

STATEWIDE GRIEVANCE COMMITTEE

Qing Li
Complainant

vs.

Walter Burrier
Respondent

Grievance Complaint #07-0490

DECISION

Pursuant to Practice Book §2-35, the undersigned, duly-appointed reviewing committee of the Statewide Grievance Committee, conducted hearings at the Superior Court, 80 Washington Street, Hartford, Connecticut on October 2, 2008, December 4, 2008 and June 4, 2009. The October 2, 2008 and December 4, 2008 hearings addressed the record of the complaint filed on May 22, 2007, and the probable cause determination filed by the Windham Judicial District Grievance Panel on August 21, 2007, finding that there existed probable cause that the Respondent violated Rules 1.1, 1.4(a) and (b), 5.5(1) and 8.4(1) of the Rules of Professional Conduct and Practice Book §2-32(a)(1).¹

This matter was initially transferred to California by Disciplinary Counsel on January 21, 2008. On May 7, 2008, California declined to take jurisdiction over this matter and a hearing was scheduled for October 2, 2008 before this reviewing committee. Notice of the hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on September 5, 2008. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent, represented by Attorney William Bloss, appeared at the hearing. At the hearing, this reviewing committee heard argument on the Respondent's motion to dismiss due to a lack of subject matter jurisdiction. This reviewing committee denied the motion, but granted Disciplinary Counsel's oral motion for a continuance.

A subsequent hearing was scheduled for December 4, 2008. Notice of the December 4, 2008 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on October 30, 2008. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent, represented by Attorney Bloss, appeared at the hearing and testified. One exhibit was admitted into evidence.

On December 9, 2008, this reviewing committee issued a contemplated finding of probable cause. By letter dated December 22, 2008, the Respondent requested to be heard at a

¹ Citations relate to Rules as enacted in 2001-2004.

hearing on the contemplated finding of probable cause. On March 12, 2009, the reviewing committee of Attorney Geoffrey Naab, Attorney Nancy Fraser, and Mr. Peter Jenkins (hereinafter, "Naab reviewing committee") conducted a hearing to address the contemplated finding of probable cause. One exhibit was admitted into evidence. Thereafter, on March 20, 2009, the Naab reviewing committee issued a probable cause determination, finding probable cause that the Respondent violated Rules 5.5(2) (2005), 8.3(a)(2005) and 8.4(4) of the Rules of Professional Conduct.

On June 4, 2009, the undersigned reviewing committee conducted a hearing to address the probable cause determination rendered by the Naab reviewing committee. Notice of the June 4, 2009 hearing was mailed to the Complainant, to the Respondent and to the Office of the Chief Disciplinary Counsel on May 1, 2009. Pursuant to Practice Book §2-35(d), Assistant Disciplinary Counsel Karyl Carrasquilla pursued the matter before this reviewing committee. The Complainant did not appear at the hearing. The Respondent, represented by Attorney Bloss, appeared at the hearing.

This reviewing committee finds the following by clear and convincing evidence:

In December of 2000, the Complainant, a citizen of China, retained the law firm of Lamonica, Cooper and Associates (hereinafter, the "Lamonica firm") to file a political asylum application on his behalf in the Immigration Court in California. The Lamonica firm subsequently retained the Respondent to represent the Complainant at hearings before the Immigration Court. The Respondent filed an appearance as the attorney of record for the Complainant and represented the Complainant at hearings on May 29, 2001, January 7, 2002 and February 13, 2002. Following the February 13, 2002 hearing, the Immigration Judge dismissed the Complainant's application for asylum.

The Complainant paid the Lamonica firm to appeal the decision to the Board of Immigration Appeals (hereinafter, "BIA"). The Lamonica firm retained the Respondent to prepare and file the appeal. The Respondent filed an appearance as the attorney of record and a notice of appeal with the BIA on behalf of the Complainant on March 13, 2002. No attorneys from the Lamonica firm filed an appearance in the case. One attorney, Mr. Lamonica, did not practice immigration law and the other attorney, Mr. Cooper, was in ill health. The Respondent had until August 19, 2002 to file the BIA brief. On July 29, 2002, the Respondent filed a request for an extension of time to file the brief. On August 2, 2002, the BIA granted the Respondent an extension until September 9, 2002.

