

OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 94-6

January 24, 1994

TO: All Regional Directors, Officers-in-Charge,
and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Misconduct by Party Representatives

Section 102.44 of the Board's Rules and Regulations, which addresses misconduct at a hearing before an administrative law judge or the Board, provides in pertinent part:

(a) Misconduct at any hearing before an administrative law judge or before the Board shall be ground for summary exclusion from the hearing.

(b) Such misconduct of an aggravated character, when engaged in by an attorney or other representative of a party, shall be ground for suspension or disbarment by the Board from further practice before it after due notice and hearing.

Section 102.66(d)(1) of the Board's rules contains the identical provisions for hearings before either a hearing officer or a Regional Director. Section 11182 of the Casehandling Manual, Representation Proceedings essentially restates the Board's rule. It further provides that in the event misconduct occurs, a full report should be submitted to the Division of Operations-Management.

Section 10054.6 of the Casehandling Manual, Unfair Labor Practice Proceedings, however, is significantly broader in scope. It states that "suspected violations of professional responsibilities by attorneys arising from their practice before the Board and in its proceedings should be referred to the Division of Operations-

organization within the meaning of Section 2(5) of the Act in circumstances where the attorney clearly had knowledge and information that it was a labor organization.

For example, in Graham-Windham Services, one of the attorneys had recently signed a stipulated election agreement on behalf of the Respondent with the United Food and Commercial Workers Union, Local 342-50, Health Care and Human Services Division, AFL-CIO. Although the charge in the instant case omitted the phrase "Health Care and Human Services Division," this phrase was added to the Charging Party's name in the complaint. Nevertheless, the attorneys refused to admit the Section 2(5) status of the Charging Party because of this discrepancy in the name, although they admitted on the record that Local 342-50 was a statutory labor organization. Moreover, one of Respondent's attorneys served a burdensome and frivolous subpoena upon the Union. In these circumstances, the aforementioned warning was issued by the Board.

Instances of alleged aggravated misconduct, which may warrant a suspension or disbarment, or conduct appropriate for referral to a bar association, must be submitted to the Division of Operations-Management. Similarly, an alleged prohibited ex parte communication which the Region concludes warrants a hearing by the Board, pursuant to Section 102.133 of the Board's Rules, for purposes of determining whether discipline is appropriate should also be submitted. However, when the Region concludes that alleged misconduct of the representative in the case is neither aggravated in character nor appropriate for referral to a bar association, it has the discretion to request that the administrative law judge or the Board take appropriate action.

Any questions you have concerning this matter should be raised with your Assistant General Counsel. Of course, you should feel free to give me a call if you wish to discuss any of the matters involved herein.



W. G. S.

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