

EFiled: Nov 17 2015 02:11PM HAST
Transaction ID 58179024
Case No. MISC-2015-1

STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of

LEON PASKER,

Respondent.

CASE NO. MISC-2015-1

ORDER NO. 3121

POST NOVEMBER 13, 2015 HAR § 12-42-8(G)(9) HEARING ORDER

POST NOVEMBER 13, 2015 HAR § 12-42-8(G)(9) HEARING ORDER

I. FINDINGS OF FACT

If it should be determined that any of these Findings of Fact should have been set forth as Conclusions of Law, then they shall be deemed as such.

A. Procedural Background

1. CE-10-865 and CU-10-377 (Pilago Case)

In Board Case Nos. CE-10-865 and CU-10-377, Elias Pilago and Halawa Correctional Facility, et al., Mr. Pasker represented the Complainant, Mr. Elias Pilago. The first day for the hearing on the merits (hearing on the merits) of the Prohibited Practice Complaint (Complaint) in these matters was set for September 16, 2015, in the Board's hearing room, and opening arguments were scheduled to begin at 9:00 a.m. commencing with Mr. Pasker's presentation. Although Mr. Pasker explained to the Board at the oral arguments in the motion hearing held on September 15, 2015, that he had a conflict in his schedule, he assured the Board that he would nevertheless be present at the 9:00 a.m. September 16, 2015 hearing.

However, Mr. Pasker failed to appear at the September 16, 2015 hearing. Mr. Pasker also failed to give advance notice to the Board that he would not appear at the hearing. Instead, Mr. Pasker called his client, Mr. Pilago, who was waiting in the hallway to the Board's offices at 9:00 a.m., and told Mr. Pilago that he would be ten minutes late to the hearing. Ten minutes passed and Mr. Pasker still did not appear. The Board and the other parties' counsel continued to wait in the hearing room.

At 9:18 a.m., Mr. Pasker arrived at the Board's office and filed Complainant's Withdrawal of Motion to Continue and Notice of Non-Appearance (Withdrawal and Notice). In this document, Mr. Pasker stated that "Complainant will not present a case on the merits of an issue now pending among the parties. Therefore, the Complainant respectfully advises the Board he will not appear to prosecute the Complaint on 9/16/15."

The Board's hearing room is merely steps away from the secretarial station where pleadings are received and filed. Despite the close proximity, Mr. Pasker did not appear in the hearing room to explain to the Board and opposing counsel his Withdrawal and Notice filing, or his failure to appear at the hearing on time (or at all).

2. Hawaii Administrative Rules (HAR) § 12-42-8(g)(9) Hearing

Accordingly, on September 28, 2015, the Board issued a NOTICE of HAR § 12-42-8(g)(9) HEARING (Notice of Hearing) scheduling and providing notice to Mr. Pasker of a hearing pursuant to HAR § 12-42-8(g)(9) to determine whether the behavior of Mr. Pasker constituted misconduct of an aggravating character such that suspension or disbarment from further practice before the Board is appropriate. The hearing was set for October 29, 2015, at 9:00 a.m. in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813. Mr. Pasker was notified of (1) his right to retain counsel if he so desires or to appear on his own behalf, (2) his opportunity to present evidence and argument on all issues involved, and (3) his right to file a memorandum, declaration, or other pleadings addressing the issues raised herein.

The Notice of Hearing was sent to Mr. Pasker by Certified Mail, Return Receipt Requested to Mr. Pasker's office (which is noted on his pleadings filed in the Pilago Case) on September 29, 2015. A true and correct copy of the Notice of Hearing with the Certified Mail Receipt is attached hereto and incorporated herein as Exhibit "A."

Mr. Pasker filed no memorandum, declaration or any other pleading addressing the issues described in the Notice of Hearing, nor did Mr. Pasker notify the Board of any conflict in his schedule on October 29, 2015 or of his inability to attend the HAR § 12-42-8(g)(9) Hearing on October 29, 2015.

On October 29, 2015, at 9:00 a.m., the Board waited for Mr. Pasker to appear at the scheduled hearing. Mr. Pasker failed to appear before the Board. At or about 9:15 a.m., a Board staff member called Mr. Pasker's law office at ((808) 585-0994), but no one answered the telephone call. At about 9:18 a.m., the Board staff member called Mr. Pasker's cell phone number ((808) 269-6989). Mr. Pasker failed to answer the call. The Board staff member left a message for Mr. Pasker to call the Board's office because of his failure to attend the 9:00 a.m. hearing.

Subsequently, the Board discovered that Mr. Pasker never accepted delivery of the Notice of Hearing, which was sent to him by Certified Mail Return Receipt Requested. Therefore, on October 30, 2015, the Board scheduled a second HAR § 12-42-8(g)(9) Hearing for November 13, 2015 at 9:00 a.m. at the Board's hearing room. A Second Notice of HAR § 12-42-8(g)(9) Hearing (Second Notice of Hearing) was served upon Mr. Pasker by both USPS Priority Mail and

electronic mail via File & Serve Express.

