



Issue Date: 08 December 2011

Case No.: 2012-MIS-00001

*In the Matter of the Qualifications of:*

**BRADLEY ROWLAND MARSHALL,**  
*Attorney.*

**BEFORE: STEPHEN L. PURCELL**  
Chief Administrative Law Judge

**ORDER DENYING AUTHORITY TO APPEAR**

Bradley Rowland Marshall is an attorney who was disbarred by the State of Washington because he attempted to squeeze certain clients in a state lawsuit for additional fees despite a flat fee agreement; caused one client to obtain other counsel to defend herself once Mr. Marshall filed a lawsuit and a lien against her; tried to bully his clients into settling their claims despite their express desire to proceed to trial; and declined to defend those clients from that point on, demanding they accept the settlement or pay him more money. *In re Disciplinary Proceeding Against Marshall*, 167 Wash.2d 151, 217 P.3d 291, 310 (Wash. Oct. 1, 2009).<sup>1</sup>

Following his disbarment, Mr. Marshall has continued to provide representative services to claimants under the Longshore and Harbor Workers' Compensation Act (LHWCA). His status as a disbarred attorney recently came to the attention of the Office of Administrative Law Judges (OALJ) when he filed an appearance in a Longshore case, *Brown v. APM Terminals*, 2011-LHC-774 and 775.

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<sup>1</sup> I note that the State of Washington has previously disciplined Mr. Marshall on three different occasions

... including: (1) a 1989 admonition for failing to respond to the [Washington State Bar Association's] requests for information; (2) a 1998 reprimand for conduct involving dishonesty, fraud, deceit, or misrepresentation; and (3) a 2007 18-month suspension for (a) "deceitful" conduct; (b) improperly charging contract attorney fees as "costs;" (c) failing to maintain complete records of client funds, failure to provide an appropriate accounting, and failing to remit client funds; (d) representing multiple clients without explaining the implications of common representation or obtaining their written consent; and (e) failing to abide by his clients' decisions.

*Marshall*, 217 P.2d at 306.

On November 15, 2011, a Judicial Inquiry was instituted by me ordering Mr. Marshall to show cause why OALJ should not afford reciprocal effect to the State of Washington's disbarment order. In response, Mr. Marshall claims that he was denied due process in the State of Washington proceeding, and requests the opportunity to present exculpatory testimony from several witnesses who he asserts had not been able to testify in the State of Washington proceedings because of scheduling conflicts.

## **BACKGROUND**

The United States Department of Labor, Office of Workers' Compensation Programs (OWCP) administers workers' compensation claims under the LHWCA. A party dissatisfied with OWCP's determination in a Longshore case may request a hearing before an administrative law judge. In *Brown v. APM Terminals*, 2011-LHC-774 and 775, such a hearing request was made, and the matter was originally assigned to Administrative Law Judge Richard M. Clark in OALJ's San Francisco District Office. The Claimant, the Employer, the Employer's insurance carrier, and the Claimant's attorney, were all from the State of Washington. The Employer's attorney was from the State of California. On April 15, 2011, Judge Clark issued an order permitting the attorney then representing the Claimant to withdraw as counsel. See *Brown v. APM Terminals*, 2011-LHC-774, 775 (ALJ Apr. 15, 2011) (Order Granting Motion to Withdraw). Under cover letter received by OALJ on April 19, 2011, Mr. Marshall filed an entry of appearance in *Brown*. The cover letter to this filing bore the letterhead "The Marshall Firm LLC - A mediation and conflict resolution firm" and an address in Raleigh, North Carolina. In the Notice of Appearance, Mr. Marshall referred to himself as a "Claimant Representative."

Later, the matter was reassigned to District Chief Administrative Law Judge Jennifer Gee. On September 16, 2011, Judge Gee, having learned that Mr. Marshall was an attorney who had been "suspended" from the practice of law by the State of Washington, ordered Mr. Marshall to show cause why he should not be disqualified from representing the Claimant in *Brown*. *Brown v. APM Terminals*, 2011-LHC-774 and 775 (ALJ Sept. 16, 2011).

