



**Issue Date: 13 August 2010**

Case No.: 2010-MIS-00001

*In the Matter of the Qualifications of:*

DENNIS F. NALICK,  
Attorney / Respondent.

### **ORDER OF SUSPENSION**

This matter arises out of the recent suspension of Dennis F. Nalick (Respondent) from practicing law in the State of Illinois. Respondent has represented claimants before the Office of Administrative Law Judges seeking benefits under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq.*, and the Defense Base Act, 42 U.S.C. § 1651 *et seq.* He currently represents claimants in several cases pending before this Office. At issue in the present matter is whether Respondent should be permitted to continue to appear before the Office of Administrative Law Judges.

### **Background and Procedural History**

On May 5, 2010, the Administrator of the Attorney and Registration Board and Disciplinary Commission of the Supreme Court of Illinois (ARDC) filed a complaint against Respondent. The complaint alleges that Respondent engaged in the following misconduct:

- a. conversion of client funds;
- b. failure to maintain and appropriately safeguard funds belonging to a client or third person and to hold funds separate from the lawyer's own property, in violation of Rule 1.15(a) of the Illinois Rules of Professional Conduct (1990);
- c. committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer, by committing the crime of forgery, in violation of 720 ILCS 5/17-3 in violation of Rule 8.4(a)(3) of the Illinois Rules of Professional Conduct (1990);
- d. conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Rule 8.4(a)(4) of the Illinois Rules of Professional Conduct (1990); and
- e. conduct which tends to defeat the administration of justice or to bring the courts or the legal profession into disrepute, in violation of Supreme Court Rule 770.

*In re: Dennis F. Nalick*, No. 2010PR00053 (May 5, 2010). On June 23, 2010, Respondent was also indicted in United States District Court for the Southern District of Illinois on one count of mail fraud in violation of 18 U.S.C. § 1341. *United States of America v. Dennis F. Nalick*, Order

of Indictment, Criminal No. 10- 30105-MJR (S.D. Ill. filed June 23, 2010). The indictment charges that Respondent, in his capacity as an attorney, knowingly and with the intent to defraud, devised a scheme to obtain money by means of false pretenses, representations, and promises through the use of the United States Mails. Shortly thereafter, this Office was notified that Respondent had been suspended from the practice of law by the State of Illinois until further order of the Supreme Court of Illinois. *In re: Dennis F. Nalick*, No. 2010PR00053 (July 21, 2010).

On July 29, 2010, I issued a *Notice of Judicial Inquiry and Order to Show Cause* directing Respondent to show why he should not be denied the authority to appear before the Office of Administrative Law Judges for a period to run concurrently with his suspension from the practice of law in the State of Illinois. Additionally, I notified Respondent that he was entitled to a hearing, but that any request for a hearing must specifically identify issues involving a genuine issue of material fact and must describe evidence to be presented that is exculpatory or otherwise relevant to a genuine issue of material fact.

On August 5, 2010, Respondent filed a Response to Judicial Inquiry.<sup>1</sup> He did not request a hearing and argues that, although he has been suspended from practicing law in the State of Illinois, he continues to be licensed to practice law in the State of Louisiana and he is a member in good standing of the United States District Court for the Eastern District of Louisiana. As evidence supporting his Response, Respondent submitted a Letter of Good Standing from the State of Louisiana dated August 3, 2010. (EX B). Respondent also argues that he should not be suspended from appearing in proceedings before this Office because the ARDC disciplinary proceedings have been stayed until the disposition of the federal criminal case, both of which matters arose out of the same conduct. He offers in support of this argument an Order issued by the ARDC on July 30, 2010 granting Respondent's motion to stay the disciplinary proceedings pending the disposition of his criminal case. (EX A).

### Discussion

The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges provide that an ALJ may deny an attorney who lacks the necessary qualifications the privilege of appearing before this Office. The rules provide, in pertinent part:

(3) *Denial of Authority to appear.* The administrative law judge may deny the privilege of appearing to any person, within applicable statutory constraints, e.g. 5 U.S.C. 555, who he or she finds after notice and opportunity for hearing in the matter does not possess the requisite qualifications to represent others; or is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude. No provision hereof shall apply to any person who appears on his or her own behalf or on behalf of any corporation, partnership, or association which the person is a partner, officer, or regular employee.

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<sup>1</sup> The following abbreviations will be used as citations to the record: "EX" for Respondent's Exhibit and "Resp." for Respondent's Response to Judicial Inquiry.

29 C.F.R. § 18.34(g)(3). This section has been interpreted as requiring notice and opportunity for a hearing. *In the Matter of Qualifications of Edward A. Slavin, Jr.*, ARB No. 04-088, ALJ No. 2004-MIS-2 (ARB April 29, 2005). The Administrative Review Board has explained that an evidentiary hearing is only necessary if: (1) the hearing request specifically identifies issues involving a genuine issue of material fact; and (2) the hearing request describes evidence to be presented that is exculpatory or otherwise relevant to the genuine issues of material fact. Slip. op. at 18.

