

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Misc. No. 254**

5 **NOTICE OF HEARING REGARDING**
6 **SUSPENSION OR REMOVAL OF**
7 **PRIVILEGE OF DANIEL ESCAMILLA**
8 **TO APPEAR IN ANY PROCEEDING AS A**
9 **REPRESENTATIVE OF ANY PARTY**
10 **BEFORE THE APPEALS BOARD OR ANY**
11 **WORKERS' COMPENSATION**
12 **ADMINISTRATIVE LAW JUDGE**

13 **IN RE: DANIEL ESCAMILLA,**
14 *Respondent.*

15 **(EN BANC)**

16 **NOTICE IS HEREBY GIVEN** that the Appeals Board may suspend or remove Daniel (Dan)
17 Escamilla's privilege to appear in any proceeding as a representative of any party before the Appeals
18 Board or any workers' compensation administrative law judge (WCJ) pursuant to Labor Code section
19 4907 for the reasons set forth herein unless good cause is shown why the privilege should not be
20 suspended or removed.

21 A hearing on this issue is scheduled to commence at 8:30 a.m. on October 28, 2011 before the
22 Honorable David Hettick at Hearing Room 2, Second Floor, 455 Golden Gate Avenue, San Francisco,
23 California. Judge Hettick will act as hearing officer for the Appeals Board to receive evidence and
24 arguments regarding this matter, and he will prepare and submit the hearing record to the Appeals Board
25 for its consideration and decision. (Lab. Code, § 5309(b).)

26 **FACTS SUPPORTING SUSPENSION OR REMOVAL OF PRIVILEGE**

27 While acting as a hearing representative before the Appeals Board and WCJs, Mr. Escamilla has
been repeatedly sanctioned for engaging in bad-faith actions or tactics that are frivolous or solely
intended to cause unnecessary delay. The reasons for those sanctions included Mr. Escamilla's willful
failures to comply with statutory and regulatory obligations, disruption and delay of proceedings for an
improper motive, and presenting arguments that were indisputably without merit, as shown by the orders,

1 notices of intention, opinions and correspondence which are jointly incorporated by reference herein and
2 identified in the accompanying list of certified documents as Board Exhibit A as follows:

3 1) In Case No. MON 206997 (*Harris*), Mr. Escamilla was sanctioned
4 \$750.00 plus costs and fees on August 19, 2003 pursuant to Labor Code
5 section 5813¹ for willfully executing, verifying and filing a successive
6 untimely petition for reconsideration that was frivolous and without merit
7 because the successive petition asserted the same issues and arguments that
8 were raised in the earlier petition for reconsideration that was dismissed by
9 the Appeals Board as untimely;

10 2) In Case No. AHM 92791 (*Rios*), Mr. Escamilla was sanctioned \$500.00
11 on May 19, 2006 pursuant to Labor Code section 5813 for willfully
12 executing, verifying and filing a frivolous petition for reconsideration that
13 was totally without merit because his client, lien claimant Ali Mostafavi,
14 D.C., was not aggrieved by the challenged compromise and release
15 agreement approved by the WCJ;

16 3) In Case No. VNO 0330565 (*Fagan*), Mr. Escamilla was ordered on
17 May 7, 2007 to pay defendant's reasonable costs and fees pursuant to
18 Labor Code section 5813 for willfully executing and filing a frivolous
19 petition for removal that mischaracterized earlier decisions of the Appeals
20 Board and the Court of Appeal;

21 4) In Case No. LAO 0800614 (*Cling*), Mr. Escamilla was sanctioned
22 \$500.00 on June 14, 2007 pursuant to Labor Code section 5813 for
23 willfully executing, verifying and filing a frivolous petition for
24 reconsideration that was totally without merit because his client, lien
25 claimant David Silver, M.D., was not aggrieved by the challenged
26 compromise and release agreement approved by the WCJ;

27 5) In Case No. MON 0280037 (*Crumpton*), Mr. Escamilla was sanctioned
\$2,500.00 on August 1, 2007 pursuant to Labor Code section 5813 for
willfully executing, verifying and filing a frivolous petition for
reconsideration that was without merit and for continuing to litigate a lien
claim of David Silver M.D., that was earlier settled (*Escamilla v. Workers'*
Comp. Appeals Bd. (Crumpton) (2008) 73 Cal.Comp.Cases 280 (writ
den.));

