

U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

Disciplinary Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

March 28, 2016

CONFIDENTIAL

Michael M. Hethmon
Senior Counsel
Immigration Reform Law Institute
25 Massachusetts Avenue, NW
Suite 335
Washington, DC 20001

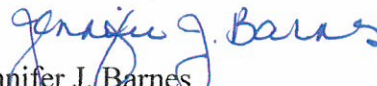
Re: D2016-0001

Dear Mr. Hethmon:

Enclosed please find a copy of the action taken by this office as a result of your complaint concerning *Matter of J-S-* and *Matter of Cristoval Silva-Trevino*.

I hope this adequately explains the decision in this matter. Thank you for bringing this matter to my attention.

Sincerely,


Jennifer J. Barnes
Disciplinary Counsel

Enclosure



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Falls Church, Virginia 22041

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CONFIDENTIAL

Mr. Christopher Strawn
Northwest Immigrant Rights Project
615 Second Avenue
Suite 400
Seattle, Washington 98014

RE: D2016-0001

Dear Mr. Strawn:

This letter is to inform you that the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) has received a complaint from the Immigration Reform Law Institute and the Federation for American Immigration Reform (FAIR). The complaint concerns the conduct of the following immigration practitioners involved in *Matter of J-S-* and *Matter of Cristoval Silva-Trevino*: Christopher Strawn, Matt Adams, Eunice Hyunhye Cho, and Elisabeth Brodyaga.¹

Matter of J-S-

On August 28, 2014, the Board of Immigration Appeals (Board) requested amicus curiae briefs from FAIR and the American Immigration Lawyers Association (AILA) in *J-S-*. The Board specifically asked FAIR and AILA to address two questions. FAIR submitted an amicus brief on October 20, 2014.

On November 7, 2014, Mr. Strawn, who represented the respondent in *J-S-*, filed a

¹ The complaint also implicated Jim Knoepp, Winifred Kao, Gail Pendleton, Jose Luis Perez and numerous organizations (Northwest Immigrant Rights Project, Southern Poverty Law Center, Inc., Asian Americans Advancing Justice – Asian Law Caucus, ASISTA LatinoJustice PRLDEF, the Political Asylum Immigrant Representation Project, and the Refugio del Rio Grande Inc. Law Office). Mr. Knoepp, Ms. Kao, Ms. Pendleton, and Mr. Perez did not file any documents in the underlying matters so they have not engaged in any conduct that would subject them to discipline under the EOIR Rules of Professional Conduct. Additionally, the EOIR Rules of Professional Conduct do not regulate the conduct of organizations so the organizations named in the complaint are not the proper subjects of a discipline complaint.

motion to strike FAIR's amicus brief. Mr. Strawn argued that FAIR's brief should be struck because: (1) "[a]ffirmatively soliciting an amicus brief from FAIR is contrary to [the] spirit of the cannons [*sic*] of judicial ethics;" and (2) "[s]oliciting an amicus brief from a partisan organization labeled a hate group is unlikely to help with the legal analysis of [the] case, particularly since both parties are represented." Mr. Strawn's motion acknowledged that FAIR had a right to request to submit an amicus brief but stated that it was "unseemly" for the Board to affirmatively request a brief from FAIR because FAIR had been labeled as an "anti-immigrant" or "hate" group. Soliciting a brief from FAIR allegedly created an appearance of impropriety in suggesting that FAIR, as opposed to other groups, was in a position to influence the Board. Mr. Strawn further claimed that FAIR's brief was not helpful to the Board because it did not address the questions posed and simply challenged prior precedents.

On November 21, 2014, FAIR submitted a brief in opposition to the motion to strike. FAIR stated that the sole purpose of the motion to strike was to "denigrate, ostracize, and effectively disqualify" FAIR as an amicus party in the case and in future cases. FAIR requested that the motion be denied and that the Board consider reprimanding Mr. Strawn for contumelious conduct and frivolous behavior.

On November 2, 2015, the Board issued its decision in *J-S-*. The Board acknowledged the brief submitted by amicus curiae but did not address the motion to strike.

Matter of Cristoval Silva-Trevino

On April 29, 2015, the Board requested amicus curiae briefs from FAIR and AILA in *Silva-Trevino*. The Board asked FAIR and AILA to address three issues raised by the Attorney General in *Matter of Silva-Trevino*, 26 I&N Dec. 550 (A.G. 2015). On June 19, 2015, FAIR submitted its amicus brief.

Prior to FAIR submitting its brief, Mr. Strawn, Mr. Adams, and Ms. Cho filed a request to appear as amicus curiae on behalf of Asian Americans Advancing Justice – Asian Law Caucus, ASISTA, the Center for New Community, LatinoJustice PRLDEF, the League of United Latin American Citizens, Northwest Immigrant Rights Project, Political Asylum/Immigration Representation Project, and the Southern Poverty Law Center. The request was similar to the motion to strike filed in *J-S-* as it argued that the Board should end its practice of affirmatively requesting amicus briefs from FAIR because FAIR "is a discredited, extremist anti-immigrant organization espousing white supremacist, eugenicist, anti-Semitic, and anti-Catholic views."

