment, based on the letter of December 17, 2007. While the letter is improbable, the Association has failed to prove by a preponderance of the evidence that the letter is not authentic.

August 26, 2010



Malcolm L. Edwards

CERTIFICATE OF SERVICE

I certify that I caused a copy of the _____ to be delivered to the Office of Disciplinary Counsel and to be mailed at _____, Respondent/Respondent's Counsel, by Certified/first class mail, postage prepaid on the _____ day of _____, _____ Clerk/Counsel to the Disciplinary Board

CERTIFICATE OF SERVICE

I certify that I caused a copy of the findings of fact, conclusions of law to be delivered to the Office of Disciplinary Counsel and to be mailed to Bakary Fanne Conneh, Respondent/Respondent's Counsel at PO Box 4009, Seattle WA 98194, by Certified/first class mail, postage prepaid on the 27th day of August, 2010 born

Juli A. Shannan
Clerk/Counsel to the Disciplinary Board

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DISCIPLINARY BOARD

August 26, 2010

Allison Sato
Clerk to the Disciplinary Board
Washington State Bar Association
1325 Fourth Avenue
Suite 600
Seattle, WA 98101-2539

Re: Public No. 09#00051
Bakary Fansu Conteh

Dear Ms. Sato:

Enclosed please find the original Findings of Fact, Conclusions of Law, and Hearing Officer's Recommendation in the subject proceeding. I have not provided copies of this to any of the parties or counsel.

Very truly yours,

Malcolm L. Edwards

Very truly yours,

Malcolm L. Edwards

CC: Note World