



Issue Date: 10 June 2019

Case No. 2017-MIS-00001

In the Matter of the Qualifications of:

KEVIN M. TRACY, Esq.
Law Office of Kevin M. Tracy

and

SUSAN M. JEANNETTE, Representative
North County Legalization Services, Inc.

Appearances: George R. Najjar, Esq.
The Najjar Law Firm
San Diego, California
For Mr. Tracy

N. Munro Merrick, Esq.
Del Mar, California
For Ms. Jeannette

RECOMMENDED DECISION AND ORDER

This matter arises under § 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A), the PERM regulations at 20 C.F.R. Part 656,¹ and the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (“OALJ”), 29 C.F.R. Part 18.²

The following recommended ruling is based upon my observation of the appearance and demeanor of the witnesses who testified at the hearing and upon my analysis of the entire record, the arguments of the parties, and applicable regulations, statutes, and case law. As the Associate Chief Administrative Law Judge for Longshore and Immigration, I was instructed to conduct this

¹ “PERM” is an acronym for the “Program Electronic Review Management” system established by the regulations that went into effect on March 28, 2005.

² “The Board of Alien Labor Certification Appeals (“BALCA”) is housed within the Office of Administrative Law Judges (“OALJ”), United States Department of Labor. Consequently, BALCA applies OALJ’s Rules of Practice and Procedure at 29 C.F.R. Part 18 in reference to procedural matters not covered by the permanent labor certification regulations.” *See Infosys Technologies Ltd.*, 2012-PER-00417 (Nov. 16, 2012), slip op. at 3 n.2.

Inquiry and to make a recommended ruling by the Chief Administrative Law Judge pursuant to 29 C.F.R. § 18.23(a)(2).

FACTUAL BACKGROUND

Pending before the Board of Alien Labor Certification Appeals (“BALCA” or “the Board”) are several appeals in which Mr. Kevin Tracy or Ms. Susan Jeannette are identified as the petitioning employer’s legal representative. When the Board issued Notices of Docketing in these appeals, the Notice included a reminder to Mr. Tracy that he would be required to personally review and sign any appellate brief. This requirement arose from a finding by the panel in *Mazatlan, Inc.*, 2011-PER-01474 (Jan. 27, 2012),³ that Mr. Tracy had failed to sufficiently monitor the activities of persons working for him, or associated with him, in the representation of clients before BALCA, as directed in the earlier admonishment and probation imposed by *In re: the Qualifications of Kevin M. Tracy*, 2011-MIS-00001 (Feb. 4, 2011). In *Mazatlan*, the panel extended Mr. Tracy’s probation, and directed him to personally review and sign, or co-sign, any legal pleadings filed with BALCA. The panel also directed Ms. Jeannette to discontinue using North County Legalization Services, Inc. (“NCLS”) letterhead that included a disclaimer that NCLS was not providing legal services, and to discontinue any practice of telling or implying to clients that NCLS is not engaged in providing legal services when filing documents before the Certifying Officer (“CO”) or the Board.

This Inquiry became necessary based on the responses received from Mr. Tracy and Ms. Jeannette to the Notices of Docketing in a number of appeals. The events in *Arsenio’s Mexican Food*, 2012-PER-01018, illustrate why this Inquiry was necessary.

Arsenio’s Mexican Food

The appeal in *Arsenio’s Mexican Food* is currently before the Board following a remand requested by the CO from the first appeal.

Mr. Tracy was listed as the Employer’s representative on the Employer’s February 22, 2010 Form 9089 mailed-in application. (AF 139).⁴ Mr. Tracy’s signature appears on the application (AF 145), and on an undated Form G-28 Notice of Entry of Appearance. (AF 148). On the Form 9089, Mr. Tracy’s Firm Name is listed as “Law Office of Kevin M. Tracy and No. County Legalization Services, Inc.” (AF 139). The email address given for Mr. Tracy is listed as “sjeannette@ncls.net.” *Id.* On the G-28, Mr. Tracy’s email address is listed as “kmtatty@hotmail.com.” (AF 148).

An April 21, 2010 request for BALCA review filed in connection with the first appeal of this application (2011-PER-00048) was signed by Mr. Tracy, under the letterhead “Law Office of Kevin M. Tracy.” (AF 111). The caption on this request for review showed the name of the Employer followed by “c/o Law Offices of Kevin M. Tracy and No. County Legalization

³ Opinions are available at www.oalj.dol.gov.

⁴ In this Order, “AF” is an abbreviation for the “Appeal File” in Case No. 2012-PER-01018, unless otherwise noted.

Services, Inc., Susan M. Jeannette.” *Id.* The letterhead shows Mr. Tracy’s email address as “kmtatty@hotmail.com.” *Id.*

Upon the CO’s unopposed motion, the matter was remanded for further processing. *Arsenio’s Mexican Food*, 2011-PER-00048 (Jan. 24, 2011). On June 29, 2011, the CO issued an Audit Notification. (AF 99-103).

The caption on the July 22, 2011 cover letter transmitting the Employer’s audit response showed “No. County Legalization Services, Inc., Susan M. Jeannette.” (AF 28). Mr. Tracy’s name does not appear on this cover letter. However, the FedEx US Airbill showed the audit response as having been mailed by Mr. Tracy from the “Law Office of Kevin M. Tracy.” (AF 98).

The CO denied the application on August 16, 2011. (AF 24-27).

The Employer requested reconsideration on September 6, 2011. (AF 3-5). The caption on the request for reconsideration displayed the name of the Employer followed by “c/o No. County Legalization Services, Inc., Susan M. Jeannette.” (AF 3). Mr. Tracy’s name does not appear in the letter requesting reconsideration. The request, however, was mailed from the “Law Office of Kevin M. Tracy.” (AF 23).

Up to this point in the record, the Law Office of Kevin M. Tracy and NCLS had identical street addresses. The record contains no indication that the Employer had discharged Mr. Tracy, that Mr. Tracy had withdrawn from representation, or that Ms. Jeannette had made an entry of appearance on behalf of the Employer. When the CO issued his decision on reconsideration on January 18, 2012, he served Mr. Tracy at the address shown on the Form 9089. (AF 1).

As alluded to above, when the Board issued the Notice of Docketing relating to this appeal on December 28, 2012, it noted that Mr. Tracy was the attorney of record in the matter, and that because of a failure in the past to sufficiently monitor the activities of persons working for, or in association with, his law firm, he was required to personally sign or co-sign all filings with the Board.

On January 6, 2013, Ms. Jeannette replied to the Notice of Docketing under the letterhead of “NCLS Inc.” stating that that Mr. Tracy was no longer the attorney of record. Ms. Jeannette wrote that “North County Legalization Services and Susan M. Jeannette the Bonded Immigration Processor is no longer affiliated with Mr. Kevin M Tracy and I have not been involved since 2012 [sic].” Ms. Jeannette stated that all PERM cases belong to her and not to Mr. Tracy. She accused Mr. Tracy “and his cohorts” of breaking into her office on March 3, 2012 and stealing over 25 years of files regarding her clients.

On January 9, 2013, Mr. Tracy replied to the Notice of Docketing.⁵ Mr. Tracy stated: “This is to inform you that I do not have the above referenced files, never represented these people, never filed an ETA 9089, and had no dealings with any of the sponsors.” Mr. Tracy further stated that he had disassociated himself from NCLS and Ms. Jeannette in October 2011, and had moved his offices on March 3, 2012. Mr. Tracy stated that he had not been aware until February 2012 that he had been “suspended”⁶ in regards to work on PERM applications. Mr. Tracy stated:

I was apparently suspended for failure to supervise NCLS and Susan M. Jeannette in matters pertaining to the preparation and follow up of PERM applications. The reason I did not supervise her was that I had no knowledge what she was doing. She would not work on days that I was in my office, and kept her files secretive because she did not want my counsel or advice on rule changes or updates that I knew about. Most particularly the June 2007 changes as to substitutions and who was required to pay the fees.