By letter dated September 19, 2011, Mr. Marshall divulged that he had been disbarred (rather than suspended) on October 1, 2009, and he sought clarification from Judge Gee regarding whether she considered him to be an "attorney at law" covered by 29 C.F.R. § 18.34(g)(1) or whether he was considered a non-attorney representative covered by 29 C.F.R. § 18.34(g)(2). This letter bore a letterhead identifying Mr. Marshall's business as "Chartmans Inc. – Specializing in Longshore and Federal Worker Claims." The address for Chartmans Inc. was Charleston, South Carolina.

Judge Gee responded that because Mr. Marshall was an attorney, his appearance would be considered under 29 C.F.R. § 18.34(g)(1), and that he was not eligible to make an entry of appearance as a non-attorney representative under 29 C.F.R. § 18.34(g)(2). *Brown v. APM Terminals*, 2011-LHC-774 and 775 (ALJ Sept. 28, 2011). In a subsequent order, Judge Gee further clarified that her interpretation of the regulations requiring consideration of Mr. Marshall's appearance under 29 C.F.R. § 18.34(g)(1) was the same interpretation made by former Chief Administrative Law Judge John M. Vittone in *In the Matter of Doyle*, 2009-MIS-1

(ALJ Dec. 16, 2008) (unpublished Order to Show Cause).<sup>2</sup> *Brown v. APM Terminals*, 2011-LHC-774 and 775 (ALJ Oct. 7, 2011).

Following receipt of Mr. Marshall's response to the Order to Show Cause, Judge Gee issued her Order Disqualifying Claimant's Representative. *Brown v. APM Terminals*, 2011-LHC-774 and 775 (ALJ Nov. 2, 2011). Mr. Marshall argued that he met the requirements of 29 C.F.R. § 18.34(g)(1) because he was admitted to practice before the U.S. District Court for the District of Colorado. Judge Gee rejected this argument because she contacted the district court and was informed that the district court had recently learned of Mr. Marshall's disbarment and that he "would no longer be able to practice before the U.S. District Court as soon as [the Attorney Services Coordinator] completed the steps to change Mr. Marshall's status." Judge Gee also rejected arguments about the validity of the disbarment order on the ground that she had no authority to modify or reverse that order, and denied a stay of her decision on whether to permit Mr. Marshall to appear in the *Brown* matter pending a collateral appeal in the Ninth Circuit. Judge Gee found that Mr. Marshall "is an attorney at law within the meaning of 29 C.F.R. § 18.34(g)(1) and as a disbarred attorney, he is ineligible to represent parties before the Office of Administrative Law Judges. His status as a disbarred attorney does not make him eligible to appear before the OALJ as a 'non-attorney' under 29 C.F.R. § 18.34(g)(2)." *Id.* at 2.

Upon receipt of the order of disqualification, Mr. Marshall wrote to Judge Gee asking if he was allowed to appeal her decision. Judge Gee thereafter issued an order informing Mr. Marshall that because the order of disqualification was not a dispositive order it was not subject to appeal as a final order to the Benefits Review Board (BRB). Judge Gee noted, however, that the BRB had, in *Baroumes v. Eagle Marine Services*, 23 BRBS 80 (1989), accepted an interlocutory appeal filed by the claimant of an ALJ's order disqualifying the law firm that had been representing the claimant.<sup>3</sup>

Because Mr. Marshall appears to have an active practice of representing LHWCA claimants before the Department of Labor, the instant Judicial Inquiry was instituted to avoid piecemeal adjudication of Mr. Marshall's authority to appear before OALJ. *See In the Matter of Slavin*, ARB No. 04-088, ALJ No. 2004-MIS-2 (ARB Apr. 29, 2005), USDOL/OALJ Reporter at 8-9 (authority of OALJ to bar attorney from appearance in future cases).

## **NOTICE OF JUDICIAL INQUIRY PROCEDURE**

Mr. Marshall was notified in the November 15, 2011 Notice of Judicial Inquiry and Order to Show Cause of OALJ's procedures for consideration of whether reciprocal effect should be

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<sup>2</sup> In *Doyle*, the suspended attorney withdrew from all representation of claimants before OWCP and OALJ following receipt of the Order to Show Cause. Accordingly, the Judicial Inquiry was closed without a formal adjudication. *See In the Matter of Doyle*, 2009-MIS-1 (ALJ Jan. 16, 2009).

