File: D2013-347

Date:

DEC 29 2014

In re: PETER SINGH, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

APPEAL

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel
Christina Baptista, Associate General Counsel

ON BEHALF OF DHS: Diane H. Kier, Associate Legal Advisor

ON BEHALF OF RESPONDENT: David J. Chapman, Esquire

In an August 13, 2014, decision, an Immigration Judge, acting as the Adjudicating Official in this case, issued a "Decision and Order", in which he suspended attorney Peter Singh from practice before the Immigration Courts, Board of Immigration Appeals, and Department of Homeland Security (the "DHS") for sixteen months. The respondent was also prohibited from appearing telephonically in the Immigration Courts for seven years. The respondent Peter Singh filed an appeal with the Board. Both the respondent and the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR), who initiated these proceedings, have filed briefs, which have been given consideration by the Board in reaching this decision. The respondent's appeal will be dismissed.[1]

The respondent is a licensed attorney in California. The EOIR Disciplinary Counsel initiated these disciplinary proceedings on January 9, 2014, by filing a Notice of Intent to Discipline, and sought to have the respondent suspended from practice for two years. The DHS then asked that the respondent be similarly suspended from practice before that agency.

The EOIR Disciplinary Counsel specifically alleged that, on at least eight occasions, the respondent enlisted his legal assistant, Douglas Comstock, to appear in his place during telephonic appearances before Immigration Judges. The EOIR Disciplinary Counsel alleged that the respondent assisted and facilitated the unlawful practice of law in at least eight cases, in violation of 8 C.F.R. § 1003.102(m); knowingly made false statements of material fact to an officer of the Department of Justice, in violation of 8 C.F.R. § 1003.102(c); engaged in conduct prejudicial to the administration of justice, in violation of 8 C.F.R. § 1003.102(n); and failed to provide competent representation to a client, in violation of 8 C.F.R. § 1003.102(o).

[1] The respondent's request to present oral argument before the Board is denied.

The respondent conceded that he had violated 8 C.F.R. § 1003.102(n)(A.O. at 2). He admitted that improper telephone appearances took place as early as 2011, and happened in eight more cases not mentioned in the Notice of Intent to Discipline. *Id.* The Adjudicating Official sustained all charges except the charge brought under 8 C.F.R. § 1003.102(c).

The Board reviews findings of fact under the "clearly erroneous" standard. 8 C.F.R. §§ 1003.1(d)(3)(i); 1003.106(c). The Board reviews questions of law, discretion, and judgment and all other issues in appeals de novo. *Matter of Kronegold*, 25 I&N Dec. 157, 159-60 (BIA 2010); 8 C.F.R. §§ 1003.1(d)(3)(ii); 1003.106(c).

The Board has considered the arguments raised on appeal by the respondent. Upon such review, the Board finds no reason to disturb either the factual findings or any other conclusion or ruling reached by the Adjudicating Official. We therefore will adopt and affirm the Adjudicating Official's August 13, 2014, order, with the following comments. *See e.g. Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision").

As stated, we agree with the Adjudicating Official's findings and analysis, and his determination that the respondent violated 8 C.F.R. §§ 1003.102(m), 1003.102(n), and 1003.102(o). In any event, as the Adjudicating Official acknowledged, the respondent admitted that he had engaged in conduct prejudicial to the administration of justice, in violation of 8 C.F.R. § 1003.102(n). This action admittedly dated back to 2011, involved 16 immigration cases, and various Immigration Courts. The discipline imposed by the Adjudicating Official would be reasonable and fair to the respondent, for this very serious offense, as it carefully weighed the aggravating and mitigating factors presented, even if it were to be determined that the respondent did not violate the other regulatory provisions.

The respondent argues that the Adjudicating Official erred by excluding the testimony of Ellen A. Pansky (Respondent's Br. at 17-25). According to Ms. Pansky's resume, she is a "California Bar Certified Specialist in the area of legal malpractice law". The Adjudicating Official issued a prehearing order excluding her testimony, which would concern disciplinary proceedings in California, as being "insufficiently probative", given that Ms. Pansky is not an expert concerning these disciplinary proceedings. As argued by the EOIR Disciplinary Counsel, Ms. Pansky might have claimed that the respondent will be subject to reciprocal discipline by the State Bar of California, but such a claim would be speculative and irrelevant to these proceedings. EOIR Disciplinary Counsel Br. at 39. Equally unconvincing is the respondent's claim that he was barred by "client confidentiality concerns" from fully defending himself against the allegations of the EOIR Disciplinary Counsel (Respondent's Br. at 39-43). The respondent does not show that such duty precluded a fair defense against the charges (EOIR Disciplinary Counsel Br. at 17-18).

The respondent may petition for reinstatement to practice before the Board, Immigration Courts, and DHS after one year has elapsed, under 8 C.F.R.§ 1003.107(b). The respondent would need to show that he meets the regulatory definition of attorney and would need to demonstrate "by clear and convincing evidence that he . . . possess[es] the moral and professional qualifications required to appear before the Board and the Immigration Courts or DHS, or before all three authorities, and that his . . . reinstatement [would] not be detrimental to the administration of justice." *Id.*; *Matter of Krivonos*, 24 I&N Dec. 292 (BIA 2007).

The respondent's appeal will, therefore, be dismissed.

ORDER: The respondent's appeal is dismissed, and the Adjudicating Official's August 13, 2014, decision is affirmed.

FURTHER ORDER: The respondent is suspended from practice before the Immigration Courts, Board of Immigration Appeals, and DHS, for a period of sixteen months, effective 15 days from this date. 8 C.F.R. § 1003.106(c).