Ms. Jeannette used my retainer agreement without my knowledge and I never signed anything and as stated earlier never met clients or sponsors.

(Tracy Letter).

Additional Appeals Subject to the Judicial Inquiry

There are only four pending appeals in which Mr. Tracy responded to the Notice of Docketing with some form of a letter discussing his involvement, or lack thereof. These four cases, *Arsenio’s Mexican Food*, 2012-PER-01018; *Rocy’s Mexican Food*, 2012-PER-01023; *Leucadia Pizzeria & Italian Restaurant*, 2012-PER-01191;⁷ and *Alberto’s Mexican Food*, 2012-

⁵ In the January 9, 2013 letter, Mr. Tracy also claimed ignorance of two other cases, *Rocy’s Mexican Food*, 2012-PER-01023, and *Alberto’s Mexican Food*, 2012-PER-01560, for which docketing orders had been issued around the same time as in the present case. Similar to this case, Mr. Tracy appears to have signed the Form 9089 and G-28s in both cases. (*Rocy’s*, AF 194, 191, *Alberto’s*, AF 82, 84). In addition, in *Alberto’s* Mr. Tracy appears to have signed the appeal letter. (*Alberto’s*, AF 58).

⁶ The panel in *Mazatlan* did not suspend Mr. Tracy, but only extended his probation and directed that he personally review and sign or co-sign pleadings filed with BALCA.

⁷ I also note that in *Leucadia Pizzeria & Italian Restaurant*, 2012-PER-01191, Mr. Tracy signed the Form 9089 and G-28 and sent in a letter dated December 26, 2012 stating:

The purpose of this letter is to inform your office that I am unable to respond to this case because I am not familiar with the issues in this case. Although it is true that I was the supervising attorney at NCLS Inc. and Ms. Susan M. Jeannette I was not aware of her goings on because she refused to keep me informed as to the many PERM cases she was handling. . . . In October 2011 I confronted Ms. Jeannette and informed her that I would be leaving my office and would no longer oversee her staff due to her noncompliance with my suggests and recommendations. My date to depart was March 2012.

...

When I departed my office at Del Mar, California in March 2012, I took all of the files that I felt were mine. . . . Many files were placed in a secure storage facility. The case presently before me may be at my

PER-01560 remain pending. As previously stated in the Notice of Judicial Inquiry and Notice of Hearing (the "Notice"), the Appeals Files in these four cases will be considered during this Inquiry.

I note that there are other pending appeals involving one or both of these representatives. Because the resolution of this Inquiry has no bearing on the merits of these appeals, I need not discuss them further.⁸

storage facility or may be with NCLS and Susan M. Jeannette. Hopefully I will determine that before the deadline to respond to your notice, and will at that time advise the client.

(Tracy letter).

Mr. Tracy never followed up to confirm whether he had this case in his storage facility. Ms. Jeannette however, sent a letter accusing Mr. Tracy of stealing her files. Ms. Jeannette also presented a signed G-28. (Supplemental filing).

⁸ In the following appeals, Mr. Tracy is listed as the attorney on the Form 9089 and he signed the Form 9089 and a G-28:

Vaquero's Carne Asada, Inc., 2012-PER-00816
Arsenio's Mexican Food, 2012-PER-01639
BGJ Corporation, 2012-PER-01714
Durant Harvesting, Inc., 2012-PER-01946
Domenic's Italian Ristorante & Deli, 2013-PER-02608

There is one case in which Mr. Tracy was listed as the attorney on the Form 9089, but Ms. Jeannette signed the documents:

Linlee Inc. d/b/a Masuo's, Inc., 2012-PER-01917

There are several pending appeals in which Ms. Jeannette is the listed representative on the Form 9089, but Mr. Tracy's name appears on mailers or in email blocks throughout the Appeal File:

Aimee L. Monroe, 2012-PER-02228
Henderlite Corp. d/b/a Sunsett Paint & Body Works, 2012-PER-03369
Neil Splonskowski Lighting Design, Inc., 2012-PER-03397
Rudy's La Costa Corp. d/b/a Rudy's Taco Shop, 2012-PER-03611
Roberto's Mexican Food, 2012-PER-03613
Norman Levitt, 2013-PER-00434
Roberto's Mexican Food, 2014-PER-01297

The following were filed by Ms. Jeannette and do not appear to mention Mr. Tracy in any way:

Alberto's Mexican Food, 2013-PER-00493
Torrey Pines Montessori Center, Inc., 2013-PER-00666
Garden Fresh Restaurants D/B/A Soup Plant, 2013-PER-01120
El Torito Market, 2013-PER-02748
Mark Langer Masonry & Landscape, 2013-PER-03297
Mark Langer Masonry & Landscape, 2013-PER-03298
Four Seasons Tree Service, Inc., 2014-PER-00344
CRG, 2014-PER-00588
Bertrand's At Mr. A's, 2014-PER-01090
Dr. David Krummen, 2015-PER-00651
Dan Conway & Associates, 2016-PER-00352

Although it appears that Mr. Tracy is no longer associated with NCLS or with Ms. Jeannette, due to their intertwined involvement in the cases pending before us, it was determined as a matter of administrative efficiency that a hearing regarding their qualifications would be consolidated. *See* 29 C.F.R. § 18.43. I held a hearing in this matter on July 21, 2017, in San Diego, California, which was attended by Mr. Tracy and Ms. Jeannette and their respective counsel.

Issues

There are three issues for adjudication in this matter:

- 1) Whether Mr. Tracy or Ms. Jeannette, or both, should be disqualified as legal representatives before OALJ and the Board;
- 2) Whether this matter should be referred to the Office of Inspector General or any other appropriate government agencies; and
- 3) In the case of Mr. Tracy, whether he should be reported to any applicable state bar association.

(Tr. 6-7).

Briefs

On April 17, 2017, Mr. Tracy filed a pre-hearing brief. Mr. Tracy's brief covers a number of facts that are also recounted in the testimony. Some pertinent facts not covered in the testimony are as follows: Ms. Jeannette had been instructed to identify herself as "Susan M. Jeannette, Immigration Processor for the Law Office of Kevin M. Tracy" or "Susan M. Jeanette, Immigration Processor for Kevin M. Tracy." (Tracy Brf. 2). He had never heard of *Mazatlan, Inc.* until receiving the Notice of Judicial Inquiry and Notice of Hearing (the "Notice") the *Notice of Judicial Inquiry*, and he only heard of *In re: Kevin M. Tracy* in November 2011. (Tracy Brf. 2-3). He states this may be because Ms. Jeannette would hide such notices and steal his mail. (Tracy Brf. 2). He denies knowledge of all the other cases listed in the Notice. He states that while he has not seen any of the alleged signatures on these cases, he believes that the signatures on these cases are not his, and that they were forged by a former employee of NCLS, referred to herein as "C.S." (Tracy Brf. 8). He explains that he was sued in small claims court by Urban Brothers, a client from whom Ms. Jeannette took money but didn't perform work. (Tracy Brf. 7). To settle the action, he did the labor certifications for free.