<sup>3</sup> The instant Notice of Judicial Inquiry and Order to Show Cause should not be misconstrued as an appeal of Judge Gee's order. Rather, it is an independent Judicial Inquiry into whether Mr. Marshall should be permitted to appear in any case docketed by OALJ.

given to a disbarment order issued by a state licensing authority. That Notice stated, in relevant part:

The procedure to be followed when OALJ proposes to deny the privilege to appear in a representative capacity before any Department of Labor ALJ is described in *In the Matter of Slavin*, ARB No. 04-088, ALJ No. 2004-MIS-2 (ARB Apr. 29, 2005). Specifically, the notice “must provide a clear, comprehensive description of the grounds on which the disciplinary inquiry is based. ... The attorney must also be put on notice of the procedure that will follow ... [and the notice] must describe the consequences of the attorney’s failure to respond to the notice as well as the consequences of an ultimate failure to successfully defend against the charges.” *Slavin*, ARB No. 04-088, USDOL/OALJ Reporter at 13 (citations omitted).

In the *Matter of Marshall*, 2012-MIS-1 (ALJ Nov. 15, 2011), Notice of Judicial Inquiry, slip op. at 4. Mr. Marshall was further informed that the ground for disqualification in the instant case was straightforward, *i.e.*, giving reciprocal effect to the State of Washington’s disbarment order in *In re Disciplinary Proceeding Against Marshall*, 167 Wash.2d 151, 217 P.3d 291 (Wash. Oct. 1, 2009). *Ibid.* He was also informed that the criteria established by the U.S. Supreme Court in *Selling v. Radford*, 243 U.S. 46 (1917),<sup>4</sup> which had previously been applied by the Department of Labor in disqualification proceedings, would be applied in this case. *Ibid.* Citing *Slavin*, ARB No. 04-088, USDOL/OALJ Reporter at 18-20, Mr. Marshall was told that while 29 C.F.R. § 18.34(g)(3) required notice and an opportunity for a hearing, the regulation did not mandate an evidentiary hearing for the taking of testimony where the facts are not in dispute. *Id.* at 5. He was expressly informed that an evidentiary hearing for the taking of testimony would not be conducted unless he clearly articulated an issue of material fact which required an evidentiary hearing, the nature of the evidence which required an evidentiary hearing, and an explanation of why such evidence was exculpatory or otherwise relevant. *Ibid.* Finally, Mr. Marshall was notified that he would not be allowed to relitigate any matter that he had been afforded a full and fair opportunity to contest in the case in which his misconduct was adjudicated, and that issue preclusion was widely accepted as applicable to attorney disciplinary proceedings, including reciprocal discipline based on another jurisdiction’s imposition of discipline or discipline based on an attorney’s criminal conviction. *Ibid.*

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<sup>4</sup> The *Selling* criteria are:

1. that the state procedure, from want of notice or opportunity to be heard, was wanting in due process; 2, that there was such an infirmity of proof as to facts found to have established the want of fair private and professional character as to give rise to a clear conviction on our part that we could not, consistently with our duty, accept as final the conclusion on that subject; or 3, that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do.

*Selling v. Radford*, *supra*, at 50-51.

## **MR. MARSHALL'S RESPONSE**

In response to my Notice of Judicial Inquiry, Mr. Marshall argued:

Realizing that you are not inviting me to re-litigate the facts of this case, please understand that there are grave due process issues and compelling testimony and documentary evidence which was unavailable to me at the time the case was tried. The evidence will prove my innocence and that my constitutional rights of due process were trampled.

(Response at 1). Specifically, Mr. Marshall alleged that the original hearing officer in the Washington proceedings improperly failed to disclose that she had applied for a job with disciplinary counsel. (Response at 4). He alleged that the chief hearing officer then appointed himself to serve in place of the original hearing officer, and concealed that he was paid by the Washington State Bar, that the Bar agreed to hold him harmless for all wrongdoing, that he had a fiduciary duty to the Bar, that his law partner was a “Board of Governor member and the President of the Bar and he served on a Bar Board of Governor Committee where he collaborated with Bar officials regarding matters that were directly at issue in my case at the same time he served as a ‘neutral’ arbiter.” (Response at 4-5).

Mr. Marshall requested permission to present oral argument and to present exculpatory testimony from Judge Michael Heavey (who presided over the mediated settlement in the case underlying the disbarment order) and several clients in that underlying matter. Mr. Marshall stated that these persons had been unable to testify because of scheduling conflicts and that “[t]heir testimony is exculpatory and will address each of the central issues referenced above.”

