NOT FOR PUBLICATION

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

MATTER OF:

Martin C. LIU, D2018-0188

Attorney

FILED
MAR 15 2022

ON BEHALF OF RESPONDENT: Cyrus D. Mehta, Esquire

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

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

IN PRACTIONER DISCIPLINARY PROCEEDINGS
On APPEAL from a Decision of the Adjudicating Official

Before: Creppy, Appellate Immigration Judge; Liebowitz, Appellate Immigration Judge; Hunsucker, Appellate Immigration Judge

Opinion by Appellate Immigration Judge Creppy

CREPPY, Appellate Immigration Judge

In a May 15, 2020, decision, an Immigration Judge, acting as the Adjudicating Official in this case, ordered that the respondent receive a public censure for his disciplinary violations. The Adjudicating Official concluded that the Disciplinary Counsel for the Executive Office of Immigration Review ("EOIR") and the Disciplinary Counsel for the Department of Homeland Security ("DHS") had met their burden of establishing violations of 8 C.F.R. § 1003.102(f)(1). The Adjudicating Official, however, did not sustain charge III in the Notice of Intent to Discipline. This charge alleges that it is in the public interest to impose sanctions because the respondent has engaged in the unauthorized practice of law before the DHS and EOIR.

The Disciplinary Counsels for EOIR and the DHS have appealed from the Adjudicating Official's decision.[1] Both parties have submitted briefs on appeal. The Disciplinary Counsels' appeal will be sustained in part and dismissed in part, and the respondent will receive a public censure for his disciplinary violations. The Disciplinary Counsels' request for oral argument is denied. *See* 8 C.F.R. § 1003.1(e)(7).

I. PROCEDURAL HISTORY

The June 20, 2018, Notice of Intent to Discipline filed by the Disciplinary Counsels for EOIR and the DHS asserts in Charges I and II that disciplinary sanctions are warranted under 8 C.F.R.

[1] All references to 'the government" or "Disciplinary Counsels" in this decision refer to the Disciplinary Counsels for EOIR and the DHIS unless otherwise indicated.

§ 1003.102(f)(1), because, between November 17, 2014, and June 6, 2018, the respondent "knowingly or with reckless disregard ma[de] a false or misleading communication about his ... qualifications or services" on Forms G-28 (Notice of Entry of Appearance as Attorney), filed with the U. S. Citizenship and Immigration Services ("USCIS") of the DHS, and on Forms EOIR-28 (Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court) filed with the Immigration Court (Notice of Intent to Discipline at 3-4). In particular, the government alleges that the respondent, contrary to his declarations, was not eligible to practice law in New Jersey at the time he filed Forms G-28 with USCIS and Forms EOIR-28 with the Immigration Court. *Id.*

The Disciplinary Counsels for EOIR and the DHS also charge in Count III of the Notice of Intent to Discipline that disciplinary sanctions are warranted in the public interest under 8 C.F.R. § 1003.102 (Notice of Intent to Discipline at 4). The Disciplinary Counsels contend that the respondent engaged in the practice of law before USCIS and EOIR in violation of applicable regulations. *Id.*

The Board initially issued a final order of discipline on August 23, 2018, but set aside this decision on October 1, 2018. On December 4, 2018, we denied a motion to reconsider filed by the Disciplinary Counsels for EOIR and the DHS and forwarded the case to the Office of the Chief Immigration Judge for the appointment of an adjudicating official.

On April 18, 2019, the Disciplinary Counsels for EOIR and the DHS filed with the Adjudicating Official a brief, along with supplemental evidence. The respondent thereafter submitted a rebuttal to the Adjudicating Official, but the rebuttal was not placed within the record of proceedings and was not considered by the Adjudicating Official in his August 21, 2019, decision. The Adjudicating Official also did not make a determination concerning Charge III in the Notice of Intent to Discipline. We accordingly remanded the record to the Adjudicating Official on February 12, 2020, to consider the respondent's rebuttal and to address Charge III.

On May 15, 2020, a new Adjudicating Official issued a decision again sustaining Charges I and II on the ground that the Disciplinary Counsels had established, by clear and convincing evidence, that the respondent acted with reckless disregard in making false statements about his ability to practice law in New Jersey when he signed certain entries of appearance between 2014 and 2018 (IJ at 10-11, May 15, 2020). The Adjudicating Official further found that the Charge III was not a valid charge because it failed to allege a specific disciplinary violation (IJ at 11-13, May 15, 2020). Finally, the Adjudicating Official concluded that a public censure was the correct sanction for the respondent's violations (IJ at 13-16, May 15, 2020).

The Disciplinary Counsels have appealed from the Adjudicating Official's decision. On appeal, they argue that they established by clear and convincing evidence that the respondent acted knowingly when he completed Forms G-28 and EOIR-28 stating that he was eligible to practice law in New Jersey (Gov't Br. at 4-12, April 22, 2021). In addition, the Disciplinary Counsels maintain that Charge III is a valid charge and that a 4 year suspension is the correct sanction in this case (Gov't Br. at 12-21, April 22, 2021). The respondent, on the other hand, argues that he did not act knowingly as charged in Charges I and II, that the Adjudicating Official properly dismissed Charge III as invalid, that the public censure sanction is appropriate, and that the Board cannot engage in de novo review of factual findings (Respondent's Response at 3-25, June 17, 2021).

II. ISSUES AND STANDARD OF REVIEW

We review the Adjudicating Official's findings of fact for clear error. 8 C.F.R. 1003.1(d)(3)(i). We review questions of law, discretion and judgment, and all other issues in appeals, de novo. 8 C.F.R. § 1003.1(d)(3)(ii); *see also* 8 C.F.R. § 1003.106(c). Further, in disciplinary proceedings, the Disciplinary Counsels "bear the burden of proving the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline by clear and convincing evidence." 8 C.F.R. § 1003.106(a)(2)(iv).

In this case, the parties have not challenged the Adjudicating Official's determination that the respondent's reinstatement from administrative ineligibility in New Jersey was not retroactive and therefore did not erase his period of administrative ineligibility between November 17, 2014, and June 6, 2018 (AO at 5-7, May 15, 2020). The parties also have not challenged the Adjudicating Official's conclusion that the respondent violated 8 C.F.R. § 1003.102(f) by acting with reckless disregard when he filed certain Forms G-28 and Forms EOIR-28 indicating that he was eligible to practice law in New Jersey even though he was administratively ineligible to practice law in New Jersey during the relevant time period (AO at 10-11, May 15, 2020). We therefore deem these issues waived. *See, e.g.*, *Matter of A.J. Valdez and Z. Valdez*, 27 I&N Dec. 496, 496 n.1, 498 n.3 (BIA 2018) (noting that an issue addressed in an Immigration Judge's decision is waived when a party does not challenge it on appeal).

The issues in dispute are whether the Adjudicating Official's finding that the respondent did not act knowingly when he completed Forms G-28 and EOIR-28 between November 17, 2014, and June 6, 2018, is clearly erroneous, whether the Adjudicating Official correctly concluded that Charge III was an improper charge, and whether public censure is the appropriate sanction.

III. KNOWING VIOLATION OF 8 C.F.R. § 1003.102(f)

According to 8 C.F.R. § 1003.102(f), a practitioner shall be subject to disciplinary sanctions if he or she "[k]knowingly or with reckless disregard makes a false or misleading communication about his or her qualifications or services." The Disciplinary Counsels allege that the respondent violated this provision by knowingly making false communications regarding his eligibility to practice law in New Jersey between November 17, 2014, and June 6, 2018. The Adjudicating Official, however, concluded that the Disciplinary Counsels had not met their burden of establishing that the respondent acted knowingly when he indicated on various Forms G-28 and EOIR-28 that he was eligible to practice law in New Jersey (AO 7-10, May 15, 2020).

The Adjudicating Official made factual findings based on the evidence of record that are without clear error. *See Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 573 (1985) (stating that factual finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed). In particular, there is no clear error in the Adjudicating Official's factual finding that the respondent did not act knowingly when he completed the Forms G-28 and EOIR-28 at issue in these proceedings (AO at 7-10, May 15, 2020; Gov't Br. at 4-12, April 22, 2021). The Disciplinary Counsels argue that the Adjudicating Official clearly erred in crediting the respondent's statement asserting that he did not know of his administrative ineligibility in New Jersey until June 21, 2018, because they submitted substantial evidence showing that the respondent had knowledge of his ineligibility before that time and was deliberately indifferent to

it (Gov't Br. at 5, April 22, 2021). In particular, the Disciplinary Counsels assert that they submitted four orders from the Supreme Court of New Jersey announcing the respondent's administrative ineligibility, a certification from Wendy Weiss, Counsel to the New Jersey Supreme Court Board on Continuing Legal Education (MCLE Board), detailing the number of notices sent to the respondent regarding his administrative ineligibility, and a certification from Carla Cousins, the billing supervisor for the New Jersey Lawyers' Fund for Client Protection, listing the notices sent to the respondent regarding his ineligibility to practice law in New Jersey due to his nonpayment of annual registration fees (Gov't Br. at 5-7, April 22, 2021).

The Disciplinary Counsels maintain that, in the face of this evidence, the Adjudicating Official incorrectly concluded that (1) there was no evidence in the record that the respondent was actually mailed a notice regarding his ineligibility through either regular mail or electronic mail and that the mailing was to his correct address, (2) that a copy of a notice of ineligibility was not made a part of the record, and (3) that nowhere in the statements of Ms. Weiss or Ms. Cousins was there a factual assertion of the addresses to which the notices were sent (Gov't Br. at 7-8, April 22, 2021). We disagree with the Disciplinary Counsels' argument.