On July 11, 2017, Ms. Jeannette submitted a hearing brief with a Declaration in addition to a Legal Memorandum.⁹ Ms. Jeannette's Declaration includes the following facts: She explains that she "was and am the sole shareholder, director and President" of NCLS. (Jeannette Brf. 2). She also explains that she "applied for the position of immigration consultant, took the test, and obtained the bond . . ." to be an immigration consultant. (Jeannette Brf. 2). She states she hired Mr. Tracy and paid him biweekly for his services and elected him to the Board of Directors in 2009. (Jeannette Brf. 2). In her Legal Memorandum, Ms. Jeannette essentially argues that the titles of the preparers of the Form 9089s are inconsequential and that they were copied from a master template. She claims no client was misled or harmed by the mistake and that clients "did not care what possible ramifications that wording might suggest." (Jeannette Brf. 4). She explains that she must continue to use the letterhead and language in her stationery that the Board previously told her to remove because it is mandated by California law. She also states that Mr. Tracy "was an independent contractor who had outside clients in addition to NCLS." (Jeannette Brf. 5). Later, she says he was her supervising attorney. (Jeannette Brf. 7). In response to the allegations that Mr. Tracy did not sign any of the applications in the above-mentioned files, that he never met with clients, and that Ms. Jeannette used his retainer agreement without his knowledge, Ms. Jeannette states that "[a]ny such problems will not recur." (Jeannette Brf. 7). In response to the allegation that Mr. Tracy's name may have been forged, Ms. Jeannette states that she "knows of no one ever 'forging' Mr. Tracy's name on any NCLS document, and the signature appears to her to be his. There is no suggestion that any client cared." (Jeannette Brf. 7). Ms. Jeannette also states that when Mr. Tracy took over a PERM case, "he became responsible for all documents filed with the court, almost of all of which had been prepared by Ms. Jeannette or one of her employees. If there were irregularities in those documents, Mr. Tracy, as the attorney of record, must assume responsibility." (Jeannette Brf. 7).

In regards to *Arsenio's Mexican Food*, Ms. Jeannette states: "Footnote 7 on page 4 of the notice states that Mr. Tracy 'claimed ignorance' of that case, but that he had signed Form 9089 and a G-28. There is no indication that the Board has any problem with that appeal." (Jeannette Brf. 8). Footnote 7 of page 4 of the notice, however, addresses *Leucadia Pizzeria & Italian Restaurant*, not *Arsenio's Mexican Food*. Moreover, Ms. Jeannette also states that "Arsenio's is mentioned as having Mr. Tracy listed as the attorney in and signing Form 9089, as well as signing a G-28" and that she "does not dispute those facts, and she is not aware of any problems with those appeals." (Jeannette Brf. 7). The *Arsenio's Mexican Food*, 2012-PER-01639, referenced in the first portion of footnote 8 of page 5 of the Notice, however, is a different case than the *Arsenio's Mexican Food*, 2012-PER-01018, that is one of the four cases whose Appeal Files the parties were advised would be considered during this Inquiry.

Ms. Jeannette denies involvement with *Rocy's Mexican Food*. She states that Mr. Tracy signed the documents in *Leucadia Pizzeria & Italian Restaurant* and claims that the fact that he was unaware of what Ms. Jeannette was doing is "an internal NCLS management problem" that has been fixed. (Jeannette Brf. 8). In regards to *Alberto's Mexican Food*, Ms. Jeannette states that she signed the Form 9089 and wrote a letter regarding Mr. Tracy's departure. Then she

⁹ Ms. Jeannette uses what is similar to OALJ letterhead (including OALJ's address and phone/fax numbers) for many of her filings. While it is appropriate for a filing to have a heading on the first page stating the tribunal to which the filing is being submitted, such a heading should not be similar to the tribunal's letterhead as the filing is not coming from the tribunal, but rather is being sent to the tribunal.

states that “footnote 7 on page 4 states that not only did Mr. Tracy sign the 9089 and G-28 but also the appeal letter.” (Jeannette Br. 8). As outlined above, however, Footnote 7 on page 4 of the Notice, however, did not address *Alberto’s Mexican Food*. She goes on to say that “*Alberto’s* is also included . . . in footnote . . . [8] on page 5 [of the Notice]” in a group of cases that do not mention Mr. Tracy in any way and as such “there [does] not appear to be any problem[] with th[is] case.” (Jeannette Br. 8). The *Alberto’s Mexican Food* referenced in that portion of footnote 8 on page 5 of the Notice, however, is a different case than the *Alberto’s Mexican Food*, 2012-PER-01560, that is one of the four cases whose Appeal Files the parties were advised would be considered during this Inquiry.

On July 18, 2017, Mr. Tracy filed a reply brief. He argues out that Ms. Jeannette is essentially refusing to take responsibility for anything that happened and alleges that clients were harmed by her actions.

On July 21, 2017, Ms. Jeannette filed another Declaration explaining why she had not personally signed her previous Declaration, which had been signed for her by her attorney. On July 24, 2017, Ms. Jeannette filed a third Declaration, in which she states that Mr. Tracy was her “boss, [her] supervisor, in matters relating to immigration.” (July 24 Declaration 1). Therefore, she states he bears the “ultimate liability.” (*Id.*). She believes she is liable for the actions of her staff, but that “Attorney Tracy was [her] supervisor.” (*Id.*). She further states: “I believe that he bears some responsibility if a document with his signatures is filed with a court. I am not dodging liability except to point out that in legal matters he is the appropriate responsible person.” (*Id.*). She denies she concealed anything from him. (*Id.*). She also states that Ms. Ramirez, whose affidavit is discussed below, “was a disgruntled NCLS employee” and states that she does not believe her declaration was relevant to any issue in this hearing. (*Id.*). She denies ever harming a client, but then states “[i]n any event, any harm done was not done because of any improper title on a government form, or any letterhead at NCLS.” (*Id.* 1-2).

I admitted exhibits submitted with Mr. Tracy’s first brief as Tracy Exhibits (“TX”) 1 through 10. (Tr. 8). I also admitted PERM records as ALJ Exhibits (“ALJX”) 1-4. (Tr. 13.) At the hearing, Ms. Jeannette did not seek to admit documentary evidence to the record. (Tr. 8). Following the hearing, Ms. Jeannette submitted documents containing California Business and Professions Code Sections 22440 through 22449. These documents are also admitted to the record as Jeannette Exhibit (“JX”) 1.

The record thus consists of the following (although I have summarized the first two Tracy Exhibits below as they are particularly relevant to this matter and have not summarized other exhibits, I have considered all exhibits admitted to the record in preparing this Recommended Decision and Order):

TX 1: Affidavit of Leticia Ramirez

TX 2: Affidavit of Hilda Renner

TX 3: First Amended Complaint filed by NCLS in San Diego County Superior Court

TX 4: Mr. Tracy’s Cross-Complaint against NCLS and Ms. Jeannette

TX 5: Ms. Jeannette’s Cross-Complaint against Mr. Tracy

TX 6: The Decision of the San Diego County Superior Court
TX 7: The San Diego County Superior Court's tentative ruling denying NCLS' and Ms. Jeannette's motion for new trial
TX 8: The Register of Actions for all actions in the *NCLS v. Tracy* lawsuit
TX 9: The October 9, 2012 Indiana grievance and the corresponding dismissal letter dated February 6, 2013
TX 10: The November 15, 2012 Indiana grievance and the corresponding dismissal letter dated February 8, 2013
ALJX 1: *Arsenio's Mexican Food*, 2012-PER-01018 (pages 138-148)
ALJX 2: *Rocy's Mexican Food*, 2012-PER-01023 (pages 184-195)
ALJX 3: *Leucadia Pizzeria & Italian Restaurant*, 2012-PER-01191 (pages 184-193)
ALJX 4: *Alberto's Mexican Food*, 2012-PER-01560 (pages 75-84)
JX 1: Cal. Bus. and Prof. Code §§ 22440-22449

Affidavit of Letitia Ramirez:

Ms. Ramirez states that she worked with Ms. Jeannette for over 25 years at NCLS and she explains that Mr. Tracy oversaw legal matters and kept employees up to date on rules. She states that Mr. Tracy never did PERM cases. She states that when Mr. Tracy told Ms. Jeannette he was leaving the company, Ms. Jeannette yelled at him and told him he had been suspended previously and had gotten yet another suspension. She states that this was the first time anyone at NCLS had heard about the Department of Labor ("DOL") discipline. She states that Ms. Jeannette locked her office and kept files there. (TX 1).

