

**NOT FOR PUBLICATION**

U.S. Department of Justice  
Executive Office for Immigration Review  
Board of Immigration Appeals

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MATTER OF:

Japheth Nthautha MATEMU, D2021-0134

Respondent

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**FILED**

NOV 09 2021

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS  
Notice of Intent to Discipline before the Board of Immigration Appeals

Before: Wetmore, Chief Appellate Immigration Judge, Malphrus, Deputy Chief Appellate  
Immigration Judge, Liebowitz, Appellate Immigration Judge

Opinion By: Chief Appellate Immigration Judge Wetmore

WETMORE, Chief Appellate Immigration Judge

The respondent will be suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (DHS) for 6 months, effective June 24, 2021.

On June 24, 2021, the Appellate Division of the New York Supreme Court, Third Judicial Department, suspended the respondent from the practice of law in New York for 6 months. On July 16, 2021, the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) and the Disciplinary Counsel for the Department of Homeland Security (DHS) jointly petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS. We granted the petition on August 11, 2021.

On August 2, 2021, the respondent filed a response to the Joint Notice of Intent to Discipline. In his response, he admits that he has been suspended from the practice of law in New York for 6 months. The respondent, however, argues that imposing reciprocal discipline upon him in this case would result in grave injustice. The respondent claims that his New York suspension was based on the confidential report he made to the United States Citizenship and Immigration Services (USCIS) about a client who was involved in a marriage fraud ring and had helped many people make false claims to United States citizenship. He contends that his client filed a grievance against him in New York, but he maintains that his conduct comes within an exception to the disciplinary rules governing client confidentiality. He therefore asserts that imposing discipline upon him would result in grave injustice, and he requests a hearing.

On August 16, 2021, the Disciplinary Counsels for EOIR and the DHS filed a motion for summary adjudication. They argue that the respondent does not dispute the material facts or the



basis for discipline alleged in the Notice of Intent to Discipline. They further contend that the grave injustice exception to reciprocal discipline is not applicable in this case because the respondent's disciplinary proceedings in New York were not initiated solely due to an unauthorized disclosure of confidential information. The proceedings instead were initiated for "unreasonably disclosing confidential information to the disadvantage of a client, failing to promptly refund an unearned fee and attempting to deceive petitioner during the course of its investigation of his professional misconduct" (Joint Mot. at 3).

The Disciplinary Councils also note that the respondent consented to the imposition of a 6-month suspension and admitted professional misconduct for various rule violations (Joint Mot. at 3). Accordingly, the Disciplinary Councils maintain that the respondent cannot now raise a collateral attack on the New York proceedings. The Disciplinary Councils further contend that the respondent's grave injustice argument is simply a scheme to avoid serving the suspension imposed in New York. The Disciplinary Councils point out that the respondent's practice is limited to immigration law and that, if his grave injustice argument is accepted, he will be able to continue practicing immigration law while disregarding the New York suspension to which he consented. Based on the foregoing, the Disciplinary Councils argue that summary proceedings are proper and that there is no need for a hearing.

We agree that a hearing is not necessary in this case. The respondent has not made a prima facie showing that there is a material issue of fact in dispute regarding the basis for summary disciplinary proceedings. *See* 8 C.F.R. §1003.106(a). The respondent has admitted that he has been suspended in New York for 6 months, and this fact is sufficient to establish that disciplinary proceedings are appropriate. *See* 8 C.F.R. § 1003.103(b)(2); *see also* 8 C.F.R. § 1003.102(e).

The respondent also has not made a prima facie showing that imposing discipline would result in "grave injustice." 8 C.F.R. § 1003.106(a). As the Disciplinary Councils for EOIR and the DHS point out, the proceedings in New York were based on more misconduct than the respondent has acknowledged. Further, the respondent consented to discipline in New York. He cannot now raise what is, essentially, a collateral attack on his disciplinary proceedings in New York. Summary proceedings therefore are appropriate in the respondent's case. 8 C.F.R. § 1003.106(a) (discussing when referral for a hearing is required).

In addition, the Disciplinary Councils for EOIR and the DHS have presented sufficient evidence to sustain the charge against the respondent (Joint Notice of Intent to Discipline at 1). In particular, the Disciplinary Councils have established that the respondent is subject to reciprocal discipline due to his suspension in New York. *See* 8 C.F.R. § 1003.103(b)(2); *see also* 8 C.F.R. § 1003.102(e).

The Notice of Intent to Discipline proposes that the respondent be suspended from practicing before the Board of Immigration Appeals, the Immigration Courts, and the DHS for 6 months, effective June 24, 2021. The proposed sanction is appropriate in light of the respondent's suspension in New York. We therefore will honor the proposed discipline and will order the respondent suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS. Further, as the respondent reported his New York suspension to the



Disciplinary Counsels in compliance with 8 C.F.R. § 1003.103(c), we will deem his suspension to have commenced on June 24, 2021, the date his suspension commenced in New York.

ORDER: The Board hereby suspends the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS for 6 months, effective June 24, 2021.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order. The respondent must notify the Board of any further disciplinary action against him.

FURTHER ORDER: The contents of the order shall be made available to the public, including at the Immigration Courts and appropriate offices of the DHS.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107.