First, as the Adjudicating Official correctly noted, the certification of Carla Cousins does not relate to the specific charges against the respondent (AO at 8, May 15, 2020, Notice of Intent to Discipline at 1). The charges in the Notice of Intent to Discipline are based on the respondent's administrative ineligibility to practice in New Jersey stemming from failure to comply with continuing legal education requirements (Notice of Intent to Discipline at 1-4). The certification from Ms. Cousins, however, relates to the respondent's failure to pay annual registration fees in New Jersey during a shorter time period (AO at 8, May 15, 2020; Gov't Br., Exh. 10, April 18, 2019). The information in the statement from Ms. Cousins therefore is of limited value in establishing whether the respondent knew that he was administratively ineligible to practice law in New Jersey from November 17, 2014, to June 6, 2018, due to his failure to comply with continuing legal education requirements.

In addition, even if fully relevant, Ms. Cousin's certification is not sufficiently detailed to rebut the respondent's statement that he was not aware of his administrative ineligibility due to noncompliance with continuing legal education requirements until June 21, 2018. While Ms. Cousins does list the respondent's address of record during certain time periods (Gov't Br., Exh. 10 at 179, April 18, 2019), she does not confirm that the notices regarding his failure to pay fees were correctly addressed or were not returned as undeliverable (Gov't Br., Exh. 10 at 178-182, April 18, 2019). Moreover, she does not address notices regarding the respondent's ineligibility to practice due to his noncompliance with continuing legal education requirements. The Adjudicating Official therefore did not clearly err in finding that the certification from Ms. Cousins was insufficient to refute the respondent's statement that he did not receive notice of his administrative ineligibility due to failure to meet continuing legal education requirements until June 21, 2018.

The Adjudicating Official similarly did not clearly err in finding that the certification from Ms. Weiss was insufficient to undermine the credibility of the respondent's claim. Ms. Weiss does not list the addresses to which specific notices were sent and does not assert or provide evidence that the notices were correctly addressed and not returned as undeliverable (AO at 8, May 15, 2020; Gov't Br., Exh. 15, April 18, 2019). Ms. Weiss's certification therefore is not sufficient to establish that the respondent actually received a notice before June 21, 2018.

Further, the certifications from Ms. Cousins and Ms. Weiss do not include copies of specific notices sent to the respondent. The copies of the orders of the Supreme Court of New Jersey submitted by the government also are not copies of specific notices sent to the respondent. The orders do not include proof of mailing, and the certification from Ms. Weiss is not sufficiently detailed to establish that the orders were actually sent properly to or received by the respondent.[2]

Based on the foregoing, the Adjudicating Official correctly stated that the record does not include a copy of a specific notice sent to the respondent, other than the notice he claims he received on June 21, 2018 (AO at 8; May 15, 2020). The Adjudicating Official also did not clearly err in concluding that the statements of Ms. Cousins and Ms. Weiss about bulk mailings were insufficient to establish that a notice was, in fact, sent to the respondent's correct physical or electronic address and not returned (AO at 8; May 15, 2020). Finally, the Adjudicating Official did not clearly err in concluding that neither Ms. Cousins nor Ms. Weiss made a factual assertion regarding the exact address to which the notices of the respondent's ineligibility to practice due to noncompliance with continuing legal education requirements were sent.

Moreover, the Adjudicating Official did not clearly err in crediting the respondent's statement over the evidence submitted by the Disciplinary Counsels (AO at 9, May 15, 2020). As the Adjudicating Official noted, the statement from Thomas Prol, a former member of the New Jersey Supreme Court's MCLE Board, documents the problems the MCLE Board encountered in notifying attorneys of their noncompliance with continuing legal education requirements and establishes that the respondent's claimed lack of notice is reasonable and not inconsistent with what was happening throughout New Jersey (AO at 9, May 15, 2020; Respondent's Answer, Exh G at 40-43, October 29, 2018). Given this information and the deficiencies the Adjudicating Official noted in the government's evidence, there is no clear error in the Adjudicating Official's decision to credit the respondent's statement that he did not receive notice of his administrative ineligibility to practice in New Jersey due to his noncompliance with continuing legal education requirements until June 21, 2018.

In reaching this conclusion, we acknowledge the Disciplinary Counsels' argument that there is a presumption of proper notice when something is properly addressed and sent by regular office procedures (Gov't Br. at 9, April, 22, 2021). *Matter of M-R-A-*, 24 I&N Dec. 665, 673 (BIA 2008). In this case, however, the record does not include a copy of a specific notice sent to the respondent or other evidence to establish that the specific notices were, in fact, properly addressed. Further, the presumption of receipt is a weaker presumption, and the Adjudicating Official reasonably concluded that the respondent's statement and other evidence was sufficient to overcome any presumption.

---

[2] The orders issued by the Supreme Court of New Jersey do not include the respondent's name. The respondent's name instead is included in a list of hundreds of names attached to each order (AO at 4, May 15, 2020; Gov't Br., Exh 11-14, April 18, 2019). The orders instruct that a copy be posted on the New Jersey Judiciary's website and in an on-line, subscription publication, but the respondent asserts that he never checked the website and did not subscribe to the publication. The orders also instruct that a copy be mailed to each attorney on the list, but, as we noted above, the certification of Ms. Weiss does not contain sufficient detail to establish that a copy of each order was, in fact, mailed or emailed to the respondent's correct address and not returned.

The Disciplinary Counsels further argue that the respondent's continued filing of Forms G-28 between June 21, 2018, and July 31, 2018, shows that he did not change his behavior upon being notified of his administrative eligibility and provides evidence that he actually did know of the ineligibility before June 21, 2018 (Gov't Br. at 9-10, April 22, 2021). The Adjudicating Official did not address the Forms G-28 filed between June 21, 2018, and July 31, 2018, but remand is not necessary to allow the Adjudicating Official to make specific factual findings regarding this evidence.

The Disciplinary Counsels first submitted the later Forms G-28 in April 2019, almost a year after they filed the Notice of Intent to Discipline (Gov't Br., Exh. 16 at 200-221, April 18, 2019).[3] The allegations and charges in the Notice of Intent to Discipline further are based only on the respondent's filing of specific Forms G-28 and EOIR-28 between November 17, 2014, and June 6, 2018 (Notice of Intent to Discipline at 1-4). The Adjudicating Official therefore did not err by not addressing the later Forms G-28 in adjudicating the charges against the respondent.

Moreover, the Adjudicating Official did not clearly err by not finding that the respondent's conduct after June 21, 2018, was sufficient to establish, by clear and convincing evidence, that he acted knowingly in filing Forms G-28 and EOIR-28 before that date. The respondent's actions after June 21, 2018, are not necessarily indicative of his actions before that date, and we cannot find clear error based on the record before us.

Finally, the fact that the respondent had to certify whether or not he was in compliance with continuing legal education requirements when he registered and paid his annual registration fee in August 2017 is not sufficient to establish that the respondent also became aware that he had been declared administratively ineligible to practice law in New Jersey on the basis of his noncompliance with the continuing legal education requirements, despite the government's arguments to the contrary (Gov't Br. at 11-12, April 22, 2021). Noncompliance with continuing legal education and being declared administratively ineligible to practice are not one and the same (Respondent's Answer, Exh. G at 41, October 29, 2018) (indicating that, under the relevant New Jersey regulations, noncompliance with continuing legal education "may" lead to ineligibility to practice).

Based on the foregoing, we uphold the Adjudicating Official's conclusion that the Disciplinary Counsels did not meet their burden of establishing by clear and convincing evidence that the respondent had knowingly made a false or misleading communication about his or her qualifications to practice law in New Jersey in violation of 8 C.F.R. § 1003.102(f). We accordingly dismiss the government's appeal on this issue.

---

[3] The Disciplinary Counsels had submitted a printout listing the applications, petitions, or requests the respondent had filed before the DHS from June 2018 through August 2018 (Gov't Opp to Respondent's Motion to Set Aside at 5, n.6, and Attachment 3, September 12, 2018). The Disciplinary Counsels, however, did not submit any Forms G-28 from this period and did not argue that the printout should be considered in evaluating whether the respondent should be disciplined as charged in the Notice of Intent to Discipline. The Disciplinary Counsels instead cited the information in support of their argument that the respondent had not shown exceptional circumstances that justified setting aside the August 23, 2018, final order of discipline. The Disciplinary Counsels further did not seek, and have not sought, to amend the Notice of Intent to Discipline to include conduct after June 20, 2018.

IV. UNAUTHORIZED PRACTICE OF LAW CHARGE

We, however, will sustain the government's appeal on Charge III, the unauthorized practice of law charge. Charge III of the Notice of Intent to Discipline states that individuals in immigration proceedings before EOIR and the DHS are entitled to be represented by certain categories of individuals, including attorneys (Notice of Intent to Discipline at 4). The charge further states that an "attorney" is defined in 8 C.F.R. §§ 1.2 and 1001.1(f) as "any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law" (Notice of Intent to Discipline at 4). The charge then alleges that, between November 17, 2014, and June 20, 2018, the respondent was ineligible to practice law in New Jersey and therefore was not qualified to provide representation as an "attorney" before the DHS or EOIR (Notice of Intent to Discipline at 4). Finally, the charge concludes that, in spite of this ineligibility, the respondent filed Forms G-28 in 3,691 matters before the DHS and filed Forms EOIR-28 in 47 matters before the Immigration Courts (Notice of Intent to Discipline at 4).

The Adjudicating Official found that this charge was not a valid disciplinary charge because it failed to allege a specific disciplinary violation (AO at 12-13, May 15, 2020). In particular, the Adjudicating Official noted that Charge III does not provide adequate notice to the respondent because it does not set forth the elements of the charge that must be proven (AO at 13, May 15, 2020). In reaching this conclusion, the Adjudicating Official noted that the opening paragraph of 8 C.F.R. § 1003.102 cannot form the basis of a separate and independent charge of discipline because it does not set out a specific violation of a disciplinary rule or an ethical principle (AO at 13, May 15, 2020).