Affidavit of Hilda Renner:

Ms. Renner states that she was Mr. Tracy's secretary at NCLS. She states that Mr. Tracy was tasked with keeping employees up to date on rules and regulations and DOL policies and procedures. She states that Mr. Tracy was not involved in labor certifications. She states that Ms. Jeannette locked her door when she was not there, and avoided being there when Mr. Tracy was present. She also states that Ms. Jeannette threatened C.S. with termination if he refused to forge Ms. Tracy's signature on applications. She states that any mail from "EDD"¹⁰ or DOL went to Ms. Jeannette regardless of to whom it was addressed.

The following is a summary of the testimony taken at the hearing. Only Mr. Tracy and Ms. Jeannette testified.

Testimony

Ms. Jeannette

Ms. Jeannette began by explaining how applications were typically handled in her office. She stated that the labor certification would be put together, approved by her and another employee, and then taken to Mr. Tracy, who would look it over and sign it. (Tr. 19). She said that they would have meetings three to four times a month and sometimes those meetings would

¹⁰ Ms. Renner did not clarify what "EDD" represents.

last five minutes, and sometimes longer. (Tr. 19). She stated that prior to the split with Mr. Tracy, NCLS had 18 people working in the office, not including Mr. Tracy and his secretary. She stated that after he left, she was unable to make ends meet, and had to sell her house to finance the business. (Tr. 20).

As of the date of the hearing, Ms. Jeannette stated she worked in a part-time capacity. (Tr. 22). She stated she greets visitors and discusses their needs and explains that they only handle family, employment and citizenship cases. (Tr. 21-22). Ms. Jeannette stated that the workflow of the office is different now than when Mr. Tracy was there. When they worked together, she did not have a lot of one-on-one with clients because they would be either directed to her or to Mr. Tracy. She also had more assistants at the time who would help process cases. (Tr. 22). She stated that she primarily handled labor certifications and whenever there was a legal issue, she would consult with Mr. Tracy. (Tr. 24).

Ms. Jeannette stated that C.S. worked for NCLS in the late 1990s. (Tr. 25). She stated that, after a time in jail, he returned to work while on probation. (Tr. 26). Mr. Tracy's counsel asked Ms. Jeannette if she had threatened to call immigration and have him deported if he did not forge Mr. Tracy's signature. (Tr. 6). "Absolutely not," she said. (Tr. 26).

I followed up with more questions about C.S. Ms. Jeannette reemphasized that as far as she knew, C.S. had never signed Mr. Tracy's name. (Tr. 27). She states that she never filed documents with BALCA that contained Mr. Tracy's false signature. (Tr. 27)

I then asked about her status as a "California immigration consultant." (Tr. 27). She explained that everything she signs needs to say that she is a bonded immigration consultant. (Tr. 27). She is bonded by the state of California in the amount of \$100,000. (Tr. 28). She has not been certified by any organization as an immigration consultant but she "was deemed a consultant by a judge" about 30 years ago though she uses the name "bonded immigration processor." (Tr. 28). She explained that there is a law in California which requires all notaries and immigration consultants and processors to contain a certain disclaimer—which is the language she has on her stationery and letterhead. Under questioning by her counsel, she noted that she did not have to pass a test to be an immigration consultant and that the only application she needed to fill out was for the bond. (Tr. 32).

Regarding the incident in March 2012, Ms. Jeannette explained that on that day, she received a call from another attorney in an office located in the same building. (Tr. 30). Ms. Jeannette stated that attorney told her that Mr. Tracy had a moving truck outside their shared space and was packing files into it. She stated that when she got to the office, Mr. Tracy was gone and her "26 file-drawer file cabinets . . . were empty." (Tr. 30). She stated that Mr. Tracy eventually returned all but two of the PERM cases which were listed in the Notice. (Tr. 31). She further stated that despite allegations to the contrary, she did not lock her office door because her employees had to be able to access the files whether she was there or not. (Tr. 31).

Mr. Tracy

Mr. Tracy stated that the signature in ALJX 2, *Rocy's Mexican Food*, is not his signature. (Tr. 36). He stated that he has never seen anything by this Employer. (Tr. 36). He stated that he

does not know whether he removed this specific file from the office. (Tr. 37). Mr. Tracey stated that he discovered after going through the files he took after the split in March 2012 that he had a “large box with a lot of PERM files that [he] inadvertently had taken” and he returned them. (Tr. 37-38). Mr. Tracy stated it is not his signature on ALJX 3, *Leucadia Pizzeria & Italian Restaurant*, he does not remember seeing this case, and he does not recall taking it – but if he had, he would have returned it. (Tr. 38). Mr. Tracy stated the same with respect to *Alberto’s Mexican Food*, ALJX 4. (Tr. 38-39). In regards to ALJX 1, *Arsenio’s Mexican Food*, Mr. Tracy stated that it contained his signature. He stated he does not recall that particular application or signing it, but he does recognize the signature itself. (Tr. 39, 55). Mr. Tracy stated that he normally would enter into a written retainer agreement with a client and he doesn’t remember doing so with *Arsenio’s Mexican Food*. (Tr. 57).

In regards to the relationship and disassociation with NCLS, Mr. Tracy explained that his association began in 2000. He stated a reporter had complained about NCLS. (Tr. 40). Mr. Tracy stated he called the reporter and explained what NCLS was and “politely asked her to back off.” (Tr. 40). Mr. Tracy stated that a few months later, he spoke to Ms. Jeannette about offering legal representation. He stated that part of the agreement was that he would get a separate office with a separate outdoor entrance and nobody else could get in or out. (Tr. 40). Mr. Tracy stated that the two worked well together from about 2001 to 2009. (Tr. 40). He stated he would advise employees on immigration matters. (Tr. 40-41). Mr. Tracy stated that in 2007, DOL changed the rules and mandated that fees be paid by the sponsor, not the alien. In the past, Ms. Jeannette would get information from the alien and the alien would put a thousand dollars down for her services. (Tr. 42). Mr. Tracy stated that in 2007, he told her this was not allowed anymore.

Mr. Tracy stated that he questioned why records had showed a company had paid in cash, as companies usually pay by check. (Tr. 42). He stated that Ms. Jeannette would “give [him] lip service.” (Tr. 42). He stated that Ms. Jeannette never fixed the issue regarding who was paying for her services. (Tr. 42). Mr. Tracy stated that Ms. Jeannette was very capable at what she did, and that he never saw the labor certification applications until they were completed. (Tr. 42). He stated that he only became involved in a labor certification case when they had to file the I-140 Immigrant Petition with United States Citizenship and Immigration Services along with the labor certification. (Tr. 42). He stated that at that stage in the process, he would examine the petition and the labor certification and flag any issues. If necessary, he would tell her that she couldn’t file if that was the case. (Tr. 42). Mr. Tracy stated that Ms. Jeannette was “very good at trying to work things out.” (Tr. 43).