The Respondent, thereafter, returned the Complainant's file to the Lamonica firm because the firm failed to pay the Respondent's fee. The Respondent recommended several other individuals to draft the brief, including Walter Wenko, a disbarred California attorney. Mr. Wenko was disbarred from the California bar on December 19, 1998 and suspended from the BIA on May 23, 2001. The Respondent did not withdraw his appearance for the Complainant in connection with the appeal. On August 19, 2002, a brief, purportedly signed by the Respondent, was filed with the BIA on behalf of the Complainant. This brief was

written and signed by Mr. Wenko who forged the Respondent's signature. The Respondent did not read the brief or receive a copy of the brief.

In late 2003, the Complainant learned that the Lamonica firm had closed without providing any notice to the Complainant. On January 15, 2004, the BIA denied the Complainant's appeal. The Respondent received notice of the decision but did not contact the Complainant because the Lamonica firm had closed and he did not have a current address for the Complainant. The Respondent did not investigate how an appeal brief was filed in a case where he was the only attorney of record, when he did not draft or review the brief. The Complainant had several mailing addresses during this time period and did not keep the Lamonica firm or the Respondent informed as to his current address. The Respondent attempted to contact the Complainant through a former employee of the Lamonica firm. The Complainant was not advised of the BIA's decision. In or about March of 2004, the Complainant discovered that his file had been transferred to King Plan Immigration Services (hereinafter, "King Plan"), a company that provided immigration services, including filing, translations and immigration paperwork; it was not a law firm. The Respondent had done legal work for King Plan in the past.

The Complainant paid King Plan to review his file and advise him regarding the status of his case. In or about August of 2004, without the Complainant's knowledge, Mr. Wenko prepared a motion to reopen the BIA's decision and filed it under the Complainant's signature. The BIA denied the motion on October 5, 2004. Subsequently, on October 13, 2004, King Plan was retained to represent the Complainant in an appeal to the Ninth Circuit. The retainer agreement provided by King Plan indicated that King Plan and the Respondent would represent the Complainant in an appeal to the Ninth Circuit. The retainer agreement was signed by King Plan, but was never signed by the Complainant or the Respondent. The Respondent refused to handle the Complainant's Ninth Circuit appeal since he had been suspended from practicing law before the Ninth Circuit.

In 2004, the Respondent met with Mr. Wenko and Jennie Chen of King Plan to discuss the denial of Mr. Wenko's "pro se" motion to reopen the BIA appeal. They also discussed having Mr. Wenko prepare a Ninth Circuit appeal and brief and filing this "pro se". Mr. Wenko intended to use a Lozada defense claiming that the Respondent had provided the Complainant with ineffective assistance of counsel. Mr. Wenko was retained by King Plan to prepare the appeal to the Ninth Circuit. Mr. Wenko never filed an appeal brief and kept the filing fee to file the appeal. The appeal was dismissed in January of 2005 because Mr. Wenko failed to pay the filing fee, which had been provided to him.

In or about April of 2005, the Complainant met with the Respondent. The Respondent advised the Complainant that Mr. Wenko had prepared the BIA brief and that the BIA appeal had been denied in January of 2004. The Respondent was suspended from the practice of law in Connecticut on April 13, 2005 and has not been reinstated.

In preparing a defense to this grievance complaint, the Respondent obtained a copy of the BIA brief drafted by Mr. Wenko and reviewed the brief. The Respondent determined that the brief was inadequate and failed to raise valid appeal issues the Complainant had. The Respondent did not prepare or file the appeal brief with the BIA and determined his signature on the brief was forged by Mr. Wenko. At some point, the Respondent learned that Mr. Wenko had also forged another attorney's signature under similar circumstances. At the hearing on December 4, 2008, the Respondent acknowledged that he never reported this conduct to the police or the California Bar.