6) In Case No. LAO 0829698 (*Rozenblat*), Mr. Escamilla was sanctioned
\$500.00 and ordered to pay defendant \$800.50 costs and fees on May 1,

¹ Labor Code section 5813(a) provides in full as follows: "The workers' compensation referee or appeals board may order a party, the party's attorney, or both, to pay any reasonable expenses, including attorney's fees and costs, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay. In addition, a workers' compensation referee or the appeals board, in its sole discretion, may order additional sanctions not to exceed two thousand five hundred dollars (\$2,500) to be transmitted to the General Fund."

1 2009 pursuant to Labor Code section 5813 for willfully executing,
2 verifying and filing an untimely petition for reconsideration that he knew
3 or should have known was frivolous because the Appeals Board did not
4 have jurisdiction to consider the petition and it would not have time to
5 grant reconsideration on its own motion;

6 7) In Case No. RIV 057393 (*Roberts*), Mr. Escamilla was sanctioned
7 \$900.00 on August 5, 2009 by the WCJ for several failures to appear
8 without good cause and for willfully executing, verifying and filing a
9 petition for removal that mischaracterized the facts;

10 8) In Case No. ADJ1194116/LAO 0797672 (*Ortiz*), Mr. Escamilla was
11 sanctioned \$750.00 by the Appeals Board on July 14, 2010, for filing a
12 verified petition for reconsideration on July 27, 2009 that contains
13 materially false statements of fact;

14 9) In Case No. ADJ1130558 (*Lee*), Mr. Escamilla was sanctioned
15 \$3,150.00 by the WCJ on June 23, 2010 and ordered to pay \$2,464.50 in
16 costs and fees as affirmed by the Appeals Board on January 6, 2011, for
17 tardiness and engaging in frivolous and bad faith actions (*Escamilla v.*
18 *Workers' Comp. Appeals Bd. (Lee)* (2011) 76 Cal.Comp.Cases 567 (writ
19 den.));

20 10) In Case No. ADJ3897299 (*Santangelo*), Mr. Escamilla was sanctioned
21 \$1,000.00 and ordered to pay \$44,169.81 in costs and fees by the WCJ, as
22 amended and affirmed by the Appeals Board on April 14, 2011, for
23 engaging in bad faith and frivolous actions and tactics;

24 11) In Case Nos. ADJ4517161/ADJ3871851 (*Chavez*), Mr. Escamilla was
25 sanctioned \$2,500.00 by the Appeals Board on June 13, 2011 for filing a
26 petition for reconsideration that contains material misrepresentations of
27 fact and frivolous legal arguments.

It has become apparent that sanctions are ineffective in causing Mr. Escamilla to conform his conduct to the Appeals Board's Rules of Practice and Procedure (Appeals Board's Rules).

On February 9, 2009, a panel of the Appeals Board conducted a Commissioner's Conference and met with Mr. Escamilla to address its intention to impose a sanction in *Rozenblat*. As shown by the transcript of that Conference, which is incorporated herein and identified as Board Exhibit B, Mr. Escamilla confirmed his awareness of the Rules of Professional Conduct of the State Bar (State Bar Rules) that apply to attorneys and acknowledged that if he failed to act in conformity with the State Bar Rules while acting as a hearing representative before the Appeals Board and WCJs his privilege of

1 appearing as a hearing representative could be suspended or removed.²

2 Since the conference in *Rozenblat*, Mr. Escamilla has continued to engage in actions that are
3 contrary to the State Bar Rules and the Appeals Board's Rules by willfully filing pleadings that contain
4 false statements of fact and that are frivolous, and by engaging in other bad faith conduct that has brought
5 discredit upon himself, his clients and the workers' compensation system. These bad faith actions
6 include the following:

7 1) In Case No. ADJ1194116 (*Ortiz*), Mr. Escamilla on October 14, 2009, willfully filed a petition
8 for reconsideration, which is incorporated herein and identified as Board Exhibit C, that he executed and
9 verified under penalty of perjury, which includes substantial misrepresentations of material fact.
10 Specifically, Mr. Escamilla averred that he spoke to defendant's adjuster Frances Whelan on August 13,
11 2008, that she agreed at that time on behalf of defendant to pay the full amount billed by Mr. Escamilla's
12 client David Silver M.D., that his claim of an oral settlement agreement was "uncontroverted" and "not
13 explicitly disputed" by the defendant and that defendant had not submitted "even a scintilla of evidence"
14 to rebut his claim.