The Adjudicating Official further found that, to invoke the catch-all provision of the opening paragraph of 8 C.F.R. § 1003.102, there must be a charge, a violation of a code of conduct, a crime, or something that is akin to the enumerated grounds and has elements that must be proven (AO at 13, May 15, 2020). The Adjudicating Official, however, noted that the Disciplinary Counsels had not alleged that the respondent's conduct violated any disciplinary rules or code of proper behavior (AO at 13, May 15, 2020).

On appeal, the Disciplinary Counsels argue that the Adjudicating Official erred in finding that the unauthorized practice charge was invalid because it was not based on a ground enumerated in 8 C.F.R. § 1003.102 (Gov't Br. at 13, April 22, 2021). The Disciplinary Counsels contend that 8 C.F.R. § 1003.102 states that the enumerated grounds "do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest." Accordingly, the Disciplinary Counsels argue that other grounds for discipline are possible, provided that the misconduct concerns criminal, unethical, or unprofessional conduct for which it would be in the public interest to impose disciplinary sanctions (Gov't Br. at 13, April 22, 2021).

The Disciplinary Counsels further contend that Charge III is based on a fundamental principle: an attorney must not provide legal representation when not authorized to do so (Gov't Br. at 15, April 22, 2021). The Disciplinary Counsels note that both the Model Rules of Professional Conduct and the New Jersey Rules of Professional Conduct contain explicit prohibitions against the unauthorized practice of law. *Id.* Additionally, the Disciplinary Counsels maintain that

engaging in the practice of law when not authorized to do so is the epitome of unethical or unprofessional conduct. *Id.*

Finally, the Disciplinary Counsels argue that Charge III clearly states that the respondent practiced immigration law in violation of applicable regulations and clearly sets forth the elements that need to be proven to sustain that charge (Gov't Br. at 16, April 22, 2021). The Disciplinary Counsels accordingly contend that the respondent and the Adjudicating Official had sufficient information, and they ask the Board to sustain the charge based on the uncontroverted facts. *Id.*

The respondent, on the other hand, argues that the Adjudicating Official was correct in concluding that the broad, catch-all language of 8 C.F.R. § 1003.102 does not provide an independent ground of discipline (Respondent's Response at 12-16, June 17, 2021). The respondent asserts that, if he did not violate any of the specific provisions of 8 C.F.R. § 1003.102 or commit any closely related act, then his potential unknowing violation of the ability to practice rules is not independently sanctionable (Respondent's Response at 13-14). In addition, the respondent argues that the prior cases the Disciplinary Counsels cite as proof that the Board and Adjudicating Officials have sustained charges under the catch-all provision of 8 C.F.R. § 1003.102 in the past are either stipulated decisions or decisions in which the misconduct was tied to a more specific rule (Respondent's Response at 14).

Finally, the respondent maintains that the Adjudicating Official's conclusion that Charge III does not allege a sufficiently specific violation is a finding of fact that the Board must review for clear error (Respondent's Response at 15-16). Moreover, the respondent asserts that, even if de novo review is appropriate, the Board should sustain the Adjudicating Official's conclusion (Respondent's Response at 16).

The unauthorized practice of law charge is a valid charge and is allowed under the terms of 8 C.F.R. § 1003.102. The opening paragraph to 8 C.F.R. § 1003.102 states that the categories specified in the regulation "do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest." 8 C.F.R. § 1003.102. This statement clearly authorizes the Disciplinary Counsels to bring disciplinary charges on other, unenumerated grounds.

Moreover, both adjudicating officials and this Board have sustained charges stemming from the catch-all provision of 8 C.F.R. § 1003.102 in the past (Gov't Br. at 14-15 and Attachments 1 and 2, April 22, 2021). The respondent is correct that several of the prior decisions cited by the Disciplinary Counsels were cases in which the attorneys had stipulated to the proposed discipline. In these cases, the Board did not need to address whether the charges were proper. In G-D-M-, Dxxxx-0263 (BIA Apr. 4, 2018), however, the Board acknowledged that the opening paragraph of 8 C.F.R. § 1003.102 authorizes disciplinary sanctions based on conduct not expressly covered by the subsections of 8 C.F.R. § 1003.102 (Gov't Br., Attachment 1 at 5, April 22, 2021). We further noted that we would expect this type of charge to be one that the government would have to prove in the first instance, and we indicated that we could not revise the charge, based on reciprocal discipline, set forth in the Notice to Appear in that case. *Id.* at 5 n.5.

In an earlier case, the Board adopted and affirmed a 105-page written decision of an Adjudicating Official that sustained charges brought under both 8 C.F.R. § 1003.102(c) and the catch-all provision of 8 C.F.R. § 1003.102. P-J-S-, Dxxxx-195 (BIA May 22, 2012). Finally, in two different decisions, Adjudicating Officials found, by clear and convincing evidence, that the

conduct of attorneys, who had practiced law in the United States without having lawful status or work authorization, violated the disciplinary provisions. The Adjudicating Officials did not link the violation to a specific subsection of 8 C.F.R. § 1003.102 but appeared to be relying on the catch-all provision (Gov't Br., Attachment 2). N-P-M-C-, Dxxx-124 (AO Mar. 16, 2011); R-S-K-, Dxxx-53 (AO, Jul. 8, 2009).

None of these decisions were published, and none of them directly rule on the specific issue in this case, namely whether a charge based on the catch-all provision of 8 C.F.R. § 1003.102 is a valid charge. The decisions nevertheless implicitly or explicitly endorse a finding that this type of charge can, in fact, be valid.

In finding that charges based on grounds not specifically enumerated in 8 C.F.R. § 1003.102 can be valid, we agree with the Adjudicating Official and the Disciplinary Counsels that any charge based on the catch-all provision of 8 C.F.R. § 1003.102 must relate to criminal, unethical, or unprofessional conduct for which it would be in the public interest to impose disciplinary sanctions The charge also needs to be sufficiently specific to provide an attorney with proper notice of the precise misconduct with which he is being charged, enabling the attorney to defend against the precise allegations levelled against him. Charge III in the Notice of Intent to Discipline, however, meets these requirements.

First, the charge is based on an alleged violation of specific regulations governing the appearance of attorneys in immigration proceedings. In particular, the Disciplinary Counsels allege that the respondent violated 8 C.F.R. §§ 292.1(a) and 1292.1(a) by practicing before the DHS and EOIR even though he did not meet the definition of "attorney" contained in 8 C.F.R. §§ 1.2 and 1001.1(f) (Notice of Intent to Discipline at 4).

Further, the alleged conduct is not only a violation of immigration regulations; the conduct also is deemed unethical by both the Model Rules of Professional Conduct and the New Jersey Rules of Professional Conduct. Both codes of conduct prohibit the unauthorized practice of law and elaborate upon what unauthorized practice entails. *See* Model Rules of Professional Conduct, Rule 5.5; N.J. Rules of Professional Conduct, Rule 5.5.

The misconduct also is closely tied to conduct expressly deemed misconduct in 8 C.F.R. § 1003.102. Specifically, the misconduct is closely tied to the conduct prohibited by 8 C.F.R. § 1003.102(m), assisting anyone other than a practitioner in the unauthorized practice of law. The conduct also is closely tied to the conduct prohibited by 8 C.F.R. § 1003.102(f), knowingly or with reckless disregard making a false or misleading communication about his or her qualifications or services. The misconduct is simply a less serious version of either of these forms of misconduct.

Finally, Charge III itself is stated with specificity and clearly advised the respondent of the conduct that is alleged to be misconduct and the grounds for concluding that the conduct provides a basis for disciplinary sanctions (Notice of Intent to Discipline at 4). The Adjudicating Official accordingly erred in finding that the charge lacked specificity. The Adjudicating Official also incorrectly concluded that the charge was not linked to a disciplinary rule or a code of ethical conduct.[4]

---

[4] There is no dispute in this case regarding what Charge III states. The dispute instead focuses the legal implications of the statements. We therefore review the Adjudicating Official's findings

Based on the foregoing, we sustain the government's appeal from the Adjudicating Official's dismissal of Charge III in the Notice of Intent to Discipline. Ordinarily, in this instance, we would need to remand the record to the Adjudicating Official to make further factual findings and determine whether the Disciplinary Counsels have met their burden of establishing that the respondent has violated the charge. In this case, however, the Adjudicating Official already has found sufficient facts to allow us to sustain the charge without remand.

First, the Adjudicating Official has concluded that the respondent was administratively ineligible to practice law in New Jersey from November 17, 2014, to July 31, 2018 (AO at 5-7, 11, May 15, 2020). This fact is sufficient to establish that the respondent did not meet the definition of 'attorney" set forth in 8 C.F.R. § 1001.1(f) during that time period. *See* 8 C.F.R. § 1001.1(f).

Second, the Adjudicating Official found that the Disciplinary Counsels had established, by clear and convincing evidence that the respondent had filed certain Forms G-28 and Forms EOIR-28 with reckless disregard for the truthfulness of the information they contained regarding his eligibility to practice law in New Jersey (AO at 3 and 11, May 15, 2020). The respondent also conceded in his answer to the Notice of Intent to Discipline that he had filed the 13 Forms G-28 and the 9 Forms EOIR-28 referenced in the allegations of the Notice of Intent to Discipline (Respondent's Answer at 4-5, October 29, 2018; Notice of Intent to Discipline at 2-3). He also admitted that he filed additional Forms G-28 and EOIR-28 during the relevant time period, but he acknowledged that he could not definitively confirm the number of cases (Respondent's Answer at 5, October 29, 2018; Notice of Intent to Discipline at 2-3).

