

1 **WORKERS' COMPENSATION APPEALS BOARD**

2 **STATE OF CALIFORNIA**

3
4 **Case No. MISC. 251**

5 **In Re the Matter of**

6 **RAMON B. PELLICER,**

7 *Petitioner,*

8
9
10 **ORDER DENYING PETITION TO PRACTICE**
11 **BEFORE THE WORKERS' COMPENSATION APPEALS BOARD**
12 **(CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 10779)**

13 The Appeals Board has reviewed Mr. Ramon B. Pellicer's February 26, 2008 Petition for
14 Permission to Appear as a hearing representative/non-attorney before the Workers'
15 Compensation Appeals Board (WCAB), filed pursuant to California Code of Regulations, title 8,
16 section 10779.¹ In his petition, Mr. Pellicer states, in pertinent part:

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

20 "An attorney who has been disbarred or suspended by the Supreme Court for
21 reasons other than nonpayment of fees, or who has been placed on involuntary
22 inactive enrollment status by the State Bar, or who has resigned while
23 disciplinary action is pending shall be deemed unfit to appear as a representative
24 of any party before the Workers' Compensation Appeals Board during the time
25 that the attorney is precluded from practicing law in this state. Any attorney
26 claiming to be qualified to appear as a representative before the Workers'
27 Compensation Appeals Board despite disbarment, suspension or resignation
may file a petition for permission to appear. The petition shall set forth in
detail:

28 "(1) the facts leading to the disbarment, suspension or resignation; and

29 "(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."

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

5 * * * *

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

9 “Promoted to Supervisor in 1987;

10 “Passed and admitted to the CALIFORNIA STATE BAR IN
11 OCTOBER 1988;

12 “Worked as IN HOUSE COUNSEL for AETNA CASUALTY
13 defending Employers from 1988 to 1992;

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

17 * * * *

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

22 “Undersigned advised Ms. Collins after reviewing her claim and
23 following her deposition, that her claim WAS WITHOUT ANY
24 MERIT BECAUSE IT WAS, AMONG OTHERS, A POST
25 TERMINATION CLAIM. She was advised to get other counsel,
26 she refused. Before trial and in chambers before the Judge, she
27 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.

* * * * *

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

1 “Undersigned will inform all clients in writing to be acknowledged
2 and filed with the Board that undersigned is A NON ATTORNEY
3 HEARING REPRESENTATIVE under the supervision of an
4 attorney;”

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

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

11 Further, we have reviewed the State Bar’s August 6, 2007 Notice of Disciplinary charges
12 involving violations of Rules of Professional Conduct, Rule 3-110(A). We note that **Count 1**,
13 involves intentionally, recklessly, or repeatedly failing to supervise the work for non-attorney
14 employees or agents; **Count 2** involves the willful violation of Business and Professions Code
15 sections 6068(o)(3), by failing to report to the agency charged with attorney discipline, in
16 writing, within 30 days of knowledge of the imposition of a judicial sanction; **Count 3** sets forth
17 a violation of a Business and Professions Code section 6103, by willfully disobeying or violating
18 an order of the court; **Count 4** recounts a violation of Business and Professions Code section
19 6106, by committing an act involving moral turpitude, dishonesty, or corruption; **Count 5**
20 involves violating Business and Professions Code section 6068(d), by employing for the purpose
21 of maintaining the causes confided in him means which are inconsistent with the truth; **Count 6**
22 involves violating Rules of Professional Conduct, Rule 4-100(A), by depositing or commingling
23 funds in a bank account labeled trust account or client’s funds account, or words similar; **Count**
24 **7** sets forth a violation of Business and Professions Code section 6103, by willfully disobeying
25 an order of the court; **Count 8** is for willfully violating Business and Professions Code section
26 6068(o)(3), by failing to report to the agency charged with attorney discipline, in writing, within
27 30 days of a judicial sanction; **Count 9** is for a violation of Business and Professions Code