15 In fact, as shown by the August 27, 2009 Minutes Of Hearing, which is incorporated herein and
16 identified as Board Exhibit D, defendant appeared at the trial scheduled for August 27, 2009 to address
17 Mr. Escamilla's claim that Ms. Whelan had agreed on behalf of defendant to pay the full amount of Dr.
18 Silver's bill. In fact, defendant explicitly disputed Mr. Escamilla's allegations and presented substantial
19 testimonial and other evidence showing that Ms. Whelan did not speak to Mr. Escamilla on August 13,
20 2008, and that defendant never agreed to pay the full amount of Dr. Silver's bills, as averred by Mr.
21 Escamilla in the petition for reconsideration. Although Dr. Silver did not appear at the August 27, 2009
22 trial through Mr. Escamilla or any other hearing representative, Mr. Escamilla was subsequently served
23 with the Minutes of Hearing from that trial, which set forth the substantial evidence presented by
24

25 ² Mr. Escamilla initially stated during the *Rozenblat* conference that one of the reasons he did not become licensed as an
26 attorney was because "becoming licensed puts some restrictions on your practice that might not be in the best interest of the
27 client," and he identified State Bar Rule 2-100, which prohibits an attorney from directly contacting a party known to be
represented by another attorney, as one of those restrictions. However, by the end of the conference he acknowledged that he
was obligated to act in conformance with all of the State Bar Rules while acting as a representative of any party before the
Appeals Board or any WCJ.

1 defendant rebutting the claim that an oral settlement was reached on August 13, 2008. Following the
2 service of that information upon Mr. Escamilla, he willfully verified and filed the petition for
3 reconsideration containing the material false representation of fact that defendant did not present any
4 such evidence. Although Mr. Escamilla subsequently requested in a November 5, 2009 letter, which is
5 incorporated herein and identified as Board Exhibit E, that his petition for reconsideration be withdrawn,
6 he further wrote in that letter that he “is standing by the statements made in the verified pleadings,”
7 which were demonstrably untrue.

8 2) In Case No. ADJ3897299 (*Santangelo*), Mr. Escamilla executed, verified and on December
9 31, 2009, filed a petition for reconsideration, which is incorporated herein and identified as Board
10 Exhibit F, on behalf of Thomas Hewko, D.C., which asserted that Dr. Hewko was never a “party” in the
11 case, and that the Appeals Board lacked jurisdiction over Dr. Hewko because he was not “personally
12 served” with papers that were filed in the case. However, those averments by Mr. Escamilla were
13 directly contradicted by oral and written representations he earlier made in the case. For example, on the
14 top of the first page of the petition for reconsideration executed and verified by Mr. Escamilla and filed
15 in the case on November 5, 2007, which is incorporated herein and identified as Board Exhibit G, Mr.
16 Escamilla’s business, Legal Service Bureau, is identified as the “Representative for lien claimant Thomas
17 Hewko, D.C./Back Pain Chiropractic Clinic, APC,” and the first sentence of the petition states, “Lien
18 claimant Thomas Hewko D.C./Back Pain Chiropractic Clinic, APC, (hereinafter petitioner) [is] aggrieved
19 by the Finding an [*sic*] Order dated October 25, 2007...”³ Likewise, in the petition for removal executed
20 and verified by Mr. Escamilla and filed in the case on February 7, 2008, which is incorporated herein and
21 identified as Board Exhibit H, Dr. Hewko was again identified in the caption of the pleading as “Lien
22 Claimant,” and on page 2 in the “Statement Of Relevant Facts” Mr. Escamilla wrote, “[T]he *defendant*
23 *denied a lien in the amount of \$19,521.22 asserted by Dr. Hewko* for treatment to applicant’s claimed
24 industrial injuries.” (Emphasis added.) Similarly, in a declaration executed and filed in the case by Mr.
25 Escamilla shortly thereafter on February 25, 2008, which is incorporated herein and identified as Board
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27

³ Quotations herein have been converted from upper case to lower case.