These facts are sufficient to establish that the respondent entered appearances in numerous cases while he did not meet the definition of "attorney" set forth in 8 C.F.R. § 1001.1(f). The respondent therefore engaged in the unauthorized practice of law before the DHS and EOIR and we sustain Charge III in the Notice of Intent to Discipline.

V. SANCTION

The Adjudicating Official determined that the appropriate sanction in the respondent's case was a public censure (AO at 13-16, May 15, 2020).[5] The Disciplinary Counsels, however, argue that a 4-year suspension is warranted. We agree with the Adjudicating Official that, given the nature of the misconduct in this case, the aggravating and mitigating factors, the manner in which this type of transgression is handled in New Jersey, and the guidance from the American Bar Association's Standards for Imposing Lawyer Sanctions, a public censure is the appropriate sanction.

There is no clear error in the Adjudicating Official's account of the aggravating and mitigating factors in the respondent's case (AO at 13-14, May 15, 2020). In addition, because Charge III is based on the same misconduct addressed in Charges I and II, we do not need to remand the record

---

de novo, contrary to the respondent's assertions on appeal. *See, e.g., U.S. v. Stock*, 728 F.3d 287, 291 (3d Cir. 2013) (finding that the sufficiency of the indictment is a legal question).

[5] The first adjudicating official to issue a decision in this case also concluded that a public censure, rather than a suspension, was the appropriate sanction (AO at 4-5, August 21, 2019).

to allow the Adjudicating Official to make additional factual findings related to Charge III before we can evaluate the appropriate sanction. The Adjudicating Official's assessment of the respondent's misconduct for the purpose of imposing an appropriate sanction is still applicable and sufficient even though the Adjudicating Official only found the respondent subject to discipline pursuant to Charges I and II (AO at 13, May 15, 2020) (noting that, because there is substantial overlap between the misconduct alleged in Charges I and II, a single sanction is appropriate).

On appeal, the Disciplinary Counsels argue that the Adjudicating Official based his determination regarding an appropriate sanction on his erroneous finding that the respondent was credible and did not act knowingly in filing G-28s and EOIR-28s containing incorrect information about his eligibility to practice law in New Jersey (Gov't Br. at 15, April 22, 2021). We, however, have upheld the Adjudicating Official's finding on these points. The Adjudicating Official accordingly acted properly in considering the lack of knowing misconduct in arriving at the appropriate sanction.

The Disciplinary Counsels also maintain that the Adjudicating Official did not consider the respondent's unauthorized practice of law for almost 4 years (Gov't Br. at 16, April 22, 2021), but the Adjudicating Official clearly stated that the respondent's conduct spanned 3 ½ years and included 3700 filings (AO at 13-14, May 15, 2020). Accordingly, while the Adjudicating Official did not specifically acknowledge that the respondent had engaged in the unauthorized practice of law, the Adjudicating Official considered the length and the breadth of the conduct. The Adjudicating Official further characterized the conduct as filing numerous Forms G-28 and EOIR-28 with reckless disregard for the truthfulness of the information regarding his eligibility to practice law in New Jersey. These acts are more serious than the unauthorized practice of law, without a specific mens rea, covered by Charge III. The Adjudicating Official therefore did not overlook any facts that would have altered his assessment of the appropriate sanction.

The Disciplinary Counsels further contend that the Adjudicating Official did not properly consider the impact of the respondent's conduct on the integrity of the immigration proceedings or the impact that a public censure would have on deterring similar conduct (Gov't Br. at 16, April 22, 2021). The Adjudicating Official, however, appropriately addressed both of these points in his decision (AO at 14-16, May 15, 2020). In particular, the Adjudicating Official correctly noted that there has been no showing of harm to any of the respondent's clients or to a party to any litigation (AO at 14, May 15, 2020). The Adjudicating Official also considered the harm to the immigration disciplinary system that could result if disciplinary sanctions skew too far from sanctions imposed by the state in which a particular practitioner is licensed given the fact that state systems are more robust and experienced in these matters (AO at 15, May 15, 2020). Finally, the Adjudicating Official found that a public censure would send the appropriate message to the respondent and other immigration practitioners regarding their continuing duty to treat their licensing requirements seriously (AO at 16, May 15, 2020). We agree with the Adjudicating Official's statements and his conclusion that a public censure provides sufficient deterrence to future misconduct and sufficient acknowledgement of the harm that reckless disregard of the truth of one's statements regarding one's eligibility to practice in other jurisdictions could have in immigration proceedings.

We further agree with the Adjudicating Official's evaluation of relevant guidance, including cases from New Jersey and the American Bar Association's Standards for Imposing Lawyer

Sanctions (ABA Standards), despite the Disciplinary Counsels' challenges to these findings. The Disciplinary Counsels argue that the Adjudicating Official erred by giving any weight to the sanction practice in New Jersey, but the Adjudicating Official correctly pointed out that New Jersey and other states have significant experience in imposing discipline and have a significantly more robust system for doing so (AO at 15, May 15, 2020). The Adjudicating Official also accurately assessed New Jersey's approach to sanctioning violations similar to the respondent's (AO at 14-15, May 15, 2020). The cases cited by the Adjudicating Official and the parties in their briefs on appeal establish that a reprimand (equivalent to a public censure) or an admonition (equivalent to a private censure) would be an appropriate sanction in New Jersey for practicing law while ineligible if the attorney is unaware of the ineligibility (AO at 14-15, May 15, 2020; Gov't Br. at 18 n.14; Respondent's Response at 17-20).

The Adjudicating Official also correctly concluded that the ABA Standards weigh in favor of a public censure rather than a suspension given the particular facts of the respondent's case (AO at 15, May 15, 2020). The Disciplinary Counsels argue that the presumption sanction when misconduct is knowing is a suspension (Gov't Br. at 17, April 22, 2021). The respondent's conduct, however, was not knowing and many of the ABA Standards the Disciplinary Counsel cites are inapplicable to the facts of the respondent's case. *Id.* The Adjudicating Official correctly found that ABA Standard 6 provided the most relevant guidance when an attorney has made a false statement to a tribunal and that the respondent's misconduct does not fall clearly within one of the categories set forth in that Standard (AO at 15, May 15, 2020).[6] The Adjudicating Official also correctly stated that the respondent's equities, the ABA Standards, and the manner in which New Jersey handles this type of violation clearly set it outside of the set of cases requiring a suspension. *Id.*

Finally, while the Adjudicating Official did not specifically address prior Board decisions, the decisions cited by the Disciplinary Counsels do not establish that a suspension is warranted in the respondent's case (Gov't Br. at 19-20, April 22, 2021). The decisions are all default orders in which the attorneys did not respond to the Notices of Intent to Discipline and therefore did not contest the charge that they knowingly filed Forms G-28 or EOIR-28 containing misrepresentations regarding their eligibility to practice law in a particular state. *Id.* The sanctions accordingly were based on knowing violations of 8 C.F.R. § 1003.102(f), which are significantly more serious than the respondent's reckless disregard in this case. Given this fact, the decisions are distinguishable and do not establish that the Adjudicating Official erred in imposing a public censure in this case.

Based on the foregoing, we affirm the Adjudicating Officials' determination that a public censure is the appropriate sanction in the respondent's case (AO at 13-16, May 15, 2020), and we dismiss the Disciplinary Counsels' appeal on this issue.

ORDER: The Disciplinary Counsels' appeal is sustained in part and dismissed in part.

---

[6] Standard 7 of the ABA Standards for Imposing Lawyer Sanctions provides the most relevant guidance for assessing the appropriate sanction for the unauthorized practice of law. This standard indicates that suspension is generally appropriate when a lawyer knowingly engages in misconduct. A reprimand or public censure, however, is appropriate for negligent acts that cause injury or potential injury. *See* ABA Standards for Imposing Lawyer Sanctions, Standard 7.2 and 7.3.

FURTHER ORDER: The respondent is censured for his misconduct.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT

In the Matter of:	**:**	
	:	
	:	**DISCIPLINARY CASE**
Martin C. Liu, Esq.,	**:**	**NO: D2018-0188**
	:	
Respondent	**:**	

CHARGES: **Charges I and II – 8 CFR 1003.102(f)(1)**
Charge III – 8 CFR 1003.102

Proposed Discipline: Suspension from practice before the Department of Homeland Security, the Board of Immigration Appeals, and the Immigration Courts for a period of four years.

Appearances:

On Behalf of Respondent:

Cyrus D. Mehta, Esq.
Cyrus D. Mehta and Partners, PLLC
One Battery Park Plaza, 9th Floor
New York, NY 10004

On Behalf of the Government:

Paul A. Rodrigues
Disciplinary Counsel
Office of General Counsel
Executive Office for Immigration Review
Department of Justice
5107 Leesburg Pike
Suite 2600, Room 2658
Falls Church, VA 22041

Catherine M. O'Donnell
DHS Disciplinary Counsel
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
11411 East Jefferson Avenue
Detroit, MI 48214

MEMORANDUM OF DECISION AND ORDER

I. Procedural History

On June 28, 2018, the Disciplinary Counsel for the Executive Office for Immigration Review ("DC EOIR) and the Disciplinary Counsel for the Department of Homeland Security ("DHS")(consolidated as "Government") jointly filed a Notice of Intent to Discipline ("NOID") against Martin C. Liu, Esq., Respondent, seeking to suspend him from practicing before EOIR and DHS for four years. The Respondent failed to reply to the NOID and on August 23, 2018, the Board of Immigration Appeals ("BIA" or "Board") adopted the NOID and suspended Respondent for a period of four years. The ROP contains evidence that the NOID as well as the BIA decision were returned, having been mailed to the Respondent at an invalid address.