Mr. Tracy stated that a breakdown occurred in relation to what could be allowed in regards to an I-140 Immigrant Petition and with labor certifications. He stated he realized that she was doing labor certification incorrectly, and so “a lot of PERMs would get approved, but I-140s wouldn’t.” (Tr. 44). He stated that he couldn’t get her into the office to talk to him. He stated he “was dealing with her staff . . . [he] supervised all of her people. [He] kept them informed as to the rules and regulations. She wouldn’t listen.” (Tr. 44). In regards to the above-referenced fee practices, Mr. Tracy stated he wasn’t aware that she wasn’t changing her practices regarding them until approximately 2009 or 2010 when he spoke with her about it. (Tr. 46). “She wasn’t in the office that often.” (Tr. 49). Mr. Tracy stated that in October 2011, he “was

just fed up” and went to talk to her in her office. (Tr. 49). He stated that this was when she “threw a letter in front of” him and told him his “suspension” had been extended. (Tr. 49). Mr. Tracy stated that he had been put on probation in 2009 or 2010 but hadn’t been aware because he did not get any mail from DOL. (Tr. 49-50)

Mr. Tracy stated that he took “all of the files” in March 2012. (Tr. 50). He stated the he did so because he did not consider them his—he says they belong to the clients and as the attorney he was protecting the clients. (Tr. 50). He stated that he sent letters to every client explaining that he and Ms. Jeannette had a separation of ways and that they could come get the file or stay with him. Mr. Tracy stated that “when we eventually went to [San Diego Superior] Court, the Judge determined that they were my files.” (Tr. 50). He stated that he “never went into her office and took files,” and that he only took them from the NCLS open area and the general practice. (Tr. 50)

Mr. Tracy stated that he returned any PERM files he accidentally took. (Tr. 51). He stated that labor certifications were normally in her office or in some file cabinets in the general area. (Tr. 51). He stated that all the files he took had retainer agreements in them from his law office. (Tr. 51). Mr. Tracy stated he does not know if the labor certification files had his retainer agreements because he did not see them, and he does not know if NCLS had their own retainer agreement. (Tr. 51). He stated that Ms. Jeannette’s office was locked and that he did not have a key. (Tr. 51).

Mr. Tracy stated that while at NCLS he did not review or supervise Ms. Jeannette because he did not do labor certification applications. (Tr. 47). He stated that he only began doing them himself in March or April 2012. He stated that he left the partnership “because [she] took over \$32,000 from a client to do PERM and never did it. And she gave them my retainer agreement.” (Tr. 47). Mr. Tracy stated that he was sued because of it and he ended up doing 17 labor certification applications for the company without payment to make the client whole. (Tr. 47).

Mr. Tracy stated that he did not maintain any control over any monetary accounts. (Tr. 52). He stated that he does not recall ever reporting Ms. Jeannette to a state bar association. (Tr. 52). He stated that mail would come to the general office regardless of who it was addressed to but anything that came from United States Citizenship and Immigration Services or the U.S. Department of Justice Board of Immigration Appeals went to him. Mr. Tracy stated that he never received anything from DOL. (Tr. 52). He stated that he doesn’t know who in the office physically received the mail and he does not why he would not have received anything if it were addressed to him from DOL. (Tr. 52-53). He stated he would not normally receive anything from DOL anyway because he wasn’t working on labor related matters. (Tr. 53).

Mr. Tracy stated he was an independent contractor with NCLS. (Tr. 57). He stated his role was to oversee employees in the office to keep them up to date and current on rules and regulations, etc. (Tr. 57). He stated that if through the questions employees were trained to ask it became clear that legal advice was needed, he would speak to the client and provide direction. (Tr. 57). He stated he was given a 1099 form at the end of the year. (Tr. 57).

Mr. Tracy stated he was with NCLS from 2001 until March 2012. (Tr. 58). He stated it was his understanding that NCLS was a Nevada corporation before becoming a California corporation. (Tr. 59). He stated he was never corporate counsel for NCLS. (Tr. 58). He stated he has never been contacted by anyone regarding the four cases mentioned in the Notice and was never contacted by anyone about the cases in Footnote 8 of the Notice. (Tr. 59). He stated he never gave anyone associated with NCLS “authority of any document.” (Tr. 59).

I asked Mr. Tracy a few questions. One was that if problems had begun to arise in the relationship in 2009, why did he continued to maintain a working relationship until October 2011. He responded that he “didn’t work with her [Ms. Jeannette]. She was out of the office a lot in 2010/2011 for health reasons” and that he dealt mostly with her office manager, Ms. Chow-Teran. (Tr. 60).

I then asked about C.S. Mr. Tracy stated that C.S. had worked for Ms. Jeannette. (Tr. 60). Mr. Tracy stated that C.S. told him that he was told that he would be fired if he didn’t forge Mr. Tracy’s signature on documents. (Tr. 61). Mr. Tracy stated that he did not realize during the time C.S. worked for NCLS that C.S. was undocumented. (Tr. 62, 66). He stated he only realized that after C.S. was deported, and that he found this out from C.S. himself. (Tr. 66-67). Mr. Tracy stated he was traveling to a correctional facility when he got in the wrong lane and ended up in Mexico. (Tr. 66). He stated he called C.S. and took him to lunch—this was after March 2012—and this is when C.S. told Mr. Tracy about the forgery. (Tr. 67).

Mr. Tracy stated that he was elected to be a part of the Board of Directors of NCLS in 2009. (Tr. 62). He stated that he was not an officer. (Tr. 67). He stated that he was never an employee of NCLS in California or Nevada. (Tr. 68). Mr. Tracy stated that he did not know if he was a board member of NLCS, Nevada. (Tr. 68). He stated that did not supervise employees in regards to DOL matters. (Tr. 66). He stated he does not remember if he was on the Board of Directors of NCLS, California, but he thinks the last Board meeting he went to was in 2010 or 2011. (Tr. 68-69). Mr. Tracy stated that as he did not know what was happening in regards to the DOL cases, he could never bring them up as a topic at a Board meeting. (Tr. 69). He stated Ms. Jeannette usually set the agenda at Board meetings and they would normally talk about replacing equipment or appropriating more money for other ventures or disciplining employees. (Tr. 70). Mr. Tracy stated that he does not believe they discussed client matters and that he does not recall discussing DOL related matters. (Tr. 70).

Mr. Tracy stated that in 2010 or 2011 his email address, kmtatty@hotmail.com, was hacked and he couldn’t resolve the problem, so he set up at new one, kmtatty1@hotmail.com. (Tr. 64).

Mr. Tracy stated that he would give legal updates to NCLS employees once a month. (Tr. 65). In regards to the “supervision” of employees, under the questioning of Mr. Merrick, Mr. Tracy stated the “didn’t supervise her employees.” (Tr. 71). He stated his role was to keep employees apprised of rules, regulations, policies and procedures. (Tr. 72). He stated that if he found something incorrect in a document, he would tell Ms. Chow-Teran that something was wrong or needed to be corrected. (Tr. 78-79). Mr. Tracy stated he did not know who in particular was making the mistakes and he did not know if there was any associated reprimand.

(Tr. 79). Mr. Tracy stated that Ms. Chow-Teran was the one who actually supervised the employees and she “never made mistakes.” (Tr. 79).¹¹

Ms. Jeannette (Rebuttal)

Ms. Jeannette retook the stand, and stated that Ms. Chow-Teran would receive the mail, date stamp it, and distribute it. (Tr. 81). Ms. Jeannette stated she would get the bills and any mail directly pertaining to her. (Tr. 81) She stated there was no special instruction with mail that came from the DOL. (Tr. 82). In regards to PERM cases, Ms. Jeannette testified that she had some discussions about the new PERM program when it was unveiled in “2007” with Mr. Tracy. (Tr. 84). After that discussion, Ms. Jeannette stated she “knew and . . . was aware that all employers needed to pay the retainers.” (Tr. 84). Ms. Jeannette stated she doesn’t recall discussing payment procedures with Mr. Tracy, but she says she knows that “the receipts for money paid were always made out to the employer.” (Tr. 84).

DISCUSSION

Applicable Law

“Where the integrity of the Department’s adjudicative processes . . . [is] at stake, the presiding Administrative Law Judge should take all appropriate steps to resolve the uncertainty surrounding questionable conduct.” *In re: Qualifications of Edward A. Slavin, Jr.*, 2004-MIS-00002 (Mar. 31, 2004) (quoting *Webb v. Carolina Power & Light Co.*, 1993-ERA-00042 (ARB Aug. 26, 1997)). The Administrative Review Board has also found that there is no “doubt that administrative tribunals have inherent authority to bar persons from appearance before them on grounds of improper conduct.” *Id.* at 6 (quoting *Macktal v. Brown & Root, Inc.*, 1986-ERA-00023, n.3 (ARB Nov. 20, 1998)).