1 Exhibit I, he avers under penalty of perjury that he is “the administrative law hearing representative from
2 Legal Service Bureau, *duly assigned to represent lien claimant Thomas Hewko, D.C./Back Pain*
3 *Chiropractic Clinic, A Professional Corporation, in the above-captioned case,”* and the case caption on
4 the declaration identifies “Thomas Hewko D.C.” as the “Lien Claimant.” (Emphasis added.)

5 California Code of Regulations, title 8, section 10550 provides in pertinent part: “Whenever any
6 party or lien claimant...files any...petition or other pleading... or...states its appearance on the record at
7 any hearing before the Workers' Compensation Appeals Board (including but not limited to stating its
8 appearance on any pretrial conference statement, appearance sheet, or minutes of hearing), the party or
9 lien claimant, or its attorney or other representative, *shall* comply with the following requirements: (a)
10 each party or lien claimant shall set forth its full legal name, and each attorney or other *representative*
11 *shall set forth the full legal name(s) of the party or parties he, she, or it is representing...*” (Emphasis
12 added.)

13 The above demonstrates that Mr. Escamilla willfully executed, verified and filed a petition for
14 reconsideration on December 31, 2009 that falsely stated that Dr. Hewko was not a party in *Santangelo*.
15 Moreover, Mr. Escamilla’s contention in his December 31, 2009 petition that Dr. Hewko was required to
16 be personally served with certain papers in the case was frivolous because the Rules of the Appeals
17 Board expressly provide that service by mail of such papers upon a lien claimant’s representative is
18 proper service upon that party. (Cal. Code Regs., tit. 8, §§ 10505, 10510.)

19 3) In Case Nos. ADJ4517161/ADJ3871851 (*Chavez*), Mr. Escamilla made the following factual
20 averment in the February 28, 2011 petition for reconsideration he filed with the Appeals Board, which is
21 incorporated herein and identified as Board Exhibit J:

22 “The reports of Dr. Warick, identified as Exhibit C, are listed in the
23 Minutes of Hearing but it is not clear whether these reports (and Defense
24 Exhibits A through D) were simply offered into evidence or actually
admitted into evidence.” (Emphasis added.)

25 Mr. Escamilla further argued in the petition that without the reports of Dr. Warick the WCJ’s decision
26 “must be annulled” because it was not supported by substantial evidence.

27 Contrary to Mr. Escamilla’s assertion that it was “not clear” if the reports of Dr. Warick were

1 admitted into evidence, the Minutes of Hearing, which is incorporated herein and identified as Board
2 Exhibit K, and partial transcript from the trial on December 3, 2010, which is incorporated herein and
3 identified as Board Exhibit L, make it absolutely clear that the reports were, in fact, admitted into
4 evidence and that Mr. Escamilla was present and participated in the admission of those documents on
5 behalf of his client, PORAC.

6 The Minutes of Hearing list the exhibits received into evidence at the trial, including
7 “**DEFENDANT’S EXHIBIT C**: Medical report of Dr. Warick, May 31st, 2007, 4 pages in length; and
8 his report of April 17th, 2007, 29 pages in length.” (Emphasis in original.)

9 The partial transcript of the proceedings on December 3, 2010 reveals Mr. Escamilla’s
10 participation in the hearing where the reports of Dr. Warick were placed into evidence, as follows:

11 “THE COURT: On behalf of defendant, admitted into evidence without
12 objection:

13 As Exhibit A, the treatment record of Dr. Gudeman.

14 Exhibit B, the treatment records of Simi Valley Hospital.

15 *Exhibit C, the medical report of Dr. Warick, May 31st, 2007, 4 pages in
16 length; and his report of April 17th, 2007, 29 pages in length.*

17 Defendant’s D, the report of Dr. Sanders dated June 12th, 2007, already
18 scanned into the EAMS system as Document No. 17473139.

19 Offered on behalf of defendant as Defendant’s E is the Ventura County
20 Employees’ Retirement Association notice of Proposed Findings of Fact
21 dated November 12th, 2008, 36 pages in length.

22 And Defendant’s F, the Ventura County Employees’ Retirement
23 Association’s notice of decision dated March 3rd, 2009, 2 pages in length.