Following the December 4th hearing, this reviewing committee issued a contemplated finding of probable cause on December 9, 2008, finding probable cause, inter alia, that the Respondent's failure to inform the appropriate disciplinary authorities of Mr. Wenko's actions constituted violations of several Rules of Professional Conduct. Thereafter, on March 3, 2009, the Respondent forwarded a letter to the Executive Office of Immigration Review advising them that someone had forged his signature on a brief and it may have been Mr. Wenko. The letter makes no mention of the Respondent's suspicions that Mr. Wenko had forged the Complainant's signature or absconded with the Complainant's Ninth Circuit filing fee. The letter makes no mention of the Respondent's knowledge that Mr. Wenko has filed and drafted ghostwritten pro se briefs before the BIA and Ninth Circuit.

This reviewing committee also considered the following:

The Respondent has previously been disciplined for soliciting and assisting Mr. Wenko in the unauthorized practice of law by having Mr. Wenko prepare a "pro se" brief for the Ninth Circuit on behalf of a client. See Grigoryan v. Burrier, Grievance Complaint #05-0702 (February 17, 2006). The Respondent has an extensive disciplinary history, which ultimately led to his suspension in Connecticut from the practice of law, as well as his suspension from practicing before the BIA and the Ninth Circuit.

When asked why the Respondent did not notify any governmental authorities upon realizing that Mr. Wenko had absconded with the Complainant's \$250 and was in the habit of forging other people's signature to briefs, including "pro se" briefs, the Respondent replied, "I sometimes don't—didn't exercise, and sometimes still don't exercise, the best judgment of people." Dec. 4, 2008 Hearing Tr. at 35. When asked whether or not he felt it was his professional responsibility to report Mr. Wenko, the Respondent replied, "I didn't think—I honestly didn't give it much thought. That's the truth. I was very, very busy with my practice." Id. at 33.

The Complainant alleged that Mr. Wenko prepared the BIA appeal brief and motion to reopen at the request of the Respondent and that the Complainant's signature on the motion to reopen was forged. The Complainant was not available to testify in regard to these grievance proceedings.

The Respondent argued that he believed Mr. Cooper was going to supervise any brief writing done by Mr. Wenko, although he also acknowledged that Mr. Cooper was not doing immigration work because of his ill health. The Respondent also argued that he was merely a subcontractor working for Attorney Cooper and that the Complainant's attorney was really Attorney Cooper not the Respondent.

The Respondent argued that he did not violate Rule 5.5(2) because disbarred attorneys are allowed to prepare legal pleadings including briefs in California under the supervision of a licensed attorney. He testified that he thought Attorney Cooper would supervise Mr. Wenko, if Mr. Wenko drafted the BIA appeal brief. The Respondent argued that he did not violate Rule 8.3(a) because this rule does not apply to disbarred attorneys and that disbarred attorneys are not subject to the jurisdiction of any disciplinary authorities.

The Respondent acknowledged that he received notice of the BIA's dismissal of the Complainant's appeal in January of 2004. The Respondent maintained that he attempted to contact the Complainant, but was unable to do so because the Complainant had taken a job out-of-state and the Respondent did not have the Complainant's new address. The Respondent further maintained that he attempted to obtain the Complainant's address from the Lamonica firm, but was unable to do so because the firm had closed. In his answer to the grievance complaint, the Respondent maintained that his failure to timely file an answer to the grievance complaint was due to the difficulty he experienced gathering evidence in support of his claims.