Pursuant to 29 C.F.R. § 18.22(c), a representative before the Office of Administrative Law Judges and the Board “must be diligent, prompt, and forthright when dealing with parties, representatives and the judge, and act in a manner that furthers the efficient, fair and orderly conduct of the proceeding.” Furthermore, pursuant to 29 C.F.R. § 18.22(d):

A representative must not:

- (1) Threaten, coerce, intimidate, deceive or knowingly mislead a party, representative, witness, potential witness, judge, or anyone participating in the proceeding regarding any matter related to the proceeding;
- (2) Knowingly make or present false or misleading statements, assertions or representations about a material fact or law related to the proceeding;
- (3) Unreasonably delay, or cause to be delayed without good cause, any proceeding; or

¹¹ Mr. Tracy stated in his pre-hearing brief that he was hired on as an independent contractor to be the supervisory attorney. He also used the word “supervise” many times throughout his testimony. Nevertheless, Mr. Tracy’s testimony made clear that his duties did not include managing NCLS employees. (*See* Tr. 71-72).

- (4) Engage in any other action or behavior prejudicial to the fair and orderly conduct of the proceeding.

“Representatives qualified under § 18.22 may be disqualified for . . . committing an act, omission, or contumacious conduct that violates these rules, an applicable statute, an applicable regulation, or the judge’s order(s).” 29 C.F.R. § 18.23(a)(1).

While candor before a tribunal is always important, it is particularly so before a tribunal such as BALCA because “BALCA does not conduct evidentiary hearings when reviewing the merits of labor certification appeals. Thus, we must rely in large part on the integrity of the persons submitting evidence and legal argument when considering appeals.” *Tadeusz Kucharski, In re: Judicial Inquiry regarding Miroslaw Kusmirek*, 2000-INA-00116, (Sept. 18, 2002). As the PERM program is attestation-based, adjudicators must be able to rely on the attestations made by, or on behalf of, applicants for labor certification.

Credibility Determinations

I find Mr. Tracy a very credible witness. What he said has been consistent throughout his briefs and testimony and has been backed by signed affidavits from former colleagues. He has consistently stated that he did not receive any mail from DOL and that he was not involved with pending PERM cases. While I recognize he stated he supervised and, at the same time, disclaimed he supervised employees, from context and observation, what he meant was that he provided employees with updates to laws and pointed out any errors but that any managerial function or corrective action was taken by the employees’ actual supervisor, Ms. Chow-Teran. I do not find this characterization inconsistent, rather just an inartful use of the word “supervise.” Mr. Tracy did not have actual authority over employees.

I find Ms. Jeannette an incredible witness. Most notably, her testimony differs in significant ways from statements made in her filings. For example, Ms. Jeannette stated both that Mr. Tracy was her boss and should take all responsibility for any mistakes, and also that she was the president and sole shareholder of NCLS and that all cases were hers. These positions are inconsistent. She stated in writing that the four cases at issue in the Notice were hers, but then subsequently denied the same. Again, these positions are inconsistent. When questioned about her status as an immigration consultant, she stated there was no paperwork or test to be a processor at the hearing, but detailed in her brief a more extensive process to become the consultant, including taking and passing a test (this inconsistency is discussed in more detail below). These inconsistencies lead me to conclude that the statements in Ms. Jeannette’s testimony and in her written submissions are suspect.

Improper Letterhead

Ms. Jeannette was instructed to “immediately discontinue using NCLS letterhead that includes a disclaimer that NCLS does not provide legal services.” *Mazatlan*, at 6. The panel noted in that case that it appeared from the “NCLS letterhead used in this appeal that Ms. Jeannette is attempting to convince clients that NCLS (and by association the Tracy law firm) is somehow not responsible for the legal services provided.” *Id.* at 6. There is no record

that Ms. Jeannette ever contacted the Board again to explain why she continued to use this language after *Mazatlan* was issued. Upon submission of her hearing brief in this case, she explained that this language is required under California law. After the hearing, counsel for Ms. Jeannette submitted California Business and Professions Code Sections 22440 through 22449 (as noted above, this was admitted as JX 1). No specific subsection was highlighted as being particularly relevant to the issue of what must be in a letterhead. This may be because there is no specific section in JX 1 that directly supports her position.

However, what is clear from the language of the California Business and Professions Code sections in JX 1 is that it is very important to the State of California that an immigration consultant convey to clients that he or she is not an attorney and is not practicing law. California law provides that an immigration consultant gives “nonlegal assistance or advice on an immigration matter” which includes filling in forms. Cal. Bus. & Prof. Code § 22441. California law provides a rule stating exactly what must be contained in written contracts with clients and even what must be put into receipts. Cal. Bus. & Prof. Code §§ 22442, 22442.1. It also notes that “[a]n immigration consultant shall conspicuously display in his or her office a notice that shall be at least 12 by 20 inches with boldface type or print with each character at least one inch in height and width in English and in the native language of the immigration consultant’s clientele, that contains the following information: . . . a statement that the immigration consultant is not an attorney.” Cal. Bus. & Prof. Code § 22442.2. Any advertisements must state that the person is not an attorney. Cal. Bus. & Prof. Code § 22442.2 (c). “An immigration consultant shall not, with the intent to mislead, literally translate, from English to another language, any word or titles, including, but not limited to . . . “attorney,” . . . that imply that a person is an attorney, in any document, including an advertisement, stationery, letterhead, business card or other comparable written material describing the immigration consultant.” Cal. Bus. & Prof. Code § 22442.3. After the submission of JX 1, I understand why Ms. Jeannette continued to use language in her letterhead stating that she is not an attorney and is not engaged in the practice of law. Accordingly, I retract the previous order that she discontinue using such language in her letterhead.

Related to her status as an immigration consultant are certain facts that damage Ms. Jeannette’s credibility. Ms. Jeannette testified at the hearing that she did not have to pass a test to be an immigration consultant and that the only application she needed to fill out was for the bond. (Tr. 32). In her pre-hearing brief, however, she wrote that she “applied for the position of immigration consultant, took the test, and obtained the bond . . .” to be an immigration consultant. (Jeannette Brf. 2). California law provides that to become an immigration consultant not only do you need the bond, but the Secretary of State must conduct a background check and that a person engaged as an immigration consultant “shall submit to the Department of Justice, fingerprint images and related information . . .” for another background check. Cal. Bus. & Prof. Code §§ 22442.1, 22442.3. Simply put, Ms. Jeannette was inconsistent in her explanation of what it takes to become an immigration consultant. It stands to reason that if Ms. Jeannette had documentation demonstrating her qualifications to serve as an immigration consultant, she would have presented it in this proceeding. She did not seek to admit any such evidence. Moreover, if the cases she states are hers are truly hers, she should have written contracts concerning those cases as required by Cal Bus. and Prof. Code § 22442. Ms. Jeannette did not seek to admit any such evidence.

“Theft” of Files

Ms. Jeannette states that Mr. Tracy stole her client files. To discuss this it is necessary to discuss the working relationship the two had with each other. Mr. Tracy states that he never worked for Ms. Jeannette, but rather he was a contractor who had his own private law office, with a separate office and separate entrance. He was issued a Form 1099 at the end of the year, rather than a Form W-2. Though he did occasionally use the word “supervise” in his testimony, he repeatedly testified that he did not actually supervise or manage Ms. Jeannette’s employees—rather, he provided them with updates on immigration rules and regulations so that they could successfully complete their work. Any corrective measures, or disciplinary actions, whatever they may have been, would have been addressed by the employees’ supervisor—Ms. Chow-Teran. Mr. Tracy had trouble recalling if he was or was not a member of the Board of Directors of NCLS. It appears he was elected in 2009 to the Board. Whether he was, or was not, an official Board member, he maintained that there was a department that he worked in, and Ms. Jeannette worked in her separate one. Furthermore, he did not know of any of the actions Ms. Jeannette was taking in regards to DOL because he did not work on labor certification cases.

