WORKERS' COMPENSATION APPEALS BOARD

STATE OF CALIFORNIA

In Re the Matter of **RAMON B. PELLICER,** ***Petitioner,***	**Case No. MISC. 251**

ORDER DENYING PETITION TO PRACTICE BEFORE THE WORKERS' COMPENSATION APPEALS BOARD (CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 10779)

The Appeals Board has reviewed Mr. Ramon B. Pellicer's February 26, 2008 Petition for Permission to Appear as a hearing representative/non-attorney before the Workers' Compensation Appeals Board (WCAB), filed pursuant to California Code of Regulations, title 8, section 10779.[1] In his petition, Mr. Pellicer states, in pertinent part:

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[1] California Code of Regulations, title 8, section 10779 provides:

> "An attorney who has been disbarred or suspended by the Supreme Court for reasons other than nonpayment of fees, or who has been placed on involuntary inactive enrollment status by the State Bar, or who has resigned while disciplinary action is pending shall be deemed unfit to appear as a representative of any party before the Workers' Compensation Appeals Board during the time that the attorney is precluded from practicing law in this state. Any attorney claiming to be qualified to appear as a representative before the Workers' Compensation Appeals Board despite disbarment, suspension or resignation may file a petition for permission to appear. The petition shall set forth in detail:
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> "(1) the facts leading to the disbarment, suspension or resignation; and
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> "(2) the facts and circumstances alleged by the attorney to establish competency, qualification and moral character to appear as a representative before the Workers' Compensation Appeals Board. The petition shall be verified, shall be filed in the San Francisco office of the Appeals Board and a copy thereof served on the State Bar of California."

"[he] was placed on INACTIVE STATUS WITH CHARGES PENDING FOLLOWING A DEFAULT FOR FAILURE TO APPEAR IN TRIAL BEFORE THE STATE BAR COURT SCHEDULED LAST JANUARY 28, 2008."

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"Started career as a WORKERS COMPENSATION CLAIMS ADJUSTER IN 1986 with the AETNA CASUALTY AND INSURANCE COMPANY in Santa Ana, CA.;

"Promoted to Supervisor in 1987;

"Passed and admitted to the CALIFORNIA STATE BAR IN OCTOBER 1988;

"Worked as IN HOUSE COUNSEL for AETNA CASUALTY defending Employers from 1988 to 1992;

"Opened ONE ROOM law office in 1992 in SANTA ANA as a sole practitioner representing APPLICANTS/EMPLOYEES IN WORKERS COMPENSATION CASES up to FEBRUARY 2008.

* * * *

"None of the matters before the State Bar, as far as undersigned is aware, involved workers compensation claims with the exception filed by FRANCESCA COLLINS which undersigned has opposed and objected to before the State bar;

"Undersigned advised Ms. Collins after reviewing her claim and following her deposition, that her claim WAS WITHOUT ANY MERIT BECAUSE IT WAS, AMONG OTHERS, A POST TERMINATION CLAIM. She was advised to get other counsel, she refused. Before trial and in chambers before the Judge, she was advised to take the offer from the insurance despite being a denied case. She refused wanted her day in court. The Judge ruled a TAKE NOTHING AGAINST HER;

"Undersigned has handled workers compensation claims for more than 21 years, as an employer/insurance attorney and for the last 16 years as an applicant's attorney.

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"Undersigned will be working under the Supervision of ATTY. JONATHAN C. NAVARRO in SANTA ANA, A LICENSED CALIFORNIA ATTORNEY;

> "Undersigned will inform all clients in writing to be acknowledged and filed with the Board that undersigned is A NON ATTORNEY HEARING REPRESENTATIVE under the supervision of an attorney;"

The Appeals Board has also reviewed the State Bar's Position Statement on Mr. Pellicer's petition, including January 28, 2008 Order of Entry of Default (Rule 201-failure to appear) and Order of Involuntary Inactive Enrollment pursuant to Business and Professions Code section 6007(e) of the State Bar of California (Exhibit 1 of the State Bar's Position Statement).