24 All right. And it is the understanding of the Court that E and F are subject
25 to objections by lien claimant.

26 Mr. Escamilla[?]

27 MR. ESCAMILLA: Yes, we are objecting to Exhibit E and F based on
relevance.

THE COURT: Very well. Thank you.

*Over the objection of lien claimant, Exhibits E and F are admitted into
evidence. The relevance will go to the weight of the evidence rather than
admissibility and will be considered.*

Very well, then. *With all of that, have we fully stated all of the Stipulations
and Issues of the parties and set forth all of the evidentiary exhibits?*

MR. ESCAMILLA: Yes, your Honor.

MR. STRAATSMA: So stipulated.” (Emphasis added. Bracketed
question mark substituted for clarity in accord with WCJ’s Report.)

In addition to presenting the above-described false statement that it was “not clear” if the reports

1 of Dr. Warick were admitted into evidence, Mr. Escamilla improperly argued in the petition for
2 reconsideration that even if the reports of Dr. Warick were in evidence they supported a finding of
3 industrial injury to psyche because the physician indicated that applicant's work "at least in part,
4 aggravated, accelerated and lit up" applicant's psychological condition. This argument was a
5 mischaracterization of the reporting of Dr. Warick, who unequivocally opined that applicant's psychiatric
6 condition was predominantly caused by non-industrial factors. It was also a frivolous legal contention
7 because the Legislature in 1991 enacted Labor Code section 3208.3(b)(1) to "establish a new and higher
8 threshold of compensability for psychiatric injury," which requires an employee to "demonstrate by a
9 preponderance of the evidence *that actual events of employment were predominant as to all causes*
10 *combined of the psychiatric injury*" in order to establish that a psychiatric injury is compensable. (Lab.
11 Code, § 3208.3(b)(1), emphasis added.)

12 Mr. Escamilla's arguments in the *Chavez* petition cannot be attributed to lack of awareness of the
13 applicable law or simple neglect because the WCJ explicitly stated in his Opinion on Decision that Labor
14 Code section 3208.3 applied in the case to preclude compensation for applicant's claimed injury to
15 psyche, which is incorporated herein and identified as Board Exhibit M. However, nowhere in the
16 petition for reconsideration did Mr. Escamilla discuss or even identify Labor Code section 3208.3 as the
17 statute that applied in determining whether an injury to psyche is compensable.

18 DISCUSSION

19 Labor Code section 4907 provides in full as follows:

20 "The privilege of any person, including attorneys admitted to practice in
21 the Supreme Court of the state to appear in any proceeding as a
22 representative of any party before the appeals board, or any of its referees,
23 may, after a hearing, be removed, denied, or suspended by the appeals
24 board for a violation of this chapter or for other good cause."

25 Good cause appears to exist to suspend or remove the privilege of Mr. Escamilla to appear in any
26 proceeding as a representative of any party before the Appeals Board and WCJs because of his
27 continuing sanctionable conduct. A pattern of disciplinary actions and repeated misconduct, with no
apparent attempt to reform, supports the suspension or removal of the privilege of practicing before the

1 Workers' Compensation Appeals Board.

2 As the Appeals Board recognized in the case of *In Re Discipline, Suspension or Removal of the*
3 *Privilege of Louis Moran to Appear in Proceedings Before the Board* (1980) 45 Cal.Comp.Cases 519
4 (Appeals Board en banc) (*Moran*):

5 “The term ‘good cause’ [as used in Labor Code section 4907] is not
6 legislatively defined. However, the State Bar Rules demarcate the
7 sanctionable limits of advocacy and indicate how – what may at times be –
8 conflicting duties to clients, opposing parties and the Board are to be
9 reconciled. These rules also give an attorney *or lay representative* notice
10 of what sort of conduct is required. By appearing as a *lay representative*
he [Mr. Moran] is charged with accepting certain limitations on his
advocacy.” (*Moran, supra*, 45 Cal.Comp.Cases at 525, bracketed material
and emphasis added.)