On July 9, 2015, FAIR wrote a letter to the Board regarding its concerns with the request to appear as amicus curiae submitted by Mr. Strawn, Mr. Adams, and Ms. Cho. FAIR asserted that the request did not address the legal issues raised in *Silva-Trevino*. FAIR described the request as being "comprised of McCarthyite ad hominem attacks on FAIR and seemingly anyone who has ever been associated with FAIR." FAIR stated: "Whatever heated rhetoric occurs in the often rough and tumble immigration debate, it does not belong in BIA filings." FAIR requested that the Board deny the request and consider reprimanding Mr. Strawn, Mr. Adams, and Ms. Cho.

On July 19, 2015, EOIR announced that the Board was launching a one-year pilot program to solicit amicus curiae briefs in order reach a broader range of the public. On August 4, 2015, the Board issued a new solicitation for briefs in *Silva-Trevino*, seeking input from the public on the same issues that it previously asked FAIR and AILA to brief.

On August 17, 2015, Ms. Brodyaga, who represented the respondent in *Silva-Trevino*, filed a motion to strike FAIR's amicus brief. Ms. Brodyaga's motion to strike explicitly incorporated the arguments made by Mr. Strawn, Mr. Adams, and Ms. Cho in their request to appear as amicus curiae. The Board has not issued a decision in *Silva-Trevino* or otherwise responded to the motion to strike.

Based on the foregoing information, this office is troubled by the conduct of Mr. Strawn, Mr. Adams, Ms. Cho, and Ms. Brodyaga in *J-S-* and *Silva-Trevino*. Their conduct in seeking to strike FAIR's amicus briefs in these cases and to discourage the Board from soliciting amicus briefs from FAIR overstepped the bounds of zealous advocacy and was unprofessional. In their motions, Mr. Strawn, Mr. Adams, Ms. Cho, and Ms. Brodyaga made uncivil comments that disparaged FAIR and its staff. Mr. Strawn, Mr. Adams, Ms. Cho, and Ms. Brodyaga called FAIR a "hate group," "anti-immigrant," "white supremacist," "eugenicist," "anti-Semitic," and "anti-Catholic." None of this language was related or relevant to the underlying factual or legal matters or FAIR's amicus briefs, and its sole purpose was to denigrate FAIR and its staff.² Such language is not appropriate in a filing before the Board (or any judicial tribunal) because it constitutes frivolous behavior and does not aid the administration of justice.³

The decisions of Mr. Strawn, Mr. Adams, Ms. Cho, and Ms. Brodyaga to engage in derogatory name-calling exhibited a lack of professionalism that did not advance the resolution of *J-S-* or *Silva-Trevino*. While such misconduct is certainly within the jurisdiction of the EOIR Disciplinary Counsel, our office has concluded that the appropriate response is not the initiation of a formal disciplinary proceeding. Instead, we take this opportunity to remind the attorney practitioners involved in this misconduct that practitioners before EOIR should be striving to be civil and professional in their interactions with each other, the public, and the Board and Immigration Courts. Attorneys owe a duty of professionalism to their clients, opposing parties and their counsel, the courts, and the public as a whole. Professionalism includes civility, professional integrity, personal dignity, candor, diligence, respect, courtesy, cooperation, and competence. In this regard, attorneys may have a difference of opinion or policy, but they must not allow those differences to infect their conduct in carrying out their professional duties. The legal profession cannot operate effectively or with dignity when attorneys lack professionalism.

² To the extent that Mr. Strawn, Mr. Adams, Ms. Cho, and Ms. Brodyaga would claim that their purpose was to end the Board's affirmative solicitation of an amicus brief from FAIR and to have the solicitation process opened to a greater number of interested parties, their filings belie such a purpose. Mr. Strawn, Mr. Adams, Ms. Cho, and Ms. Brodyaga targeted FAIR, not the solicitation process that also included AILA.

³ We further note that the decision to engage in such conduct in the amicus curiae context was misguided. Amicus curiae are generally supposed to assist the court with the legal matter before it. Mr. Strawn, Mr. Adams, and Ms. Cho's request to appear as amicus curiae did not address the legal issues in *Silva-Trevino* and only sought to personally attack FAIR. Such conduct is not the role of amicus curiae.

We hope that the practitioners addressed in this letter reflect on their conduct in these matters and on their obligation to advance the ideals of the legal profession in the future.⁴

Sincerely,



Jennifer J. Barnes
Disciplinary Counsel

cc: Michael M. Hethmon, Immigration Reform Law Institute
Matt Adams, Northwest Immigrant Rights Project
Eunice Hyunhye Cho, Southern Poverty Law Center Incorporated
Elisabeth Brodyaga, Refugio del Río Grande Incorporated Law Office

⁴ In the spirit of civility and professionalism expressed in this letter, we would request that the parties addressed herein, FAIR, and the Immigration Reform Law Institute hold this letter in confidence.