As noted above, Respondent has not requested a hearing, and he has not identified any disputed genuine issues of material fact. Nor has Respondent identified or described any evidence that may be exculpatory or otherwise relevant to a genuine issue of material fact. Despite the gravity of the allegations against him,<sup>2</sup> Respondent simply contends that he has not yet been convicted or entered a guilty plea in the federal criminal case, the Illinois disciplinary proceeding before the ARDC has been stayed indefinitely, and he is presently a member in good standing of the Louisiana Bar.

The fact that the criminal case in which Respondent has been indicted has not yet been resolved is irrelevant to the issue of whether he possesses the qualifications to appear in a representative capacity before this Office. As Rule 18.34(g)(3) makes clear, an administrative law judge may deny an attorney the privilege of appearing in matters before this office if he or she finds that the attorney has engaged in unethical or improper professional conduct, or has engaged in an act involving moral turpitude. Respondent has been suspended from practicing law in Illinois due to allegations of conversion of client funds, forgery, dishonest conduct, and failure to appropriately safeguard client funds.<sup>3</sup> Furthermore, the fact that Respondent is presently a member of the Bar in good standing in the State of Louisiana does not, in and of itself, tend to show that he possesses the requisite character and integrity to represent others before this Office. It simply suggests that the Louisiana Bar is not presently aware of Respondent's Illinois suspension, and has thus not initiated an investigation into the matter.<sup>4</sup>

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<sup>2</sup> I am not persuaded by Respondent's suggestion that his release on a \$10,000 signature bond in the federal criminal case reflects in any way on "the quality of the nature of the charge" in that case.

<sup>3</sup> Despite Respondent's reference to the ARDC's July 30, 2010 order staying the Illinois disciplinary proceedings, and the suggestion implicit therein that such order has removed any bar to his continuing to practice law, the ARDC's website confirms that that he is not presently authorized to practice law in that jurisdiction. See <https://www.iardc.org/lawyersearch.asp> last visited August 13, 2010. Furthermore, the order of the Supreme Court of Illinois suspending Respondent from the practice of law makes clear that such suspension is effective "immediately and until further order of Court." *In re: Dennis F. Nalick*, No. 2010PR00053 (July 21, 2010) (emphasis added). No further order of the Illinois Supreme Court was offered by Respondent in his response to my Order to Show Cause, and the record before me thus establishes that Respondent's suspension pursuant to the July 21, 2010 order remains in effect.

<sup>4</sup> It is worth noting that in a prior disciplinary action against Respondent by the Supreme Court of Louisiana, the Louisiana Supreme Court explained that when considering disciplinary action based on an attorney's conduct in another jurisdiction, "only under extraordinary circumstances should there be a significant variance from the sanction imposed by [another] jurisdiction." *In re: Nalick*, 06-B-1570, 939 So. 2d 349 (La. Sept. 29, 2006) (citing *In re: Aulston*, 05-1546, 918 So. 2d 461 (La. Jan. 13, 2006)). In that case, the Louisiana Supreme Court imposed a one year reciprocal suspension to correspond with Respondent's one year suspension from practicing law in the State of Missouri. In light of the foregoing, it is probable that Respondent will also face reciprocal disciplinary action by the Supreme Court of Louisiana to correspond with his current Illinois suspension.

Respondent has failed to offer any evidence refuting the allegations which provide the basis for his suspension from the practice of law in Illinois, and I therefore find that it is appropriate to impose a reciprocal suspension to correspond with the Illinois disciplinary action. *See generally In the Matter of Qualifications of Scott N. Roberts*, ALJ No. 2008-MIS-5 (Oct. 9, 2008).

### **Conclusion**

Based on the foregoing, I find that Respondent should be suspended from appearing before the Office of Administrative Law Judges in a representative capacity for a period to run concurrently with his suspension from the practice of law in the State of Illinois. If Respondent's suspension from the practice of law in the State of Illinois is lifted, he may thereafter apply for readmission to practice before this Office.

The ALJs in this Office will be informed of this Order with directions to take appropriate steps to protect the interests of any claimant currently being represented by Respondent, including providing time for the claimant to obtain new counsel. Further, while § 18.34(g)(3) only applies to proceedings before OALJ, this Order will be transmitted to the Benefits Review Board, the Solicitor of Labor, and the Office of Workers' Compensation Programs, for their consideration regarding whether Respondent possesses the qualifications to appear in a representative capacity before them.

### **ORDER**

Based on the foregoing, IT IS HEREBY ORDERED that Attorney DENNIS F. NALICK is IMMEDIATELY SUSPENDED from appearing in a representative capacity before the Office of Administrative Law Judges. This suspension applies to all cases that are currently before this Office and all that may be returned on remand in the future.

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STEPHEN L. PURCELL  
Acting Chief Administrative Law Judge

Washington, D.C.