We have also reviewed Mr. Pellicer's answer to the allegations of the State Bar.

Further, we have reviewed the State Bar's August 6, 2007 Notice of Disciplinary charges involving violations of Rules of Professional Conduct, Rule 3-110(A). We note that **Count 1**, involves intentionally, recklessly, or repeatedly failing to supervise the work for non-attorney employees or agents; **Count 2** involves the willful violation of Business and Professions Code sections 6068(o)(3), by failing to report to the agency charged with attorney discipline, in writing, within 30 days of knowledge of the imposition of a judicial sanction; **Count 3** sets forth a violation of a Business and Professions Code section 6103, by willfully disobeying or violating an order of the court; **Count 4** recounts a violation of Business and Professions Code section 6106, by committing an act involving moral turpitude, dishonesty, or corruption; **Count 5** involves violating Business and Professions Code section 6068(d), by employing for the purpose of maintaining the causes confided in him means which are inconsistent with the truth; **Count 6** involves violating Rules of Professional Conduct, Rule 4-100(A), by depositing or commingling funds in a bank account labeled trust account or client's funds account, or words similar; **Count 7** sets forth a violation of Business and Professions Code section 6103, by willfully disobeying an order of the court; **Count 8** is for willfully violating Business and Professions Code section 6068(o)(3), by failing to report to the agency charged with attorney discipline, in writing, within 30 days of a judicial sanction; **Count 9** is for a violation of Business and Professions Code

section 6068(i), by failing to cooperate and participate in a disciplinary investigation; **Count 10** alleges a violation of Rules of Professional Conduct, Rule 3-700(A)(2), by failing, upon termination of employment, to take reasonable steps to avoid reasonably foreseeable prejudice to his client; **Count 11** alleges a violation of Business and Professions Code section 6068(i), by failing to cooperate and participate in a disciplinary investigation; and **Count 12** is for willfully violating Business and Professions Code section 6068(i), by failing to cooperate and participate in a disciplinary investigation.

Specifically, the State Bar requests that the Appeals Board issue an order denying Mr. Pellicer's petition and prohibiting Mr. Pellicer from appearing as a non-attorney/hearing representative for the following reasons:

> "On January 28, 2008, the State Bar court, in Case Nos. 05-O-04923, 06-O-12202, 06-O-13291, 07-O-10636, ordered ('January 28, 2008 Order') that: Pellicer's default be entered because of his failure to appear at trial; the facts set forth in the Notice of Disciplinary Charges ('NDC') filed against Pellicer be deemed admitted; and Pellicer be suspended and placed on involuntary inactive enrollment from the practice of law pursuant to Business and Professions Code § 6007(e) pending finality of its recommendation of discipline to the California Supreme Court. A certified copy of the January 28, 2008 Order is attached hereto as **Exhibit 1.**
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> "On February 26, 2008, the State Bar received a copy of Pellicer's 'Petition to Appear As a Hearing Representative/Non Attorney Under Rules and Regulations 10779 of the Labor Code' ('Pellicer's Petition') that Pellicer had purportedly filed with the Workers' Compensation Appeals Board ('WCAB') on February 18, 2008. A copy of Pellicer's Petition is attached hereto as **Exhibit 2.**
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> "Based upon the Declaration of Monique T. Miller and the exhibits thereto filed herewith, Pellicer: (1) is not entitled to practice law in California; (2) has two prior records of discipline and a pending discipline recommendation; and (3) has filed a petition with this court that does not set forth in detail the facts leading to his involuntary inactive enrollment and the facts and circumstances that establish his competence, qualification and moral character to appear as a representative before the WCAB as required by California Code Regulations, Title 8, §10779."

