

**FILED**

FEB 07 2011

BEFORE THE **DISCIPLINARY BOARD**  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION

In re

**BAKARY F. CONTEH**  
Lawyer (WSBA No. 35098)

Proceeding No. 09#00051

DISCIPLINARY BOARD ORDER  
MODIFYING HEARING OFFICER'S  
DECISION

This matter came before the Disciplinary Board at its January 7, 2011 meeting, on automatic review of Hearing Officer Malcolm L. Edwards', August 26, 2010 decision recommending a 60-day suspension, following a hearing.

Having reviewed the materials submitted by the parties, heard oral argument and considering the applicable case law and rules,

**IT IS HEREBY ORDERED THAT** the Hearing Officer's decision is amended as follows: the Findings of Fact are adopted except for one correction to Finding 7; the Conclusions of Law are amended to reflect that the record establishes a violation of Count 2; and the Sanction Recommendation is increased to an 18-month suspension.<sup>1</sup>

**FINDINGS OF FACT**

7. Respondent's employment in the health care field was contrary to the immigration laws as his G2 status did not authorize him to be employed except as an incident to his

<sup>1</sup> The vote on this matter was 11-0. Those voting were Bahn, Barnes, Butterworth, Handmacher, Ivarinen, Maier, Ogura, Stiles, Trippett, Waite and Wilson. Lombardi recused from participation in this matter. Mr. Lombardi did not vote and was not present during the deliberations.

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1 employment by The Gambia as a representative of the government to the PCICC.<sup>2</sup>

2 **CONCLUSIONS OF LAW**

3 Count 2 states "by engaging in the private practice of law without legal authorization  
4 and contrary to the immigration laws of the United States, respondent violated RPC 8.4(i) and  
5 8.4(k)." RPC 8.4(i) states that it is professional misconduct for a lawyer to commit any act  
6 involving moral turpitude, or corruption, or any unjustified act of assault or other act which  
7 reflects disregard for the rule of law, whether the same be committed in the course of his or her  
8 conduct as a lawyer, or otherwise, and whether the same constitutes a felony or misdemeanor or  
9 not; and if the act constitutes a felony or misdemeanor, conviction thereof in a criminal  
10 proceeding shall not be a condition precedent to disciplinary action, nor shall acquittal or  
11 dismissal thereof preclude the commencement of a disciplinary proceeding. RPC 8.4(k) states it  
12 is professional misconduct for a lawyer to violate his or her oath as an attorney. The Oath of  
13 Attorney [APR 5(e)] includes the statement "I am fully subject to the laws of the State of  
14 Washington and the laws of the United States and will abide by the same." Finding of Fact 16  
15 states:

16  
17 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 G2 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.

18 This Finding of Fact, along with POF 7, establish that Respondent's conduct violated the Oath

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<sup>2</sup> Original Finding of Fact 7 stated: Respondent's employment in the health care field was contrary to the immigration laws as his B2 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.

1 of Attorney, and therefore, RPC 8.4(k).<sup>3</sup>

2 SANCTION RECOMMENDATION

3 The presumptive sanction for Count II is suspension under ABA Standard 7.2<sup>4</sup> and *In re*  
4 *Disciplinary Proceeding Against Perez-Peña*, 161 Wn.2d 820, 834, 168 P.3d 408 (2007).  
5 Respondent knowingly violated the Oath of Attorney by practicing law beyond the scope of his  
6 G2 status in violation of the laws of the United States. Respondent's violation of the Oath is  
7 directly related to the practice of law.

8 The presumptive sanction for violations of both counts II and III is suspension. The  
9 hearing officer found two mitigating factors and three aggravating factors. Although the  
10 hearing officer found that respondent had a cooperative attitude towards the disciplinary  
11 proceeding, the record did not establish cooperation "above and beyond" that required of all  
12 lawyers. The Board accorded this mitigating factor little weight. The Board finds it  
13 particularly important that Respondent has a prior reprimand for misrepresentations to the court.  
14 The aggravating factors outweigh the mitigating factors in this matter.

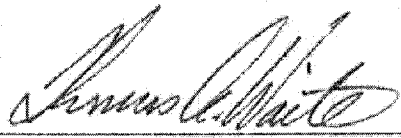
15 If suspension is the presumptive sanction, the appropriate range is generally six months  
16 to three years, with the minimum sanction being appropriate only when the mitigating factors  
17 outweigh the aggravating factors. *In re Behrman*, 165 Wn.2d 414, 426, 197 P.3d 1177 (2008).  
The minimum six-month suspension is not appropriate in this matter, because there are multiple  
offenses and because the aggravating factors outweigh the mitigating factors. This is  
respondent's second disciplinary matter involving misrepresentation. In this matter, the hearing  
officer found that respondent's conduct "had a purpose to deceive and, is therefore, fraudulent."  
[Conclusions of Law 6] The Board recommends an 18-month suspension based on respondent's  
submission of false statements to a tribunal and prior discipline for a similar RPC violation.

<sup>3</sup> The Hearing Officer stated "[T]here 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). " Respondent's work as an attorney occurred after he took the oath, so the conclusion that the oath only applies prospectively is irrelevant. The Board also believes that a violation of the laws of the United States that is not a crime can violate RPC 8.4(k) and not be subsumed by RPC 8.4(i). Here, the Hearing Officer found that Respondent's conduct was a civil violation of the immigration laws.

<sup>4</sup> ABA Standard 7.2: Suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional, and causes injury or potential injury to a client, the public, or the legal system.

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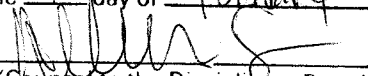
Dated this 2nd day of February, 2011.



Thomas A. Waite  
Disciplinary Board Vice Chair

**CERTIFICATE OF SERVICE**

I certify that I caused a copy of the Board Order Modifying the Decision  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Mark V. Jettler Respondent/Respondent's Counsel  
at PO Box 4099 Seattle WA 98104 by Certified first class mail,  
postage prepaid on the 2nd day of FEBRUARY, 2011

  
Clerk/Counsel to the Disciplinary Board