Mr. Pasker appeared before the Board for the second HAR § 12-42-8(g)(9) Hearing on November 13, 2015. Mr. Pasker also filed with the Board on the morning of the hearing Respondent's Declaration in Response to the Second Notice of HAR Section 12-42-8(G)(9) Hearing, together with Exhibits A – B.

B. Second HAR § 12-42-8(g)(9) Hearing

At the hearing at the Board on November 13, 2015, Mr. Pasker provided the Board with his explanation for his non-appearance at the 9 a.m. hearing on the merits on September 16, 2015 in the Pilago Case which included the following circumstances. He was scheduled for a family court trial with potential criminal penalties against his client at 10:30 a.m. on that same day (Family Court Trial). He admitted that he knew as of September 14, 2015 that he had a conflict in his schedule for the morning of September 16, 2015. However, he believed that by withdrawing the Complaint in the Pilago Case, the 9 a.m. hearing on the merits would not proceed as scheduled. Mr. Pasker further explained that he believed that even if the hearing on the merits were to go forward, it would be better if he did not appear before the Board, be forced to proceed, and risk Pilago's rights being jeopardized by the collateral estoppel and/or res judicata doctrine. Finally, Mr. Pasker stated that he believed that his non-appearance in the Family Court Trial might result in his client's incarceration; and therefore, he felt that it was more important for him to focus his time and attention on the Family Court Trial.

Mr. Pasker admitted that he exercised poor judgment by failing to appear at the hearing on the merits to explain his client's decision to withdraw the complaint in the Pilago Case and present his client's case in the event the Board denied the withdrawal. In addition, Mr. Pasker apologized to the Board and stated that while demonstrating poor judgment, his actions were not out of disrespect for the Board, the other parties, and their attorneys. Mr. Pasker expressed his willingness to accept whatever punishment the Board finds proper. He further explained that his declarations to the Board were made not as excuses, but rather as an explanation of his thinking on September 16, 2015, which admittedly was poor.

Mr. Pasker also gave words of assurance to the Board that he is in the process of changing his law practice to enable him to exercise better judgment in managing his cases. He acknowledged to the Board his recognition of the need to reassess his practice to more properly handle the reality of unexpected events often arising in the practice of law.

Finally, Mr. Pasker assured the Board that he would contact Mr. Herbert Takahashi and Ms. Miriam Loui, the attorneys who represented the other parties in the Pilago Case and were waiting in the Board's hearing room for Mr. Pasker's appearance at 9 a.m. on September 16, 2015, and express his apologies for his conduct.

II. LEGAL STANDARDS

HAR § 12-42-8(g)(9) states as follows:

§ 12-42-8 Proceedings before the board.

...
(g) Hearings:

...
(9) Contemptuous conduct:

- (A) Contemptuous conduct at any hearing shall be grounds for summary exclusion from the hearing. Such misconduct, if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the board after due notice and hearing.
- (B) The refusal of a witness at any such hearing to answer any question which has been ruled to be proper may, in the discretion of the board, be grounds for striking all testimony previously given by such witness on related matters.

The Board is unaware of any prior action taken by the Board under HAR § 12-42-8(g)(9) for contemptuous conduct of an attorney before the Board; thus, there is no prior Board case law for precedence and guidance in this matter.

III. CONCLUSIONS OF LAW AND ORDER

The Board finds that Mr. Pasker exercised poor judgment in failing to appear before the Board on September 16, 2015 for the hearing on the merits in the Pilago Case. However, the Board is unable to conclude that Mr. Pasker's actions rise to the level of "contemptuous conduct" warranting his suspension (or disbarment) from further practice before the Board. Crucial to the Board's finding are Mr. Pasker's admission that he exercised poor judgment, his acceptance of responsibility for his actions that resulted in this hearing, and his assurances to the Board that "this will not happen again." Also important to the Board's finding are his assurances that he is making changes to his law practice to better manage his cases and give the proper attention to the needs of his clients and his further assurance that he will apologize to Mr. Takahashi and Ms. Loui for his actions.

Mr. Pasker's assurances and apologies appear to the Board to be earnest and sincere. However, ultimately his promises and statements of good intentions will be tested by time and by his future deeds. While the Board shall remain mindful of Mr. Pasker's conduct in the Pilago Case, the Board does not find Mr. Pasker's behavior to be misconduct of an aggravating character such that suspension or disbarment from further practice before the Board is warranted.

LEON PASKER
CASE NO. MISC-2015-1
POST NOVEMBER 13, 2015 HAR § 12-42-8(G)(9) HEARING ORDER
ORDER NO. 3121

DATED: Honolulu, Hawaii, November 17, 2015.

HAWAII LABOR RELATIONS BOARD



KERRY M. KOMATSUBARA, Chair

SESNITA A.D. MOEPONO, Member

EXCUSED

ROCK B. LEY, Member

Copies to:

Leon Pasker, Esq.

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

LEON PASKER,

Respondent.