We note that the State Bar of California also sets forth the following argument:

> "In *Benninghoff v. Superior Court*, the Court of Appeal considered the case of a former attorney ('Benninghoff') who had resigned with charges pending after he had been convicted of four federal felonies. After his resignation, Benninghoff began representing parties before state administrative boards and commissions as a 'lay representative.' Benninghoff asserted he could do so because this kind of representation must not constitute the practice of law since laypersons may represent parties in state administrative hearings. The Court flatly rejected this assertion, finding that Benninghoff's representation of parties in state administrative hearings constituted the practice of law 'something he has lost the right to do so by reason of his resignation from the State Bar with disciplinary charges pending.'
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> "The Court based its determination on the State Bar Act's differentiation between a true layperson and a 'defrocked' attorney.[2] After concluding that 'defrocked' attorneys cannot practice law under any circumstances, the Court next addressed the question whether the representation of parties in state administrative hearings constitutes the practice of law and held that it does pursuant to the Court's interpretation of the State Bar Act…"
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> "The Court then determined that Benninghoff may not represent parties in state administrative hearings since that 'representation constitutes the practice of law, from which defrocked attorneys are categorically barred.'"

In the Appeals Board's Significant Panel Decision of *In The Matter of John H. Hoffman Jr*. (2006) 71 Cal.Comp.Cases 609, Misc. 250 the Board held that pursuant to *Benninghoff v. Superior Court* (2006) 136 Cal.App.4th 61 [2006 Cal. LEXIS 4780]:

> "(1) both Rule 10779 and the State Bar Act preclude any non-reinstated former attorney who has been disbarred or suspended by the Supreme Court (for reasons other than nonpayment of State Bar fees), who has been placed on involuntary inactive status by the State Bar, or who has resigned with disciplinary proceedings pending against him or her from appearing as a representative of

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[2] "*Benninghoff (supra)* 136 Cal.App.4th at p. 68, fn. 5; the Court used the term "defrocked" lawyer to refer to disbarred lawyers, suspended lawyers, lawyers involuntary enrolled as inactive State Bar members, and lawyers who resign with charges pending (sic)(Business and Professions Code § 6126(b).)"

> any party before the WCAB (at least if they have not received permission under Rule 10779); (2) this preclusion against appearing as a representative of any 'party' extends to appearing on the behalf of *any* litigant, including but not limited to lien claimants; and (3) this preclusion against 'appearing as a representative' in WCAB proceedings extends to any activity that would constitute the practice of law."

After reviewing the instant request for the permission to appear and the State Bar's response, and in view of the *Hoffman*, *supra*, and *Benninghoff*, *supra*, cases, we are persuaded that a "defrocked" attorney cannot be permitted to appear in workers' compensation proceedings.

Further, we note that Mr. Pellicer's petition lacks total disclosure of all of his disciplinary matters, in particular, the fact that according to State Bar records, he was disciplined on April 23, 2007 and designated a "voluntary inactive" tender of resignation with charges "…not eligible to practice law."

On this basis, we issue an order denying Mr. Ramon Pellicer's petition for permission to appear, pursuant to California Code of Regulations, Title 8, section 10779.

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For the foregoing reasons,

IT IS ORDERED that Ramon B. Pellicer's Petition for Permission to Appear, filed February 26, 2008, be, and the same hereby is, **DENIED**.

WORKERS' COMPENSATION APPEALS BOARD (EN BANC)

/s/ Joseph M. Miller
JOSEPH M. MILLER, Chairman

/s/ James C. Cuneo
JAMES C. CUNEO, Commissioner

/s/ Frank M. Brass
FRANK M. BRASS, Commissioner

/s/ Ronnie G. Caplane
RONNIE G. CAPLANE, Commissioner

/s/ Alfonso J. Moresi
ALFONSO J. MORESI, Commissioner

/s/ Deidra E. Lowe
DEIDRA E. LOWE, Commissioner

DATED AND FILED AT SAN FRANCISCO, CALIFORNIA

7/8/2008

SERVICE BY MAIL EFFECTED ON ABOVE DATE AS FOLLOWS:

Ramon B. Pellicer; 8544 Villa La Jolla Drive #204, La Jolla, CA 92037

State Bar of California; Office of the Chief Trial Counsel; Monique T. Miller; 1149 South Hill Street, Los Angeles, CA 90015-2299

JD/tab/jp