11 Of particular concern with regard to actions taken by Mr. Escamilla following the February 9,
12 2009 Commissioner’s conference in *Rozenblat* is State Bar Rules of Professional Conduct 5-200(A) and
13 (B), which provides in pertinent part as follows:

14 “In presenting a matter to a tribunal, a member:
15 (A) Shall employ, for the purpose of maintaining the causes confided to the
16 member such means only as are consistent with truth;
17 (B) Shall not seek to mislead the judge, judicial officer, or jury by an
artifice or false statement of fact or law;”

18 Following the *Rozenblat* conference on February 9, 2009, Mr. Escamilla repeatedly executed,
19 verified and willfully filed pleadings containing misrepresentations of material facts made with reckless
20 indifference as to their truth or falsity. These include the petition for reconsideration he verified and filed
21 on October 14, 2009 in *Ortiz*, the petition for removal he verified and filed on December 31, 2009 in
22 *Santangelo*, and the petition for reconsideration he verified and filed on or about February 28, 2011 in
23 *Chavez*.

24 Verifying and filing pleadings containing misrepresentations of fact violates both Rule of
25 Professional Conduct 5-200 and the Appeals Board’s Rules. (Lab. Code, § 5813; Cal. Code Regs., tit. 8,
26 § 10561(b)(5); c.f. *In re Aguilar* (2004) 34 Cal.4th 386 [“It is, of course, an extremely serious breach of
27 an attorney’s duty to a court to lie in statements made to the court, and an intentionally false statement

1 made by an attorney to a court clearly constitutes a contempt of court” (citations omitted)].) Mr.
2 Escamilla has appeared as a hearing representative in numerous workers’ compensation proceedings and
3 stated during the February 9, 2009 *Rozenblat* conference that he is a law school graduate and that he
4 passed the California Bar examination. Mr. Escamilla knows, or should know the Appeals Board’s Rules
5 and the State Bar Rules. But even if Mr. Escamilla had never attended law school, he acts as a hearing
6 representative before the WCAB and is expected to comply with all of the Appeals Board’s Rules, as is
7 every other hearing representative.

8 Mr. Escamilla took the actions he did in *Ortiz, Lee, Santangelo* and *Chavez* after being sanctioned
9 numerous times for filing frivolous petitions, and after he assured the Appeals Board at the *Rozenblat*
10 conference on February 9, 2009 that he would act in compliance with the standards set forth in the State
11 Bar Rules. However, his improper actions following the *Rozenblat* conference evince a habitual lack of
12 appreciation and respect for the duties and responsibilities of a hearing representative appearing before
13 the Appeals Board and WCJs. A pattern of disciplinary actions and repeated misconduct with no
14 apparent attempt to reform supports a suspension or removal of the privilege of appearing before the
15 Appeals Board and WCJs. (See e.g. *Dixon v. State Bar* (1982) 32 Cal.3d 728; *Garlow v. State Bar*
16 (1982) 30 Cal.3d 912 and *Garlow v. State Bar* (1988) 44 Cal.3d 689; *Lebbos v. State Bar* (1991) 53
17 Cal.3d 37; *Twohy v. State Bar* (1989) 48 Cal.3d 502.)

18 Mr. Escamilla’s actions as described above have placed unreasonable burdens on opposing parties
19 and have wasted limited judicial resources. His failure to change his conduct notwithstanding the several
20 sanctions that have been imposed appears to be in willful disregard of the Appeals Board’s Rules
21 contrary to Labor Code section 5813 and California Code of Regulations, title 8, section 10561. These
22 ongoing concerns require that we consider taking action pursuant to Labor Code section 4907 to suspend
23 or remove Mr. Escamilla’s privilege of appearing in any proceeding as a representative of any party
24 before the Appeals Board or any WCJ.

25 Acting as a hearing representative and appearing before the Appeals Board and WCJs constitutes
26 the performance of legal services. (*Eagle Indemn. Co. v. Industrial Acc. Com. (Hernandez)* (1933) 217
27

1 Cal. 244 [19 I.A.C. 150].) Suspension or removal of the privilege to appear before the Appeals Board
2 and WCJs prohibits the performance of such legal services, including but not limited to the following:

3 “(1) filing pleadings reflecting that the [individual] is ‘appearing’ on behalf
4 of another...;

5 (2) negotiating and settling claims on behalf of a client with third
6 parties...;