This reviewing committee concludes by clear and convincing evidence that the Respondent engaged in unethical conduct in violation of the Connecticut Rules of Professional Conduct. We consider each Rule for which probable cause was found in turn:

Rule 1.1:

Rule 1.1 requires an attorney to provide competent representation to a client. The evidence shows that the Lamonica firm did not put in an appearance on behalf of the Complainant before the BIA and that the Respondent did appear on behalf of the Complainant. The Respondent knew that the appeal and appeal brief were time sensitive. When the Lamonica firm failed to pay him, the Respondent did not ask the BIA for permission to withdraw his appearance nor did he withdraw his appearance from the case. The Respondent recommended other attorneys write the brief, including a disbarred attorney Mr. Wenko. The Respondent did no further work on this case and made no attempt to keep himself informed as to whether or not a brief was filed, nor did he review Mr. Wenko's brief before it was filed. Upon review of the brief Mr. Wenko fraudulently filed in preparation for this grievance complaint, the Respondent gave his opinion that said brief was inadequate.

This reviewing committee finds clear and convincing evidence that the Respondent violated Rule 1.1 by failing to file an appeal before the BIA after undertaking to provide the Complainant with such representation as his attorney of record. While an attorney may withdraw from representation if the client fails to pay, he can only do so after giving the client

notice and if such a withdrawal will not materially affect the interests of the client. See Rule 1.16(b). The Respondent argued that he was merely a sub-contactor working for the Lamonica firm. We disagree. The Lamonica firm never had an appearance in the case. The Respondent owed a direct duty to the Complainant as a client even if he was being paid by a middleman. The Respondent violated the duty to provide competent representation by failing to file a brief to the BIA in an appeal he had undertaken and by failing to review and supervise the filing of a brief by another person.

Rule 1.4(a) and (b):

This reviewing committee concludes that the record does not substantiate a finding by clear and convincing evidence that the Respondent violated Rule 1.4(a) and (b) of the Rules of Professional Conduct. The Complainant failed to appear and testify. There was insufficient evidence that the Respondent failed to communicate with the Complainant. The Complainant moved around and changed addresses frequently during the representation and did not provide the Respondent with the means to contact him.

Rule 5.5 (2005):

This reviewing committee concludes that the record does not substantiate a finding by clear and convincing evidence that the Respondent violated Rule 5.5(1) (2005) of the Rules of Professional Conduct, which states: "A lawyer shall not practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." There is insufficient evidence that the Respondent practiced immigration law after he was suspended from the practice of law before the BIA and the Ninth Circuit.

However, we conclude that there is clear and convincing evidence that the Respondent violated Rule 5.5(2) (2005) of the Rules of Professional Conduct, which states: "A lawyer shall not assist a person who is not a member of the bar...or who has been...disbarred...in the performance of activity that constitutes the unauthorized practice of law."

The evidence shows that at all relevant times, Mr. Wenko was disbarred in California and suspended from practicing before the BIA. The Respondent had previously worked with Mr. Wenko as a disbarred attorney. The Respondent recommended the Lamonica firm use Mr. Wenko to draft the appellate brief. The Respondent failed to withdraw his appearance in the case, which allowed Mr. Wenko to file the forged brief in the Respondent's name. The Respondent failed to inquire into what brief had been filed before the BIA while he was attorney of record in the case. The Respondent met with Mr. Wenko after Mr. Wenko had filed the "pro se" Motion to Reopen accusing the Respondent of ineffective assistance of counsel. The Respondent consulted with Mr. Wenko at King Plan regarding the filing of a "pro se" brief to the Ninth Circuit on behalf of the Complainant.

Based on the foregoing clear and convincing evidence, we believe that the Respondent through both his actions and inactions assisted a disbarred attorney in the unauthorized practice

of law. We are not persuaded by the Respondent's argument that he did not violate this rule because a disbarred attorney can write briefs, if he is under supervision by a licensed attorney. In this case, there was no evidence that the Respondent supervised the drafting and filing of the BIA brief and the consultation with Mr. Wenko regarding the filing of a Ninth Circuit appeal occurred after the Respondent was suspended from practice before the Ninth Circuit. Further, we do not believe that proper supervision of a disbarred attorney includes the allowance of forged signatures or the ghostwriting of pleadings for parties appearing pro se. We believe that as the attorney of record, it was the Respondent's non-delegable duty to supervise any pleadings prepared on behalf of the Complainant before the BIA. The Respondent's failure to supervise the drafting of the Complainant's appellate brief to the BIA, the Respondent's tacit approval of Mr. Wenko's actions including the filing of a "pro se" motion to the BIA and his discussion with Mr. Wenko as to how to file a "pro se" Ninth Circuit appeal demonstrate by clear and convincing evidence that the Respondent violated Rule 5.5(2) (2005) of the Rules of Professional Conduct.