CASE NO. MISC-2015-1

NOTICE OF HAR § 12-42-8(g)(9)
HEARING

NOTICE OF HAR § 12-42-8(g)(9) HEARING

Pursuant to Hawaii Revised Statutes (HRS) §§ 91-9 and 89-5(i), and Hawaii Administrative Rules (HAR) § 12-42-8(g)(9), NOTICE IS HEREBY GIVEN that the Hawaii Labor Relations Board (Board) will conduct a hearing to determine whether the behavior of Respondent LEON PASKER (Mr. Pasker) that is discussed in more detail below, constituted misconduct of an aggravating character such that suspension or disbarment from further practice before the Board is appropriate. The hearing will be held on **October 29, 2015, at 9:00 a.m.**, in the Board's hearing room located at 830 Punchbowl Street, Room 434, Honolulu, Hawaii 96813.

Pursuant to HAR § 12-42-8(g)(9)(A), "[c]ontemptuous conduct at any hearing shall be grounds for summary exclusion from the hearing. Such misconduct, **if of an aggravating character and engaged in by an attorney or other representative of a party, shall be grounds for suspension or disbarment from further practice before the [B]oard** after due notice and hearing." (Emphasis added).

In Board Case Nos. CE-10-865 and CU-10-377, Elias Pilago and Halawa Correctional Facility, et al., Mr. Pasker represented the complainant (Complainant). The first day for the hearing on the merits of the Complaint was scheduled for September 16, 2015, in the Board's hearing room, and opening arguments were to begin at 9:00 a.m. with Mr. Pasker's presentation. Although Mr. Pasker explained to the Board at the oral arguments held on September 15, 2015, that he had a conflict in his schedule, he assured the Board that he would be present at the September 16, 2015, hearing scheduled to start at 9:00 a.m.

On September 16, 2015, Mr. Pasker failed to appear at the hearing. Mr. Pasker also failed to give advance notice to the Board that he would not appear at the hearing. Instead, Mr. Pasker called his client, Complainant, who was waiting in the hallway to the Board's offices at

9:00 a.m., and told Complainant that he would be ten minutes late. Ten minutes passed, and Mr. Pasker still did not appear. The Board and the other parties' counsel continued to wait in the hearing room.

At 9:18 a.m., Mr. Pasker arrived at the Board's office and filed Complainant's Withdrawal of Motion to Continue and Notice of Non-Appearance (Withdrawal and Notice). In this document, Mr. Pasker stated that "Complainant will not present a case on the merits of an issue now pending among the parties. Therefore, the Complainant respectfully advises the Board he will not appear to prosecute the Complaint on 9/16/15."

The Board's hearing room is mere steps away from the secretarial station where pleadings are received and filed. Despite the proximity, Mr. Pasker did not appear in the hearing room to explain to the Board and opposing counsel his Withdrawal and Notice, or his failure to appear at the hearing on time (or at all).

The Withdrawal and Notice requires the approval of the Board, and the opportunity for opposing parties to submit an answer or objection thereto. It appears that Mr. Pasker filed the Withdrawal and Notice without consideration of the Board's authority to deny the Withdrawal and Notice, or the opposing parties' opportunity to answer or object. Additionally, Mr. Pasker's actions of letting the Board and opposing parties sit idle and wait for his appearance that never came, demonstrates disrespect for the Board and other parties.

Accordingly, the Board will conduct a hearing pursuant to HAR § 12-42-8(g)(9) at the date, time, and location stated above, to determine whether the behavior of Mr. Pasker constituted misconduct of an aggravating character such that suspension or disbarment from further practice before the Board is appropriate.

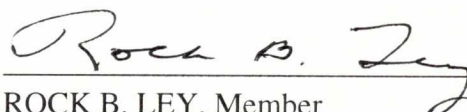
Mr. Pasker has the right to retain counsel if he so desires or may appear on his own behalf, shall have the opportunity to present evidence and argument on all issues involved, and shall have the right to file a memorandum, declaration, or other pleadings addressing the issues raised herein. Auxiliary aids and services are available upon request by calling Ms. Nora Ebata, Board Secretary, at (808) 586-8610, (808) 586-8847 (TTY), or 1(888) 569-6859 (TTY neighbor islands). A request for reasonable accommodation should be made no later than ten working days prior to the needed accommodation.

LEON PASKER, ESQ.
CASE NO. MISC-2015-1
NOTICE OF HAR § 12-42-8(g)(9) HEARING

DATED: Honolulu, Hawaii, September 28, 2015.

HAWAII LABOR RELATIONS BOARD


KERRY M. KOMATSUBARA, Chair


ROCK B. LEY, Member

Registered or Certified Mail to:

Leon Pasker, Esq.

7006 2150 0000 0121 8849

U.S. Postal Service TM	
CERTIFIED MAIL TM RECEIPT	
(Domestic Mail Only; No Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
HAWAII LABOR RELATIONS BOARD	
Postage	\$.49
Certified Fee	3.45
Return Receipt Fee (Endorsement Required)	2.80
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 6.74
Postmark Here	
Sent To LEON PASKER, ESQ.	
Street, Apt. No., or PO Box No. 920 WARD AVE., STE. 17G	
City, State, ZIP+4 HONOLULU, HI 96814	

PS Form 3800, August 2006 See Reverse for Instructions