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

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

11 "On January 28, 2008, the State Bar court, in Case Nos. 05-O-
12 04923, 06-O-12202, 06-O-13291, 07-O-10636, ordered ('January
13 28, 2008 Order') that: Pellicer's default be entered because of his
14 failure to appear at trial; the facts set forth in the Notice of
15 Disciplinary Charges ('NDC') filed against Pellicer be deemed
16 admitted; and Pellicer be suspended and placed on involuntary
17 inactive enrollment from the practice of law pursuant to Business
18 and Professions Code § 6007(e) pending finality of its
19 recommendation of discipline to the California Supreme Court. A
20 certified copy of the January 28, 2008 Order is attached hereto as
21 **Exhibit 1.**

18 "On February 26, 2008, the State Bar received a copy of Pellicer's
19 'Petition to Appear As a Hearing Representative/Non Attorney
20 Under Rules and Regulations 10779 of the Labor Code'
21 ('Pellicer's Petition') that Pellicer had purportedly filed with the
22 Workers' Compensation Appeals Board ('WCAB') on February
23 18, 2008. A copy of Pellicer's Petition is attached hereto as
24 **Exhibit 2.**

22 "Based upon the Declaration of Monique T. Miller and the exhibits
23 thereto filed herewith, Pellicer: (1) is not entitled to practice law in
24 California; (2) has two prior records of discipline and a pending
25 discipline recommendation; and (3) has filed a petition with this
26 court that does not set forth in detail the facts leading to his
27 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."

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

2 “In *Benninghoff v. Superior Court*, the Court of Appeal considered
3 the case of a former attorney (‘Benninghoff’) who had resigned
4 with charges pending after he had been convicted of four federal
5 felonies. After his resignation, Benninghoff began representing
6 parties before state administrative boards and commissions as a
7 ‘lay representative.’ Benninghoff asserted he could do so because
8 this kind of representation must not constitute the practice of law
9 since laypersons may represent parties in state administrative
10 hearings. The Court flatly rejected this assertion, finding that
11 Benninghoff’s representation of parties in state administrative
12 hearings constituted the practice of law ‘something he has lost the
13 right to do so by reason of his resignation from the State Bar with
14 disciplinary charges pending.’

15 “The Court based its determination on the State Bar Act’s
16 differentiation between a true layperson and a ‘defrocked’
17 attorney.[²] After concluding that ‘defrocked’ attorneys cannot
18 practice law under any circumstances, the Court next addressed the
19 question whether the representation of parties in state
20 administrative hearings constitutes the practice of law and held
21 that it does pursuant to the Court’s interpretation of the State Bar
22 Act...”

23 * * * *

24 “The Court then determined that Benninghoff may not represent
25 parties in state administrative hearings since that ‘representation
26 constitutes the practice of law, from which defrocked attorneys are
27 categorically barred.’”

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

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

37 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).)”

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

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

12 Further, we note that Mr. Pellicer's petition lacks total disclosure of all of his disciplinary
13 matters, in particular, the fact that according to State Bar records, he was disciplined on April 23,
14 2007 and designated a "voluntary inactive" tender of resignation with charges "...not eligible to
15 practice law."

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

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2 For the foregoing reasons,

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

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

7
8 */s/ Joseph M. Miller*

JOSEPH M. MILLER, Chairman

9
10 */s/ James C. Cuneo*

JAMES C. CUNEO, Commissioner

11
12 */s/ Frank M. Brass*

FRANK M. BRASS, Commissioner

13
14 */s/ Ronnie G. Caplane*

RONNIE G. CAPLANE, Commissioner

15
16 */s/ Alfonso J. Moresi*

ALFONSO J. MORESI, Commissioner

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18 */s/ Deidra E. Lowe*

DEIDRA E. LOWE, Commissioner

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23 ***DATED AND FILED AT SAN FRANCISCO, CALIFORNIA***

24 ***7/8/2008***

25 ***SERVICE BY MAIL EFFECTED ON ABOVE DATE AS FOLLOWS:***

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

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

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