Rule 8.4(1):

This reviewing committee concludes that there is clear and convincing evidence that the Respondent violated Rule 8.4(1) (2005) of the Rules of Professional Conduct. As previously stated, the evidence shows that the Respondent through his actions and inactions assisted Mr. Wenko to continue to practice before the BIA and the Ninth Circuit despite the fact that he was suspended from such practice. We are particularly troubled by the meeting at King Plan in which the Respondent learned that Mr. Wenko had forged both the Respondent's signature and the Complainant's signature on various motions and intended to do so before the Ninth Circuit, either by forging the Complainant's signature or by preparing a ghostwritten brief for the Complainant's signature. The Respondent through his silence and through his consultation with Mr. Wenko on the substance of the Complainant's case assisted him in perpetrating a fraud on the court. We find there is clear and convincing evidence that the Respondent violated Rule 8.4(1) by assisting Mr. Wenko in the unauthorized practice of law.

Practice Book §2-32(a)(1):

Although the Respondent failed to timely file an answer to the grievance complaint, we conclude that the Respondent provided good cause for his failure to do so. The delay was based on his attempt to track down the relevant records and evidence needed to explain what happened to the Complainant's immigration case. While it would have been preferable for the Respondent to request an extension of time rather than failing to meet the deadline, we conclude that the Respondent's conduct did not rise to the level of a violation of Practice Book §2-32(a)(1).

Rule 8.3(a)(2005):

This reviewing committee concludes that there is clear and convincing evidence that the Respondent violated Rule 8.3(a) (2005) of the Rules of Professional Conduct, which states, in part:

A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority....

The commentary notes: "Self-regulation of the legal profession requires that members of the profession initiate disciplinary investigation when they know of a violation of the Rules of Professional Conduct."

In this case, the Respondent knew that Mr. Wenko forged his signature on an inadequate brief on behalf of the Complainant. He suspected Mr. Wenko forged the Complainant's signature on a motion to reopen. He knew that Mr. Wenko avoided his suspension from the BIA by filing pro se briefs and perpetrating a fraud on the courts. He suspected Mr. Wenko absconded with the Complainant's filing fee. He knew Mr. Wenko intended to file a pro se brief with the Ninth Circuit despite his relevant suspensions and disbarment. Yet Respondent never brought this to the attention of the relevant courts, the California bar or the federal immigration disciplinary authorities for an investigation. Only after contemplated probable cause was issued in this case, did the Respondent write a half hearted letter to Bar Counsel for the Executive Office for Immigration Review reporting that Mr. Wenko may have filed a brief with a forged signature on it. The letter itself is disingenuous in that the Respondent should have investigated the filing of the BIA brief as soon as he received notice under his appearance that a brief not signed by him had been filed. The letter also fails to report the Respondent's knowledge that Mr. Wenko filed a pro se motion to reopen that may have contained the Complainant's forged signature, Mr. Wenko absconded with the Complainant's funds, and that Mr. Wenko prepared pro se briefs without legal supervision for the Ninth Circuit.

The Respondent argued that there was no need to report the conduct of a disbarred attorney to the California authorities because Mr. Wenko no longer had a license to practice law in California. We note that California allows disbarred attorneys to apply for reinstatement and can use the disbarred attorney's conduct during the disbarment as grounds for denial of a reinstatement application. See Rule 662 of the Rules of Procedure of the State Bar of California (explaining the process to reapply after disbarment) and Rule 9.20(d) of the California Rules of Court (noting failure of a disbarred attorney to comply with Rule 9.20 would be grounds for denial of reinstatement). We also note that Mr. Wenko had been suspended from practice before the BIA, where this conduct took place, and had not received the more serious sanction of expulsion, which is permanent; thus the BIA could have imposed further discipline against Mr. Wenko for his conduct. 8 CFR 1003.101(a)(2).