Ms. Jeannette states she had two different relationships with Mr. Tracy. In pre-hearing briefs, she describes him as her boss, and therefore alleges that he is responsible for any misconduct or mistakes. She also describes herself as the sole shareholder and president of NCLS, as if she were the boss, not Mr. Tracy. She offers no documentation to support her assertion that Mr. Tracy was her boss. She does not counter the assertion that Mr. Tracy did not work on labor certifications. She provides no documentary evidence whatsoever of their working relationship. Frankly, it appears from her inconsistent testimony that she alleges Mr. Tracy was her boss when it is convenient to shuffle blame to someone else. Otherwise, from her descriptions it appears that the two were near-equal partners in a business venture—with her managing labor certification matters, and him managing the practice that appeared before the Department of Homeland Security and the Department of Justice. Based on the entirety of the record, I find that Mr. Tracy worked as an independent contractor with Ms. Jeannette and NCLS. He was neither her boss, nor her employee. As a result of this, client files could belong to either Mr. Tracy or Ms. Jeannette; they did not necessarily all belong to her or to both Mr. Tracy and Ms. Jeannette.

On this record, it has been sufficiently established that there was a physical dissolution of the partnership between Ms. Jeannette and Mr. Tracy in early March 2012. This involved Mr. Tracy coming to their shared office space and taking immigration files. Mr. Tracy stated that the files he took belonged to his clients and that he did not intend to take PERM files. (Tr. 50). He stated that he returned any PERM files he inadvertently took. (Tr. 51). Ms. Jeannette stated that the taking was actually “theft,” and that Mr. Tracy took “26 four-drawer file cabinets” full worth of cases. (Tr. 30). She also stated he took files off her desk. (Tr. 30). She acknowledged, however, that he returned “all but two” of the files. (Tr. 31). Ms. Jeannette never articulated which two files remained missing.

Theft is a serious allegation. There is no doubt that Mr. Tracy took files from their shared office space, as he admits doing so. Recognizing that this administrative tribunal is not

empowered to address matters of criminal law, for the limited purpose of recommending an appropriate disposition of the matters addressed by this Inquiry I find that Mr. Tracy did not steal these files because there is no evidence that he had the intent permanently to deprive the rightful owner of possession of these files, as demonstrated by the fact that he returned the PERM files he inadvertently took. I also find that Mr. Tracy did not take files from Ms. Jeannette's private office because Mr. Tracy testified, and Ms. Renner and Ms. Ramirez attested, that Ms. Jeannette kept her door locked.

Simply put, Mr. Tracy's and Ms. Jeannette's working relationship dissolved. Mr. Tracy took what he believed were his own client files. Each of these files had a retainer agreement between the client and himself. (Tr. 51). Mr. Tracy returned any PERM files he took by accident—even Ms. Jeannette acknowledges the return of files. While she states that two are missing, she did not state which files those are. I find Mr. Tracy did not engage in any inappropriate behavior when he took his own client files when his working relationship with Ms. Jeannette dissolved.

Responsibility for Current PERM Files

Mr. Tracy stated that he did not practice before DOL and that he did not do labor certification applications. Ms. Jeannette stated that the PERM files are hers, and that the files that were taken were all hers as well. She asserted her responsibility for these PERM files, and Mr. Tracy does not contest this. As a result, I find that all pending BALCA cases that may reference Mr. Tracy and Ms. Jeannette belong solely to Mr. Jeannette and NCLS. Any future correspondence on any of these matters will be served on Ms. Jeannette, and not Mr. Tracy.

Forgery

I now turn to the most concerning issue of all in this matter – the allegation that Mr. Tracy's signature was forged. As noted above, Mr. Tracy denies that his signature is on ALJX 2-4. He admits the one signature on ALJX 1 is his, though he says he had nothing to do with the case.¹² He provides an explanation as to how his signatures appeared on the other documents—they were forged by a former employee of Ms. Jeanette's. Both he and Ms. Jeannette acknowledge that C.S. was a former employee of Ms. Jeannette's and that he had at some point been deported to Mexico.

Mr. Tracy credibly testified that he did not work on PERM applications while he was associated with Ms. Jeannette and that he would only ever see labor certifications after they had been granted by DOL, when they were being submitted to United States Citizenship and Immigration Services for review with a corresponding immigrant petition. He categorically stated, "I never did PERMs. I never did labor certifications." (Tr. 42; *see also* Tr. 47, 50, TX 1 and 2).

¹² This admission goes a long way towards establishing Mr. Tracy's credibility. With no hand-writing expert, the reality is it is very difficult to establish as an observer which signatures are real and which are not. Mr. Tracy has no reason to admit that this signature is his, as he is essentially admitting to signing a document he did not read or admitting to engaging in or working on a case which he failed to monitor.

Ms. Jeannette provides no explanation as to how Mr. Tracy's signatures appeared on the PERM applications at issue other than to say that she never forged them or asked anyone to forge the signatures. Her response to Mr. Tracy's allegation that he never met with clients or signed documents is to say that any such problems will not recur. (Jeannette Brf. 7). Ms. Jeannette denies ever having threatened C.S. with termination if he did not forge Mr. Tracy's signature, but offers no other explanation as to how Mr. Tracy's signatures were on these PERM applications, which she steadfastly claims are her own.

BALCA is not an investigatory or prosecutorial agency, and necessarily inquiries of this type are limited in scope. *Tadeusz Kucharski*, slip op. at 9 n.11. Nevertheless, the record in this case is sufficient for me to find by a preponderance of the evidence that misrepresentations were made on the PERM applications at issue, and that the misrepresentations originated from Ms. Jeannette and NCLS. Simply put, I find by a preponderance of the evidence that Ms. Jeannette was responsible for presenting documents to the Board and to the CO that purported to have Mr. Tracy's signature when in fact those documents did not have his signature.¹³ This serious misrepresentation requires an appropriate sanction.¹⁴

Disqualification/Referral

I see no reason to take any action against Mr. Tracy. As outlined above, I found him a credible witness. He admits that the signature on ALJX 1 is his own, which could be viewed as an admission against his own interests as it means that he signed a document and then failed to follow-through with that PERM application. This admission bolsters his credibility.¹⁵ While I recognize the seriousness of this one admission, I find that Mr. Tracy's overall conduct in the matters covered by this Inquiry meets the standard one would expect of an attorney practicing before this tribunal.

Ms. Jeannette, on the other hand, was not a credible witness. Her best defense was essentially that because her last decade or so of work had been spotless and without complaint, the potential forgery should be dismissed as unimportant. She also seemed to argue that because no client was hurt, no admonishment was necessary. On this record, however, there is no concrete evidence that no client was hurt. Quite the contrary, as Mr. Tracy testified that due to Ms. Jeannette's previous misrepresentations, he had to complete numerous labor certification applications for a client when she had failed to do the work as promised. (Tr. 47). It is therefore possible that these other misrepresentations have hurt clients in, as of yet, unknown ways. As explained above, Ms. Jeannette was responsible for these misrepresentations.

¹³ On this record, I decline to make a specific finding as to whether Ms. Jeannette either forged Mr. Tracy's signature or directed C.S. to do so.

¹⁴ While there was an allegation of improper use of a retainer agreement, no agreement was ever introduced into evidence. I need not, and do not, make any finding as to whether Ms. Jeannette misused any retainer agreement.