7 (4) appearing at depositions on behalf of another...; and

8 (5) engaging in discovery or responding to discovery requests...” (*In the*
9 *Matter of John Hoffman* 71 Cal.Comp.Cases 609, 622 (significant panel
10 decision) [bracketed material substituted], citing Rules Prof. Conduct, rule
11 1-311(B)(3) and rule 1-311(B)(4); *Birbrower, Montalbano, Condon &*
12 *Frank v. Superior Court* (1998) 17 Cal.4th 119, 127 [949 P.2d 1, 70
13 Cal.Rptr.2d 304]; *Morgan v. State Bar* (1990) 51 Cal.3d 598, 603 [797
14 P.2d 1186, 274 Cal.Rptr. 8]; *Benninghoff v. Superior Court* (2006) 136
15 Cal.App.4th 61, 69 [38 Cal.Rptr.3d 759]; *Gentis v. Safeguard Business*
16 *Systems, Inc.* (1998) 60 Cal.App.4th 1294, 1308 [71 Cal.Rptr.2d 122];]; *Ex*
17 *Parte McCue* (1930) 211 Cal. 57, 68 [293 P. 47] c.f. *Watung v. Riverside*
18 *Beauty Supply* (2003) 68 Cal.Comp.Cases 1602 (Appeals Board en banc);
19 *Moran, supra; Crumpton, supra.*)

20 Mr. Escamilla is entitled to due process and Labor Code section 4907 provides that a hearing be
21 conducted before the privilege to appear in any proceeding as a representative of any party before the
22 Appeals Board or any WCJ is suspended or removed. Accordingly, a hearing is scheduled to be
23 conducted by any WCJ to receive evidence and arguments concerning the suspension or removal of Mr.
24 Escamilla’s privilege to appear pursuant to Labor Code section 4907 and this Notice and to receive any
25 mitigating or other relevant evidence he may have to offer. (Lab. Code, § 5309(b).)

26 Following the hearing, the WCJ will prepare the hearing record and submit it to the Appeals
27 Board for its consideration. The Appeals Board will then decide whether Mr. Escamilla’s privilege to
appear in any proceeding as a representative of any party before the Appeals Board or any WCJ should
be suspended or removed pursuant to Labor Code section 4907 and this Notice.

For the foregoing reasons,

NOTICE IS HEREBY GIVEN that the Appeals Board may suspend or remove Daniel (Dan)
Escamilla’s privilege to appear in any proceeding as a representative of any party before the Appeals

1 Board or any workers' compensation administrative law judge pursuant to Labor Code section 4907 and
2 California Code of Regulations, title 8, section 10561 for the bad faith actions and tactics alleged above.

3 **NOTICE IS FURTHER GIVEN** that a hearing to address whether Daniel (Dan) Escamilla's
4 privilege to appear in any proceeding as a representative of any party before the Appeals Board or any
5 workers' compensation administrative law judge should be suspended or removed pursuant to Labor
6 Code section 4907 and California Code of Regulations, title 8, section 10561 is scheduled to commence
7 at 8:30 a.m. on Friday, October 28, 2011 before the Honorable David Hettick at Hearing Room 2, Second
8 Floor, 455 Golden Gate Avenue, San Francisco California.

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1 **IT IS FURTHER ORDERED** that pending the issuance of our decision herein, all written
2 correspondence, objections, motions, requests, and communications shall be filed in paper format (not
3 e-filed or in electronic format) with the Workers' Compensation Appeals Board, P.O. Box 429459,
4 ATTENTION: Office of the Commissioners, San Francisco, CA 94142-9459, and not with any local
5 office.

6 **WORKERS' COMPENSATION APPEALS BOARD (EN BANC)**

7
8 /s/ Joseph M. Miller

 JOSEPH M. MILLER, Chairman

9
10 /s/ Frank M. Brass

 FRANK M. BRASS, Commissioner

11
12 /s/ Ronnie G. Caplane

 RONNIE G. CAPLANE, Commissioner

13
14 /s/ Alfonso J. Moresi

 ALFONSO J. MORESI, Commissioner

15
16 /s/ Deidra E. Lowe

 DEIDRA E. LOWE, Commissioner

17
18
19 **DATED AND FILED AT SAN FRANCISCO, CALIFORNIA**

20 9/21/2011

21 ***SERVICE BY MAIL EFFECTED ON ABOVE DATE ON THE FOLLOWING PARTY:***

22 **DANIEL (DAN) ESCAMILLA, 888 W. SANTA ANA BLVD., SUITE 100, SANTA ANA, CA**
23 **92701**

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27 **JFS/jp/jmp**