For all of the foregoing reasons, we believe the Respondent violated Rule 8.3(a) of the Rules of Professional Conduct because he had a duty to report Mr. Wenko's conduct to both the California and immigration disciplinary authorities when he learned there was evidence that Mr. Wenko, a disbarred attorney, absconded with Complainant's filing fee, forged both the Complainant and Respondent's signatures on pleadings, and filed or intended to file ghostwritten pro se pleadings before the BIA and Ninth Circuit. We do not believe the Respondent's March 3, 2009 letter to the EOIR was either timely or adequate in addressing his duties under Rule 8.3(a) as an officer of the court.

Rule 8.4(4):

Finally we consider whether or not the Respondent's conduct was prejudicial to the administration of justice in violation of Rule 8.4(4) of the Rules of Professional Conduct. We believe there is clear and convincing evidence that the conduct found throughout this decision was in violation of Rule 8.4(4).

We first note that the Respondent never took responsibility for the attorney client relationship he had with the Complainant and made great attempts to minimize his involvement by calling himself a "sub-contractor". The Respondent filed an appeal on behalf of the Complainant as his attorney of record, and yet failed to file a brief because the LaMonica firm did not pay him. The Respondent failed to notify his client, the Complainant and the courts that he intended to withdraw from the Complainant's case. Although the Respondent did not do any further work on the case, he failed to withdraw from the case and Mr. Wenko used that failure to perpetrate a fraud on the court by submitting a forged brief. The Respondent admits that the forged brief was inadequate and when he received notice of the appeal being dismissed, he made no inquiries into who had filed the appellate brief despite the fact that he was the only attorney with an appearance in the file. Later, the Respondent obtained knowledge that Mr. Wenko had filed a pro se motion in the case, but failed to inform the court. The above conduct was prejudicial to the administration of justice in that the Complainant's ability to raise valid issues on appeal was delayed and compromised and the ability to process files and appeals efficiently through the BIA and other federal immigration authorities was delayed unreasonably.

The Respondent was suspended from the practice of law on April 13, 2005 for one year with the requirement that he apply for reinstatement. Although he has now been suspended for more than four years and a court may take into consideration that this conduct took place during the same time that actions leading to his suspension arose, we would emphasize that the Respondent admitted at the December 3, 2008 hearing that "I still don't exercise, the best judgment of people", Tr. at 35.; the Respondent still does not seem to understand that it was wrong of Mr. Wenko to ghostwrite and file "pro se" pleadings in courts where Mr. Wenko was suspended from practicing; and the Respondent does not understand the very important duty of all attorneys to self-regulate the bar when faced with clear Rule violations and fraudulent conduct. These issues affect not only his ability to practice law in 2005, but also his present fitness to practice law were he to apply for reinstatement. Since we conclude that the

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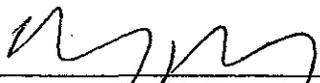
Respondent violated Rules 1.1, 5.5(2), 8.3(a), 8.4(1) and 8.4(4) of the Rules of Professional Conduct, we direct the Disciplinary Counsel to file a presentment against the Respondent in the Superior Court for the imposition of whatever discipline is deemed appropriate.

(D)

EMR

DECISION DATE: 9/18/09

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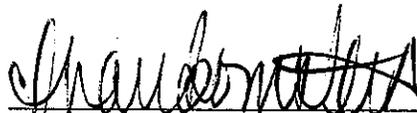


Attorney David Channing

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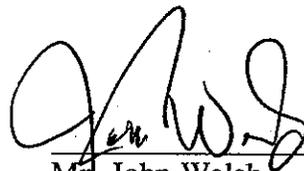


Attorney Shari Bornstein

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A handwritten signature in black ink, appearing to read 'John Walsh', is written over a horizontal line. The signature is stylized and cursive.

Mr. John Walsh