¹⁵ I recognize this admission also means it is possible that his signatures on some of the other documents listed in the Notice were also his own. He was unable definitively so to state because none of those signature pages were admitted into evidence.

It is rare that OALJ and the Board have conducted judicial inquiries into the ability of representatives to appear before us. *Mazatlan* and *In re: Kevin M. Tracy* are, of course, examples of the Board examining the conduct of representatives which with these parties are by now, no doubt, intimately familiar. Both cases resulted in some directive to Ms. Jeannette and probationary action against Mr. Tracy.

Two representatives have been barred permanently before appearing before the office.

In one case, *In re: Qualifications of Edwin H. Rivera d/b/a Inmigracion Hoy News Today*, 2009-MIS-00002 (Feb. 6, 2009), the Chief Administrative Law Judge began to question the qualifications of Mr. Rivera when he had asserted that the employer in a PERM case wished to continue the appeal, while the employer wrote separately to the Board to explain that the foreign worker had been fired. An order was issued to Mr. Rivera asking him to explain his relationship with the Law Office of John J. Montes and explain his misrepresentation regarding that employer. That order referenced the fact that there were numerous federal court decisions referencing a Mr. Edwin Rivera who had been accused of conspiracy to violate federal immigration laws. The New York State Attorney General was suing a man named Edwin Rivera for defrauding consumers seeking immigration advice. It appeared that this was the same man who appeared before BALCA. Because Mr. Rivera did not timely respond to the Notice of Judicial Inquiry, he was found to have forfeited all right to appear before OALJ and BALCA.

In the other case, *In re: Qualifications of Edward A. Slavin, Jr.*, 2004-MIS-00002 (Mar. 31, 2004), Mr. Slavin was sanctioned with permanent debarment in a 127 page opinion. Mr. Slavin had been admonished many times previously and had intentionally refused to comply with directives, exhibited contempt for the tribunal, harassed and intimidated judges, made false statements and misrepresentations, and displayed a lack of competence and diligence in his cases. *Id.* at 121, 122, 120, 119, and 118.

Ms. Jeannette participated in this Inquiry and thus her situation is factually distinguishable from that of Mr. Rivera. Similarly, Ms. Jeannette's situation is factually distinguishable from that of Mr. Slavin because her behavior is much less egregious than his. While she has been warned about certain conduct with the Board in the past, she was not warned about anything related to an alleged forgery. Moreover, she has explained why she has not followed Board directives in the past regarding her letterhead and I have accepted her explanation. Accordingly, I find that the sanction of permanent debarment is not appropriate in Ms. Jeannette's case.

Two representatives have been suspended for submitting forged documents.

In one case, *In re: Dule Cuco*, 2002-INA-00217 (Aug. 1, 2003), Ms. Cuco had pled guilty to visa fraud and admitted to falsifying documents before the CO, including asking employers to sign labor certification cases for employees who did not work for them. She claimed that she had only wanted to help people stay in the United States and that she should be able to continue representing people due to her 17 years of experience in the field. The Chief Administrative Law Judge disagreed and held that "[t]he filing of false documents is a criminal

offense and merits a serious sanction.” *Id.* at 2. It found “that a ten years suspension is warranted.” *Id.*

The other case involved a representative who submitted forged documents to the Board. *Kucharski*, 2000-INA-00116. The documents submitted by Mr. Kucharski contained the signatures of an employer who had passed away. It appeared to the judges that Mr. Kucharski truly did not realize the man had died as his only interaction with this employer was through a third-party. Mr. Kucharski had failed to maintain communication or investigate his client’s intent regarding the foreign worker. He seemed genuinely remorseful, but the panel of judges and the Chief Administrative Law Judge nevertheless found that “and a representative who so loses communication with the employer so as not to even know that he is deceased and that someone is forging his signature has been recklessly negligent and must be sanctioned.” Also, “[w]e note that although an attorney or professional representative in a labor certification is not required to vouch for the evidence submitted in a cause, an attorney or professional representative is not a mere paperwork processor who lacks any responsibility for the content of representations made in submissions to the Department of Labor.” Mr. Kucharski was given a six-month suspension as the judges determined that his “primary deficiency” was inattention and gullibility, rather than an “active intention to defraud the government.”

In this case there is an allegation of forgery, which has the potential to be a criminal offense. However, as explained above, “BALCA is not an investigatory or prosecutorial agency.” *Kucharski*, slip op. at 9 n.11. Moreover, on this record I have declined to make as specific finding as to whether Ms. Jeannette herself forged, or forced C.S. to forge, Mr. Tracy’s signatures. Therefore, I cannot equate this allegation of forgery with Ms. Cuco’s criminal conviction. Accordingly, Ms. Jeannette’s situation is factually distinguishable from that of Ms. Cuco and a 10 year suspension is inappropriate in this case.

That said, Ms. Jeannette’s misconduct is more severe than that of Mr. Kucharski. I cannot find that Ms. Jeannette’s “primary deficiency” was inattention and gullibility because, she, or someone in her employ, engaged in serious misconduct in order to submit labor certifications with false signatures. Simply put, Ms. Jeannette’s “primary deficiency” was not just inattention or gullibility, but rather an affirmative intention to mislead.

Taking into the entire record in this matter, I find that an appropriate sanction in this matter is a two year suspension from practice before BALCA and OALJ to begin the date this Recommended Decision and Order is ratified and adopted by the Chief Administrative Law Judge (should he elect to do so). Six months before the suspension period concludes, Ms. Jeannette may petition in writing for a reinstatement of her ability to practice before the Board. 29 C.F.R. § 18.23(c).

Pursuant to 20 C.F.R. § 656.31(b):

If the Department learns an employer, attorney, or agent is involved in possible fraud or willful misrepresentation in connection with the permanent labor certification program, the Department will refer the matter to the Department of Justice, Department of Homeland Security, or

other government entity, as appropriate, for investigation, and send a copy of the referral to the Department of Labor's Office of Inspector General (OIG).

This Inquiry raised the very real concern that Ms. Jeannette, or someone in her employ and at her direction, has engaged in misrepresenting Mr. Tracy's signature in the past. As outlined above, I have declined to make a specific finding on this issue, as BALCA is not an investigative or prosecutorial agency. However, I have a regulatory and ethical obligation to report the possibility. Accordingly, a copy of this order will be provided to the Department of Homeland Security and to DOL's Office of Inspector General pursuant to 20 C.F.R. § 656.31(b), and to the State Bar of California for whatever action it may deem appropriate.

Mr. Tracy is not responsible for the pending PERM cases. While we may suspend processing with cases involving Ms. Jeannette until the completion of any proceedings 20 C.F.R. § 656.31(b)(1), we find no need to do so. The record has long since closed on the cases that involved Mr. Tracy's alleged signature, and the time for briefing is over.

CONCLUSION

Considering all of the above, I recommend that the Chief Administrative Law Judge adopt and ratify this Recommended Decision and Order and that he issue the following specific orders:

- 1) Mr. Tracy is not subject to any further discipline by the Board.
- 2) Ms. Jeannette may continue to include language in her letterhead and stationery in compliance with California law. She must, however, cease using a letterhead that is similar to OALJ letterhead when drafting documents.
- 3) Ms. Jeannette is barred from appearing before the Board and the OALJ for two years from the date he ratifies and adopts this Recommended Decision and Order (should he elect to do so). Six months before the suspension period concludes, Ms. Jeannette may petition the Board for reinstatement of her ability to appear pursuant to 29 C.F.R. § 18.23(c).

- 4) This order will be provided to the Department of Homeland Security and to the Department of Labor's Office of Inspector General pursuant to 20 C.F.R. § 656.31(b). This order will also be provided to the State Bar of California for whatever action it may deem appropriate.

SO ORDERED.

PAUL R. ALMANZA
Associate Chief Administrative Law Judge