On September 7, 2018, Respondent filed a motion to set aside the suspension. The Government filed an objection to Respondent's motion to set aside. The Board entered an order setting aside the suspension on October 1, 2018, and directed the Respondent to answer the NOID within thirty days. On October 12, 2018, the Government moved the BIA to reconsider the grant of Respondent's motion to set aside and vacate the suspension to which Respondent filed a timely response on October 22, 2018. Respondent filed his answer to the NOID on October 30, 2018, including exhibits. On December 4, 2018, the Board denied the Government's motion to reconsider and directed that the matter be forwarded to the Office of the Chief Immigration Judge ("OCIJ") for the appointment of an adjudicating official pursuant to 8 CFR 1003.106(a)(1).

On April 18, 2019, the Government filed a Supplemental brief and exhibits 1-18 in support of the disciplinary charges. Respondent filed a rebuttal with additional exhibits and a brief on May 16, 2019. However, this document was not made part of the record of proceedings. On August 28, 2019, the prior adjudicating official rendered a decision finding the Respondent in violation of all three charges in the NOID and imposed public censure as the appropriate sanction.

The parties cross-appealed to the BIA. On February 12, 2020, the BIA remanded the case for further proceedings specifically because the prior adjudicating official did not consider the May 16, 2019 filing of the Respondent which both parties had referenced in their appeal to the BIA, and that he failed to consider Respondent's arguments that Charge III of the NOID should be dismissed.

OCIJ appointed undersigned as the adjudicating official. This Court initiated an email exchange between the parties to (1) secure a copy of the missing May 16, 2019 filing by the Respondent and make certain it was lodged as part of the record of proceedings and (2) inquire whether either party had further evidence or a request for an evidentiary hearing. This Court now has the May 16, 2019 Rebuttal brief and exhibits as part of the Record of Proceedings. Both parties stated that neither would submit further evidence and Respondent adhered to his prior decision to waive an evidentiary hearing.

I. Factual History

The NOID charges Respondent with three disciplinary violations that stem from Respondent's signing multiple entries of appearance – Form EOIR-28 ("E-28") - before the Immigration Court and before USCIS (G-28) in which, by his signature he affirmed that he was licensed to practice law in New Jersey and was not under any suspension, disbarment or impediment to the practice of law under his license. [1]The factual allegations assert that for the period between November 2014 and the filing of the NOID in June 2018, Respondent had failed to properly maintain his license in New Jersey because he had not completed the mandatory continuing legal education ("MCLE") credits as required by rules promulgated in 2009 by the Supreme Court of New Jersey.[2]

He was therefore listed on official documents in New Jersey as "administratively ineligible" to practice law in New Jersey. This status is not the result of the imposition of discipline in New Jersey, but an attorney so classified is not permitted to practice law.[3] The Government alleges in Charges I and II that Respondent's affirmation of his unrestricted license to practice law while being "administratively ineligible" to practice law constitutes a false or misleading communication knowingly made or made with reckless disregard of the truth in violation of 8 CFR 1003.102(f)(1)(false statement as to the qualifications of the attorney).

The NOID included exhibits that established that Respondent had filed numerous G-28's and E-28's while he was administratively ineligible to practice law (NOID – Exhs. 2-6, with Exh. 2 an email exchange between the Government and NJ authorities that Respondent was administratively ineligible based on his failure to certify MCLE credits). Respondent filed an Answer to the NOID on October 30, 2018, and asserted (1) that he was without notice that he had been placed on the administratively ineligible list of attorneys by the regulatory authorities in New Jersey (Answer, Exh. C – Respondent's affidavit,) and that he had corrected his problem with those licensing authorities promptly upon being informed of the issue (Answer, Exh. D – notice of ineligibility date June 17, 2018), and (2) that he had been reinstated fully as of July 31,

[1] Charge I states: "Between November 17, 2014 and June 6, 2018, Respondent knowingly or with reckless disregard made at least 13 false or misleading communications about his qualifications or services because the Form G-28s he filed with USCIS contained a material misrepresentation of fact or law, or omitted a fact necessary to make the statement considered as a whole not materially misleading, as he failed to disclose his ineligibility to practice law in New Jersey, in violation of 8 CFR 1003.102.(f)(1), Contrary to his declaration on the Form G-28s, Respondent was not eligible to practice law in New Jersey at the time he filed the Form G-28s with USCIS."
Charge II is identical except that it alleges 9 false E-28s filed with the Immigration Court.
Charge III alleges it is in the public interest to impose sanctions pursuant to 8 CFR 103.102 for filing 3691 entries of appearance before USCIS and 47 before EOIR while ineligible to practice law.

[2] The Government noted in a footnote in the NOID that Respondent was also administratively ineligible to practice law for failure to pay required annual licensing fees in New Jersey from August 15, 2015 to August 22, 2017, a timeframe encompassed by his failure to maintain proper CLE status. However, this assertion was not alleged a factual predicate to the charges in the NOID.

[3] "administratively ineligible" to practice law is defined as: "The attorney is not currently eligible to practice law in New Jersey for one or more reasons, including failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection, failure to register with IOLTA or maintain IOLTA accounts, or otherwise failing to meet the requirements of Rule 1:212-1(a). Administrative ineligibility is not the result of discipline, but attorneys who are administratively ineligible are not allowed to practice law in New Jersey."

2018, removing him from the list of attorneys ineligible to practice in 2017 (Answer Exh. F – letter of current status). Respondent also included a statement from an expert, Thomas Prol, Esq. (Answer – Exh. G). Mr. Prol served on the Supreme Court of New Jersey MCLE Board from 2011-2015, which had oversight responsibility of the newly created MCLE program. Mr. Prol detailed the problems of notifying attorneys of their MCLE responsibilities in the initial years of the program, and the growth in the last couple of years in curing that problem. His statement noted that in 2016 over 14% of the New Jersey attorneys were not in compliance with MCLE and therefore placed on the ineligible to practice list. Because of the problems implementing the MCLE program, New Jersey has been lenient in meting out disciplinary actions resulting from these violations.

On April 18, 2019, the Government filed a Supplement to the NOID which included exhibits and a brief. The exhibits included Supreme Court orders which stated that all the attorneys on attached lists are ineligible to practice law for failing to comply with annual fees and/order compliance with MCLE for specified dates in 2014, 2015, 2016 and 2017. None of the Supreme Court orders identify Respondent by name, but his name is on the attached lists of attorneys. Respondent was included in Supreme Court Orders dated November 12, 2014, November 10, 2015, November 16, 2016 and October 23, 2017, for his failure to complete required CLE. (Supplement, Exhs, 11-14). He was also included in separate orders of administrative ineligibility for his failure to pay annual fees, issued on August 18, 2015 and September 7, 2016. (Supplement, Exhs. 8-9). The Government presented the certified statement in lieu of affidavit of Wendy L. Weiss, Esq., Counsel to NJ Supreme Court Board On Continuing Legal Education(Supplement – Exh. 15). She set forth that according to NJ Board on Continuing Legal Education Reg. 402:3, an attorney who is not in compliance with MCLE may be deemed ineligible to practice law (Statement of Wendy Weiss, para. 8), and that notices for each of the years that Respondent was not in compliance were sent to him either through regular or electronic mail. By New Jersey Supreme Court order of July 20, 2017, attorneys must furnish a valid email address to the Supreme Court to comply with the requirements of maintaining a valid law license. (Weiss, para. 5). She asserted that notices were sent to all attorneys and that Mr. Liu's notice of non-eligibility was directed to be sent to him by Order of the New Jersey Supreme Court (Weiss, para. 13). She set forth the various time frames that Respondent was ineligible to practice and concluded that his compliance on July 26, 2018, did not make him retroactively eligible to practice from November 17, 2014 to July 31, 2018. (Weiss, paras.21-23).

The Government's Supplemental Filing also provided the certified statement in lieu of affidavit of Carla Cousins, Billing Supervisor by New Jersey Fund for Client Protection since 2006(Supplemental Filing-Exh. 10). Her responsibility is to ensure billing and payment of the annual fee and annual registration of all attorneys in New Jersey as set by N.J.R. 1:20-1(b),(c). Her statement asserted various dates of purported mailing both via regular mail, and later via email, to the Respondent of his annual notices for purposes of his annual registration, including notices in February 2016 that the Supreme Court was instituting mandatory email/on-line registration.(Cousins, paras. 25-27). Based on his non-payment, Respondent was not eligible to practice law between August 24, 2015 and August 22, 2017, the date he paid his fees, including arrearages. (Cousins – paras. 30-31)

Respondent filed a Rebuttal on May 16, 2019, which was never previously in the record, but both parties referred to it in their arguments on the prior appeal to the Board. This Court has received that document and Respondent has been directed to file it with EOIR so that it can be properly included in the ROP. Respondent's Rebuttal included Respondent's additional statement in which he reiterated that the first mailing he ever received as to his ineligibility to practice law was the notice sent to him on June17, 2018. He further discussed his active community service in the arts. Respondent's Rebuttal also provided a supplemental statement from Thomas Prol, Esq. who opined that the chaotic organization and implementation of MCLE meant that it was not unusual for attorneys to fail to receive the notices. Further, he opined that the reinstatement of Respondent on July 31, 2018 was retroactive, curing his prior periods of ineligibility to practice law. Finally, Respondent's brief as part of the Rebuttal asserted that he was never charged in the NOID with being ineligible to practice law on account of non-payment of annual fees and that his ineligibility to practice law, and concomitant allegations of false claims as to being able to practice law, were all predicated on his failure to comply with MCLE.

II. Issues

(1) Does the Respondent's reinstatement on July 31, 2018, through late compliance with New Jersey rules retroactively void the prior years he was placed on the ineligible practice list *nunc pro tunc* and mean that he has not violated any EOIR Disciplinary Rules?
(2) If Respondent is not retroactively protected from being in violation of EOIR Disciplinary Rules, did he violate 8 CFR 1003.102(f)(1), knowingly?
(3) If Respondent did not violate 8 CFR 1003.102(f)(1), knowingly, did he do so with reckless disregard?
(4) Is Charge III of the NOID, charging in the language of the preamble to the enumerated grounds of discipline, a valid disciplinary charge?
(5) If any charges in the NOID are sustained, what sanction, if any, should be imposed?