## **REQUEST FOR ORAL ARGUMENT AND PRESENTATION OF WITNESS TESTIMONY**

As stated above, Mr. Marshall was notified that he would not be allowed to re-litigate matters which he had been afforded a full and fair opportunity to present in the Washington State proceedings. The question of whether the status and actions of the original hearing officer and chief hearing officer deprived Mr. Marshall of due process in the disciplinary proceedings was *specifically* litigated in the Washington state proceeding, and the Washington Supreme Court *expressly* addressed and rejected these due process arguments. *Marshall*, 217 P.3d at 297-299. A review of the Washington Supreme Court’s decision further establishes that Mr. Marshall had a full and fair opportunity to present any due process concerns about the disciplinary hearing process before the State of Washington.<sup>5</sup> Accordingly, his request for oral argument and to

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<sup>5</sup> It is noted too that Mr. Marshall collaterally challenged the State of Washington disbarment proceedings in federal court and that those challenges were not successful. *See Marshall v. State of Washington*, No. 2:10-cv-0359-JCC (W.D.Wash. July 8, 2010), *aff'd Marshall v. Washington State Bar Ass'n*, No. 10-35684 (9<sup>th</sup> Cir. Aug. 17, 2011), *pet. for reh'g en banc denied*, (9<sup>th</sup> Cir. Oct. 25, 2011), *cert. denied Marshall v. Washington State Bar Ass'n*, 130 S.Ct. 3480, 177 L.Ed.2d 1059, 78 USLW 3670, 3738, 3742 (U.S. June 21, 2010). *See also Marshall v. Washington State Bar Ass'n*, C08-0742-JLR (W.D. Wash. Aug. 8, 2008) (suit dismissed for lack of subject matter jurisdiction).

present the testimony of Judge Heavey and several clients regarding the actions of the original hearing officer and chief hearing officer in the State proceeding is denied.

### **DECISION**

In addition to being notified that he would not be allowed to re-litigate matters which he had been afforded a full and fair opportunity to present in the Washington State proceedings, Mr. Marshall was notified that if he failed to show sufficient cause not to afford reciprocal effect to the State of Washington's disbarment order, he would be barred from appearing before the OALJ in a representative capacity in any proceeding. Despite these warnings, his response to the Notice of Judicial Inquiry is nothing more than an attempt to reopen and re-litigate the disciplinary matter. His response does not establish that the Washington State proceedings were conducted in such a way as to violate due process, or were lacking in proof of misconduct, or that a grave injustice would result in giving effect to the Washington Supreme Court's judgment. *See Selling v. Radford*, 243 U.S. 46, 50-51 (1917). In short, Mr. Marshall has not shown cause why reciprocal effect should not be afforded to the State of Washington disbarment order. I therefore find that denial of the privilege to appear before OALJ under 29 C.F.R. § 18.34(g)(3) is warranted.

### **ORDER**

Based on the foregoing, **IT IS ORDERED** that Mr. Marshall is denied the authority to appear in a representative capacity before the United States Department of Labor, Office of Administrative Law Judges. A copy of this decision will be referred to the Office of Workers' Compensation Programs for its consideration regarding whether to institute a debarment proceeding under 20 C.F.R. § 702.432(b).

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**STEPHEN L. PURCELL**  
Chief Administrative Law Judge

Washington, D.C.

**NOTICE OF APPEAL RIGHTS:** Disqualification in this matter is a general denial of authority to appear in any proceeding before OALJ pursuant to 29 C.F.R. § 18.34(g)(3). According to OALJ's rules of practice and procedure, when no provision for appeal is made in a

statute or regulation under which OALJ's hearing jurisdiction is conferred, the decision of the presiding administrative law judge "shall become the final administrative decision of the Secretary." 29 C.F.R. § 18.58. Accordingly, any appeal of this Order Denying Authority to Appear must proceed in accordance with the provisions of the Administrative Procedure Act governing judicial review found at 5 U.S.C. §§ 701-706. In addition to the provisions of Fed.R.Civ.P. 4(i) governing service of any petition for review of the Order, copies of such petition must also be served on the following:

Chief Administrative Law Judge  
U.S. Department of Labor  
800 K St. NW – Suite 400 North  
Washington, DC 20001-8002

Solicitor of Labor  
U.S. Department of Labor  
200 Constitution Ave, NW  
Washington, DC 20210