III. Legal Analysis

A. Respondent's Reinstatement From Administrative Ineligibility Was Not Retroactive So As To Place Him As An Eligible Practitioner During the Time Periods Alleged By the Government

Respondent asserts that when New Jersey authorities reinstated his ability to practice law on July 31, 2018, that they did so retroactively, thereby curing all his prior periods of administrative ineligibility and making him eligible to have practiced law from November 17, 2014 through June 2018, the period of time the Government alleged him to be without a proper law license. If this analysis is correct, Respondent was retroactively properly licensed to practice law at the time he signed the entries of appearance before EOIR and USCIS.

While there is a superficial appeal to Respondent's position, for the reasons that follow, the Court finds that Respondent's retroactivity argument is not persuasive and therefore does not warrant a dismissal of the disciplinary charges.

In order to apply a statute – or regulation – retroactively, the Court must find a clear expression of retroactive intent from the drafters of the regulation. See, *Landgraf v. USI Film Products*, 511 US 244 (1994). This doctrine of clear expression of retroactive application applies to regulations as well as statutes. *Durable Mfg Co. v. DOL*, 578 F.3rd 497, 502-04(7th Cir. 2009) and *Mejia v. Gonzales*, 499 F. 3rd 199, 995-99(9th Cir. 2012). The determination of retroactive intent is derived from an analysis of the statute or regulation at issue, using the ordinary tools of statutory (or regulatory) construction. See, Lindh v. Murphy, 521 US 320 (1997) and *Fernandez-Vargas v. Gonzales*, 548 US 30, 37 (2006)(there must be a clear expression of retroactive intent either expressly or through clear implication).

The governing regulation for reinstatement following completion of CLE requirements lacks a clear expression of retroactive intent. Rule 402:4 states:

> A lawyer who has been administratively suspended from the practice of law for noncompliance with Rule 1:42 and these regulations may be reinstated administratively by the Board upon the suspended lawyer filing an appropriate certification that he or she has complied with the CLE requirements and the payment of a fee in an amount to be determined by the Board.

There is nothing in this Rule that can be construed as retroactive intent, and this Court is unable to glean from the Rule, either in its plain language or by employing ordinary tools of construction that the drafters intended that it be applied retroactively.[4]

Indeed, applying a retroactive effect would permit a respondent in the midst of disciplinary proceedings in New Jersey for practicing while in administratively ineligible status (whether based on failure to complete CLE and/or failure to pay required fees) to defeat such proceedings by merely filing appropriate compliance during the disciplinary proceedings. This Court finds

[4] Respondent relies on Thomas Prol's analysis of Rule 1:28-2, the reinstatement process for failure to pay lawyer fees. The Rule outlines a reinstatement process that purportedly strikes the attorney's name from prior year lists of ineligible attorneys. He urges that this Rule be read in concert with Rule 402:4 to find a retroactive intent in the reinstatement process for failing to comply with CLE, but provides no authority for doing so. It is inapposite here. The Court finds even though Rule 1:28-2 (lawyer Fund rule) permits removal of an attorney's name from a prior list, that does not establish retroactive intent. The name is removed –and the lawyer saved the public ignominy of being so labelled - does not establish that he is made retroactively eligible to have practiced during the time period he was administratively ineligible to do so. Finally, it is inconsistent for Respondent to rely on the Fund Rule for reinstatement when he complains he was not properly alleged to have violated rules governing failure to pay attorney's fees. (Respondent's Rebuttal, P.14).

that the drafters of the New Jersey rules would not have intended such an absurd result of belated filing to defeat properly initiated disciplinary proceedings.

Finally, and most importantly, this is not a case involving whether the Respondent should be disciplined for his failure to comply with MCLE and/or pay annual attorney registration fees. Even if the proper interpretation under New Jersey disciplinary law is that Respondent retroactively cured his law license deficiency, retroactive application does not solve his problem with in these proceedings. This is a case concerning whether the Respondent either knowingly or with reckless disregard for the truth, made a false representation regarding his ability to practice law on a particular date. The fact remains, that even if New Jersey were to view reinstatement as wiping his slate clean, Respondent made statements regarding his lawful ability to practice law on particular dates when, at that time, they were factually untrue. The putative retroactive curing of his ineligibility to practice law from November 2014 to June 2018 does not save him from making a statement that was false at that time.

Therefore, the Court concludes that there is no retroactive application of Respondent's 2018 reinstatement that can serve as a basis to dismiss the charges against him.

B. Respondent Did Not Act "Knowingly" When Signing Entries of Appearance that Asserted His Unimpeded Ability to Practice Law

Charges I and II of the NOID set forth that Respondent "knowingly ***OR*** with reckless disregard" made false statements as to his ability to practice law (emphasis added). The Government need not establish both *mens rea*, but only one in order to prove the charges I and II of the NOID.

"A person acts knowingly if that person acts voluntarily and intentionally and not because of mistake or accident or other innocent reason." *United States v. Maury*, 695 F.3rd 226, 261 (3rd Cir.2016). Knowledge does not require that the person know the conduct is unlawful, but that he knew he was engaging in that prohibited conduct. It is different from willful mens rea which is to act intentionally in violation of a known legal duty. *United States v. Hayden*, 64 F.3rd 126, 130 (3rd Cir. 1995) and *Arthur Anderson v. United States*, 544 US 696,705(2005)(knowingly is normally associated with awareness, understanding or consciousness). It is a question of fact whether a defendant (or in this case a Respondent) acted with knowledge. The Third Circuit illustrates this fact based analysis in *Hayden, supra.* In that case, the defendant was indicted for making a false statement on his application to purchase a firearm as to whether he was currently under criminal charges. The defense claimed low intelligence and an inability to read, seeking to negate whether the defendant "knew" that he was under criminal prosecution. The Court vacated the conviction finding the defendant was entitled to make his case before a jury that he did not act with knowledge of his inability to purchase the firearm or of his obligation to disclose that fact on the form due to his lack of knowledge based on his subjective understanding of his status. The jury should have the opportunity to evaluate the myriad of facts that do or do not establish "knowledge". Of course, deliberately avoiding knowledge of one's status will still satisfy the knowledge requirement. *Hayden, supra, at 131.*

This Court applies the same analysis in this case in determining whether the Respondent acted with knowledge when he signed the entries of appearance while ineligible to practice law. The Government seeks to meet its burden of proof of Respondent's knowledge based in part on the number of notices purportedly sent to the Respondent by New Jersey authorities. See Exhibits 10 and 15 (Statements of Carla Cousins and Wendy L. Weiss, Esq. that notices routinely sent to members of the Bar to comply with CLE requirements for maintaining a law license, notices mailed that an attorney had been placed on list of "administratively ineligible" attorneys, and specific notices purportedly mailed to Respondent).

Respondent denies receipt of any notice of administrative ineligibility to practice law due to CLE deficiency until June 17, 2018 (Answer, Exh. D) at which time he acted promptly to rectify the situation. The Court credits Respondent's statement that he did not receive any prior notices that he was administratively ineligible to practice law. The Court therefore finds that the Respondent did not know that he was ineligible to practice law during the time frames set forth in the NOID charges. The statements of Wendy Weiss and Carla Cousins that notices were to be mailed to attorneys in New Jersey pursuant to regulatory procedures do not undermine Respondent's credible assertion that he was never received such notices of his ineligibility to practice law.

The Government relies on the generalized rules directing notice to attorneys of their deficiencies through mail (See Orders of Supreme Court). However, there is no evidence in this record that Respondent was actually mailed a notice through either regular mail or electronic mail, and that the mailing was to his correct address. No copy of such a notice – even a form notice - has been made part of this record. (Supplemental Evidence, Exhibits 8,9,11-14). The Government also relies on the statements of Carla Cousins (Supplemental Filing – Exh. 10) that Respondent was mailed notices by regular and electronic mail on specific dates. (Indeed, New Jersey authorities allegedly sent reminders to Respondent that he was required to establish a proper email account for the online registration process). The Carla Cousins statement is of limited utility as it does not relate to the specific charges against the Respondent – ineligible to practice law for failure to comply with CLE, not his failure to file annual registration fees. Indeed, she cites a different period of ineligibility than is set forth in Charges I and II – August 24, 2015 to August 22, 2017 (Cousins Statement, para. 31 – Supplemental Evidence, Exh. 10).[5]

The Government asserts that multiple mailings equates to Respondent's knowledge of his being administratively ineligible to practice law during the alleged time frame. This record contains the returned envelopes to Respondent as undeliverable of both the NOID in June 2018 as well as the BIA decision in August 2018 suspending Respondent for four years. Nowhere in the record of statements by either Ms. Weiss or Ms. Cousins is there a factual assertion of the address to which the notices were sent and that the notices were tracked for accuracy with Respondent's on

[5] The Carla Cousins statement is limited to matters that were not charged – failure to pay fees between August 2015 and August 2017. This is only relevant as a fact for the Court to consider whether Respondent's denial of any receipt of notices is credible given the overall volume of notices between the two disciplinary functions.

file address as well as whether any notices were returned.[6] The assertion that records reflect that notices were sent to the Respondent on specific dates does not establish his receipt of those notices, especially in light of this Court's record of returned mail in this case.

The lack of any documentation of a notice being sent to Respondent is consistent with Mr. Prol's opinion that the first few years of the mandatory CLE program were rife with administrative failures, especially in sending proper notices to the attorneys. Fully 15% of the New Jersey Bar were out of status for failure to comply with MCLE and Respondent was literally one of thousands of attorneys not in compliance and who were not authorized to practice law because of that lack of compliance. (See, Answer Exh. G and Rebuttal, Exh. B).

This Court must weigh the Respondent's statements that he never received the notices from New Jersey authorities against the numerous mailings purportedly sent to him. This Court finds Respondent credible in his denials of receipt of notices and therefore lack of knowledge that he was placed on administrative ineligibility to practice law. The lack of actual proof of mailing to a confirmed address combined with a search that the notice was not returned is a significant deficit in proof that Respondent acted with knowledge. This, when combined with the returned mail in these disciplinary proceedings, supports Respondent's statement that he did not receive the purported mailings, in spite of the asserted high volume of notices. The Court attributes limited weight to number of mailings. Doing the same act repeatedly does not imbue it with accuracy. The Board as well as the Third Circuit have noted that regular mail has a presumption of delivery, but it is a weak presumption that can be rebutted. See, *Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008) and *Santana Gonzalez v. Attorney General*, 506 F.3rd 274 (3rd Cir. 2007). In this case, whatever presumption of delivery of notices that would confer knowledge of Respondent's law license status has been rebutted. Respondent's denials are further supported by the prompt action he took when he received notice in June 2018, without even knowing about the EOIR/DHS actions against him (August 23, 2018 BIA decision affirming four year suspension returned as undeliverable mail). Respondent may have been careless in failing to keep the New Jersey authorities as well as EOIR and DHS abreast of how to contact him. But, carelessness does not amount to knowledge.

The Court finds the evidence is insufficient to establish that Respondent received notice of his deficiencies – both in terms of his lack of compliance with the CLE requirements and, importantly, that his failure to comply would result in a determination that he was not authorized to practice law.

The Court further concludes that the evidence is insufficient to establish that Respondent acted knowingly. Not only did Respondent not act knowingly, he was not "willfully blind" to his lack of a proper law license when he signed the entries of appearance. The doctrine of willful blindness – another basis to establish knowledge - requires that the Government prove that the

[6] The Carla Cousins statement lists addresses that Respondent had on record with New Jersey Fund for Client Protection. (Supplemental Evidence, Exh. 10, para. 15). However, there has been no assertion of investigation whether any notices were returned and further whether the notices were properly addressed and mailed.

Respondent subjectively believed that there was a high probability that he was not eligible to practice law and that he *consciously* took steps to avoid learning about this defect in his law license. See, *United States v. Tai*, 750 F.3rd 309, 314-14(3rd Cir. 2014). *See also, Third Circuit Model Jury Instructions (Criminal)* 5.06. The record does not reflect Respondent's failure to take the CLE courses and certify them in a timely fashion as a deliberate avoidance of his responsibility to comply with all rules to maintain a valid law license. His statement of lack of knowledge encompasses a lack of deliberate avoidance as well. The Agency has not set forth facts from which this Court can infer that the Respondent subjectively believed that he was signing the entries of appearance by deliberately closing his eyes to whether he was properly licensed. The Court finds that he took periodic steps to update his license by filing annual fees establishes that he was not deliberately avoiding knowledge of the status of his law license. (See, Supplemental Evidence – Cousins statement, para. 30). Indeed, the Court infers that Mr. Liu's payment on August 22, 2017 as well as in prior years, allowed him to believe he had cured any problems he had with New Jersey licensing authorities and did not give rise to facts from which this Court can infer that he deliberately avoided finding out the status of his law license. Given the chaotic notice procedures of MCLE (See, Prol statements), the assertion that a violation "may" place an attorney as ineligible to practice (not shall) (See, Rule 402:4 and Supplemental Statement, Weiss, Exh. 15, para. 8), Respondent's payment in August 2017 there is not sufficient to establish that Respondent deliberately avoided his law license status – or was willfully blind.

Therefore, Respondent did not act "knowingly" as charged in the NOID.

C. Respondent Acted With Reckless Disregard

The alternate theory of liability posited by the Agency is that the Respondent acted recklessly, or with "reckless disregard" of whether he was properly licensed to practice law. In order to prove that Respondent acted with this mens rea, the Government must establish that he acted with a subjective awareness of a risk that he was falsely claiming he was properly licensed to practice law, and then disregarded that risk. *Brennan v. Farmer,* 511 US 825(1994)(deliberate indifference in Eighth Amendment civil rights case is akin to reckless disregard in criminal cases and defining reckless disregard). More recently, the Third Circuit noted that reckless disregard can be established in two ways – either a signer entertained serious doubts as to the veracity of a document or, obvious reasons existed for him to doubt the accuracy of the information, such that a fact finder can infer a reckless state of mind. *United States v. Brown*, 631 F.3rd 638,641 (3rd Cir. 2011). *See also, Third Circuit Model Jury Instructions (Criminal)* 5.08. To that extent, reckless disregard will be heavily fact dependent and will turn on what the actor knew, or should have known. *Wilson v. Russo*, 212 F.3rd 781 (3rd Cir. 2000).

The practice of law is not a right, it is a privilege and a privilege burdened with conditions. "Those conditions are not only a prerequisite for admission to the bar, they are equally essential afterward. Whenever they are broken, the privilege is lost." *In re Harris*, 868 A.2nd 1011, 1020 (NJ 2005). A license to practice law is a highly regulated industry. As such, it requires vigilance on the part of the licensee to keep abreast of the requirements placed on the maintaining proper

licensure and taking the necessary actions to do so. This does not require much effort - but it does require an attorney to use the skills he acquired in law school to research the rules that govern the licensing requirements and the consequences for failing to abide by those rules, including any changes over time.

It is Respondent's obligation to properly maintain his license by abiding by changes in the rules such as the imposition of MCLE, changes in notification processes for the annual fee and payment of those fees as well as his legal responsibility to inform New Jersey regulatory authorities of his office location. See, Rule 1:21(a)(2)(notice requirements for licensed attorneys not domiciled in New Jersey). The Respondent acted with reckless disregard to the New Jersey disciplinary authorities when he signed his entries of appearance because he did not adhere to his responsibilities as an attorney to pay serious attention to the basic tenets of maintaining his law license. The failure to pay proper heed to these basic requirements permits a fact finder to infer a reckless state of mind from the serious doubts of the accuracy of his statement on the entry of appearance that he was properly licensed in New Jersey. An attorney cannot ignore the details of maintaining his law license and then claim he lacks any culpability when signing an affirmation that he is properly licensed. This is the operative definition of a reckless state of mind - a failure to abide by the obligations to keep abreast of regulatory requirements. It constitutes more than mere negligence, but is less culpable than acting with knowledge which requires taking active steps to consciously avoid learning the facts about his law license. An attorney has a legal obligation to be aware of the kinds of conduct that could place his ability to practice law in jeopardy and to abide by the appropriate regulations and conduct.

In this case, Respondent should have known that his cavalier attitude toward the licensing authorities created a considerable risk that New Jersey would take an action that could implicate his law license. He knew - or should have known - that this risky behavior in failing to assiduously follow the rules governing practice of law would have the consequences that it did. The mere fact that he did not receive notices of his deficiency in mandatory CLE requirements and the concomitant ineligibility to practice law did not absolve him of his responsibility to affirmatively adhere to those requirements. He knew, or should have known that his lack of attention to these rules created a substantial risk that he would make a false statement regarding his ability to practice law.

Therefore, when Respondent signed those E-28's and G-28's he acted with reckless disregard of the truthfulness of the entries of appearance as set forth in Charges I and II of the NOID.

The Court finds that the Government has met its burden of proof that the Respondent acted with reckless disregard of the truthfulness that he was properly licensed when he signed the entries of appearance set forth in Charges I and II of the NOID and therefore finds the Government has met its burden of proof of clear and convincing evidence to establish these disciplinary violations.

D. Charge III Of The NOID Is Not A Valid Disciplinary Charge As It Fails to Allege A Specific Disciplinary Violation

Charge III of the NOID alleges that it is in the public interest to impose disciplinary sanctions on Respondent.[7] The charge alleges that he was not a properly licensed attorney and for a period of approximately three and half years he continued to enter his appearance as an attorney in over 3700 USCIS and EOIR matters. It is a numerically broader allegation than contained Charges I and II which are limited to thirteen and nine entries of appearance, respectively.

The Government cites 8 CFR 1003.102 as the sole ground of disciplinary violation. This paragraph is the preamble to the listed grounds of discipline. This section of the regulations is entitled "Grounds", and provides that "…it is in the public interest….to impose sanctions against any practitioner who falls within *one or more of the categories enumerated* in this section…" although the categories are not exclusive. (emphasis added).The opening paragraph of the regulation concludes, "A practitioner who falls within one of the *following* categories shall be subject to disciplinary sanctions in the public interest if he or she:…" (emphasis added).

The plain language of this opening or preamble paragraph to the grounds for discipline is to impose sanctions on the basis of the violations set forth at 8 CFR 1003.102(a)-(u). The grounds are detailed, specific and numerous. They provide due process – clear notice - of the charges such that disciplinary authorities can state the allegations with clarity and point with specificity to provisions of law/conduct allegedly violated. The same holds true for Respondents - that the specification of grounds enables them to ascertain with clarity the charges so they are able to defend the precise allegations and legal violations levelled against them. See, *United States v. Stock*, 728 F.3rd 287 (3rd Cir. 2013)(an indictment is not sufficient if it fails to charge an essential element of the offense); *United States v. Rankin*, 870 F.2nd 112 (3rd Cir. 1989)(a valid charge must contain the elements of the offense to be charged, sufficiently apprise the defendant of what he must be prepared to defend and permits him to invoke double jeopardy).[8]

[7] "Pursuant to 8 CFR 1003.102, it is in the public interest to impose disciplinary sanctions against Respondent based on his unprofessional conduct in engaging in the practice of law before USCIS and EOIR, in violation of the applicable regulations who may provide representation before USCIS and EOIR. Individuals entitled to representation in immigration matters before USCIS and EOIR may be represented by certain categories of individuals, including attorneys. 8 CFR 292.1(a) and 1292.1(a). An "attorney" is defined as "any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring or otherwise restricting him or her in the practice of law." 8 CFR 1.2 and 1001.1(f). Between November 17, 2014 and the date of this filing, Respondent has been ineligible to practice law in New Jersey, and therefore, Respondent has not been qualified to provide representation as an "attorney" before USCIS and EOIR. In spite of Respondent's ineligibility to practice law before USCIS and EOIR, Respondent filed Notices of Entry of Appearance in 3,691 matters before USCIS and 47 matters before the Immigration Court between November 17, 2014 and June 6, 2018 as alleged in paragraphs 12 and 19."

[8] While the standard for a criminal indictment may not be fully applicable in this disciplinary proceeding, there is sufficient overlap in the detrimental restriction of liberty (loss of freedom and loss of livelihood) as well the public humiliation inherent in both processes. Therefore, in the absence of other clear guidance, this Court finds the language on the validity of indictments a useful tool in assessing whether a disciplinary charge is viable.

Therefore, this Court is constrained to find that the opening paragraph of 8 CFR 1003.102 cannot form the basis of a separate and independent charge of discipline. The plain language of the regulation directs in two places to the "enumerated…categories" as the foundation to impose discipline. The mandate of the regulation is clear. And, as the case law makes clear, there is good reason. Without a specification of the violation of a disciplinary rule or even an ethical principle, the parties would be adrift without clarity to resolve the issues in the litigation. Accurate pleadings provide a roadmap for the litigation and a firm end point for what the moving party must prove and the respondent must defend. The lack of a precise charge leaves the adjudicating official without a basis upon which to ground a decision. Applying the language of Stock, supra, and Rankin, supra, Charge III fails to adequately provide notice because it fails to set forth the elements of a charge.

Finally, there is a catchall provision in the preamble paragraph, that states that the enumerated "…categories do not set forth the exclusive grounds for which disciplinary sanctions may be imposed in the public interest." The Government finds no refuge here. In order to invoke this catchall, there still must be a charge, a violation of a code of conduct, a crime, something that is akin to the enumerated grounds and has elements that must be proven. The charge alleges that Respondent entered his appearance in over 3700 cases before USCIS and EOIR during a time period when he was not entitled to act as an attorney. In contrast to Charges I and II, the Government has not alleged that this conduct is a violation of an attorney rule and/or behavior. There is no allegation that he was practicing law without a license, no allegation of false statement or fraud as in Charges I and II. In short, there is no roadmap for this Court to find the Respondent acted in violation of a professional conduct. This charge, standing alone as it must (and not in concert with the other charges) simply states that Respondent signed entries of appearance when he should not have. It does not sound like proper conduct, but in order for this Court to impose sanctions, the charge must rise to something more than a visceral sense of impropriety. There must be a specific charge of misconduct, whether in the enumerated grounds or not. There is none here.

Count III is dismissed.

E. Imposition of Sanctions

The Government has proven Charges I and II of the NOID by clear and convincing evidence. It is therefore in the public interest for the Court to impose the appropriate sanction for these violations. Because there is substantial overlap factually and legally the Court will impose a single sanction.

1. Aggravating Factors

Respondent has been practicing law for over 30 years. During this time he violated the disciplinary rules on multiple occasions as alleged in the specified Charges I and II, but also in

the factual predicates, more than 3700 times. This was not an isolated instance, but rather a pattern of continued violation over the course of more than three and a half years.

Respondent signed multiple entries of appearance with reckless disregard to the legal meaning of his signature. As an attorney he has a higher responsibility than the average citizen. When he signed his name attesting to the veracity of certain facts, he had an obligation to make certain that those facts were true. He took a cavalier attitude to the mechanical signing of entries of appearance, a legal document. This is conduct that is not befitting a lawyer.

2. Mitigating Factors

The Court finds that the Respondent acted with reckless disregard of the facts, and therefore, his responsibilities as an attorney. It is significant that the Respondent did not act with knowledge. This lesser mens rea reflects on his careless and cavalier attitude toward the documents he was signing, but is far less culpable than acting with knowledge of a false representation.

There has been no harm to any client of Respondent or a party in litigation. Disciplinary rules exist to protect members of the public (clients) as well as the institutions that make up our judicial system. A violation that harms a client necessarily harms both the client and the institutions. Further, an injury to a client is an injury to a person who is vulnerable since they are dependent upon the expertise of the professional. Since there is no articulable harm or injured party, Respondent's violation is of the lesser harm.

Respondent has no history of disciplinary violations in either New Jersey, his licensing state, or before the immigration system where he practices regularly, if not exclusively. While he engaged in a pattern of wrongful conduct over a number of years, this is his first offense.

He complied promptly when he was directly noticed of his status in New Jersey and has expressed remorse.

He has a history of public good works in benefitting the arts both in terms of his time and money. He is President of WhiteBox an arts organization that supports emerging artists from diverse and economically challenged communities. He has supported the Sculpture Center for nearly three decades and is a donor and supporter of Storm King. Mr. Liu has supported Stoked Mentoring an organization that mentors inner-city youth. Attorney engagement in non-profit organizations in the community is a salutary benefit to the profession, which has been frequently maligned in the public arena and often without proper basis (and sometimes with proper basis).

3. Analysis of Factors

The Court is guided by these factors, as well as looking to the New Jersey disciplinary process as to what sanctions would be appropriate. New Jersey resolves matters of failure to pay annual assessments and therefore being placed on list of ineligible attorneys, when combined with other

violations, as a basis for a reprimand. See, *In re Zeitler,* 759 A.2nd 846 (NJ 2000)(attorney with history of prior violations reprimanded for practicing while on list of attorneys ineligible to practice due to non-payment of annual fee), *Matter of Alston,* 711 A.2nd 292 (NJ 1998)(two violations – failure to pay annual fee and failure to maintain bona fide office warranted a reprimand). Of course, this Court is faced with the fact that the Respondent made a reckless false statement as part of his practicing law while on the list, but even New Jersey uses reprimand as a basis where the attorney lied about a prior conviction for providing false information on a firearms permit. See, *Matter of Kotok,* 528 A.2nd 1307 (NJ 1987).

This Court also looks for guidance to the *ABA Standards for Imposing Lawyer Sanctions.* Chapter 6 of those standards addresses appropriate sanctions where an attorney has made false statements to the tribunal. Section 6.1 sets forth grading of sanctions depending upon mens rea of the attorney and the resulting harm, if any. For instance, at section 6.11, disbarment is appropriate for an attorney who with intent to deceive the court makes a false statement that results in harm to a party or the court. Knowing false statements on documents that causes injury or potentially causes injury to a party or court warrants suspension. Sec. 6.12. When an attorney acts negligently in the submission of false documents and there is injury or potential injury, a reprimand is generally appropriate.[9] Sec. 6.13. Finally, an admonition is generally appropriate in an isolated instance of neglect in submitting a false document where little or no injury to a party or the process is incurred. Sec. 6.14.

The Respondent does not fall cleanly within one of these categories as his mens rea is recklessly, more culpable than negligent, but certainly less culpable than knowing. Further, this was more than an isolated incident, but there was no harm that this Court can identify to a client of Respondent, a party or to an institution.

Respondent's equities, along with the ABA Guidance and the manner in which New Jersey treats these violations clearly set this case outside of the need to impose a suspension. He acted recklessly, not knowingly, he is remorseful and corrected his situation promptly. New Jersey would not sanction him with any more than a reprimand and it does violence to the immigration disciplinary system to skew far from the licensing authorities of the state where Respondent is licensed. Indeed, the state systems are far more robust and experienced in these matters than is EOIR and their experience is useful guidance to this Court.

Therefore, this Court concludes the Respondent should receive a censure. The sole question is whether that censure should be public or private.

The Court determines public censure is appropriate for the following reasons.

[9] Reprimand is akin to a public censure and admonition akin to a private censure. Standards for Imposing Lawyer Sanctions, secs. 2.5 and 2.6.

First, this was not an isolated instance. It was a pattern of behavior spanning years and thousands of entries of appearance. Respondent engaged in a pattern of treating the requirements to maintain his law license as an afterthought.

Second, a public censure sends the appropriate message to Respondent and to the immigration bar of the continuing duty to treat their licensing requirements seriously. Immigration can become its own insular world and many immigration practitioners pay little heed to their state courts and legal institutions. As such, it is all too easy for immigration practitioners to act in a cavalier fashion toward their state's legal licensing requirements. Often those state licensing authorities and rules become mere background to the practice of law in the immigration world. Yet, it is those state licensing rules and regulations that enable the immigration practitioner to act as an attorney and with regard to mandatory CLE to effectively represent clients with sufficient knowledge and expertise. A public censure will serve as a reminder both to the Respondent and to other practitioners to take their state law licensing rules seriously at all times. Those rules are not a nuisance or impediment to the practice of law. They are part of a web of rules and regulations that protect the public and serve as a foundation for our justice system. As such they provide the very foundation upon which the immigration practitioner can operate.

For the foregoing reasons, the Court enters the following orders in this case.

ORDERS

The Court finds that the Government has met its burden of proof of clear and convincing evidence establishing violations of Charges I and II of the Notice of Intent to Discipline.

The Court finds that the Government has failed to prove a violation in Charge III of the Notice of Intent to Discipline and Charge III is dismissed.

It is in the public interest that sanctions be imposed for the violations of Charges I and II.

It is hereby ORDERED that the Respondent receive a public censure.

Date: May 15, 2020

/s/ Steven A. Morley
Steven A. Morley
Immigration Judge
Adjudicating Official