FURTHER ORDER: The respondent is prohibited from appearing telephonically in the Immigration Courts for seven years, effective 15 days from this date. 8 C.F.R. § 1003.106(c).

FURTHER ORDER: The respondent is directed to promptly notify, in writing, any clients with cases currently pending before the Board, the Immigration Courts, or the DHS that the respondent has been suspended from practicing before these bodies.

FURTHER ORDER: The respondent shall maintain records to evidence compliance with this order.

FURTHER ORDER: The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.

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

FOR THE BOARD

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

In the Matter of: **Peter Singh,** **Respondent.**	**DISCIPLINARY CASE # D 2013-347**

ON BEHALF OF RESPONDENT:
David J. Chapman, Esquire
1121 Westrac Drive, Suite 806
Fargo, North Dakota 58103

ON BEHALF OF THE GOVERNMENT:
Jennifer J. Barnes, Disciplinary Counsel
Christina Baptista, Associate General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 20530

Catherine M. O'Connell, Disciplinary Counsel
U.S. Department of Homeland Security
111 Massachusetts Avenue, NW, Room 3100,
Mail Stop 2121
Appellate and Protection Law Division
Washington, DC 20529

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that:

[x] 1. The ground under 8 C.F.R. § 1003.102(c) set forth in the Notice of Intent to Discipline has not been established by clear and convincing evidence and is, hereby, dismissed.

[x] 2. The grounds under 8 C.F.R. §§ 1003.102(m), (n), and(o) set forth in the Notice of Intent to Discipline have been established by clear and convincing evidence.

The following disciplinary sanction shall be imposed:

[ ] Practitioner shall be permanently expelled from practice before:
- [ ] The Board of Immigration Appeals and the Immigration Courts
- [ ] The Department of Homeland Security
- [ ] Both

[x] Practitioner shall be suspended from practice before:
[ ] The Board of Immigration Appeals and the Immigration Courts
[ ] The Department of Homeland Security
[x] Both
Until: December 13, 2015 (16 months)

[ ] Practitioner shall be publically/privately censured

[x] Other appropriate disciplinary sanction

Prohibition on making telephonic appearances in Immigration Courts until August 13, 2021 (7 years).

Date: 8-13-14

Brian Parchen

Adjudicating Official - Immigration Judge

APPEAL: RESERVED for all parties
APPEAL DUE BY: September 15, 2014
EOIR 45

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] PRACTITIONER [M] PRACTITIONER'S ATT/REP [M] DHS/EOIR

DATE: 8/13/14 BY: COURT STAFF

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

In the Matter of: **Peter Singh,** **Respondent.**	**DISCIPLINARY CASE # D 2013-347**

CHARGES: 8 C.F.R. §§ 1003.102 (c), (m), (n), and (o)

PROSOSED DISCIPLINE: Suspension from practice before the Board of Immigration Appeals and Immigration Courts for a period of two years

ON BEHALF OF RESPONDENT:
David J. Chapman, Esquire
1121 Westrac Drive, Suite 806
Fargo, North Dakota 58103

ON BEHALF OF THE GOVERNMENT:
Jennifer J. Barnes, Disciplinary Counsel
Christina Baptista, Associate General Counsel
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 20530

MEMORANDUM OF DECISION AND ORDER

I. PROCEDURAL HISTORY

On January 9, 2014, the Disciplinary Counsel of the Office of the General Counsel for the Executive Office for Immigration Review (Disciplinary Counsel) filed a Notice of Intent to Discipline (NID) Peter Singh (Respondent)[1] with the Board of Immigration Appeals (Board) pursuant to 8 C.F.R. § 1003.102(e)(1) and 8 C.F.R. 1003.103(b).[2] Ex. 1. In the NID, Disciplinary Counsel charges Respondent with professional misconduct consisting of violations of four subsections of 8 C.F.R. 1003.102.[3] Specifically, Disciplinary Counsel alleges that Respondent:

> 102(c): knowingly made a false statement of material fact to an officer of the Department of Justice;
> 102(m): assisted in and facilitated the unauthorized practice of law;
> 102(n): engaged in conduct prejudicial to the administration of justice; and

[1] Respondent is also known as Preetinder Singh.
[2] On January 29, 2014, the DHS filed a motion for reciprocal discipline, requesting that any discipline imposed on Respondent which restricts his authority to practice before the Board or Immigration Courts also apply to his authority to practice before the DHS. *See* Ex. 3.
[3] The Court will address the four charges in the order in which they appear in the regulations.

102(o): failed to provide competent representation in cases in which he acted in a representative capacity.

Ex. 1 at 4. Respondent, through counsel, filed an answer to the NID, admitting some allegations, denying some others, and contesting the recommended sanction of a two-year suspension. *See* Ex. 5. Respondent also requested a hearing during which the charges set against him could be adjudicated. *Id.* Prior to his hearing, Respondent filed a pretrial brief and a brief conceding violation of 8 C.F.R. § 1003.102(n). Exs. 11, 11A. Respondent's substantive hearing took place on July 22, 2014, and he and a number of other witnesses offered testimony.[4] Taking that hearing and all other evidence[5] into account, the following decision will address the charges against and the discipline to be imposed on Respondent.

II. ALLEGATIONS AND CONCESSIONS OF MISCONDUCT

The filing of the present NID is a result of the actions, or inaction, of Respondent during an approximate three-year period in which he was representing numerous clients before various Immigration Courts. Specifically, Disciplinary Counsel alleges on at least eight different occasions Respondent enlisted Douglas Comstock, a legal assistant in his office, to impersonate him during telephonic appearances in front of various immigration judges.[6] *See* Ex. 1 at 2-3.

In his pretrial brief, Respondent concedes that the record speaks for itself as to what occurred in Court and concedes the alleged misconduct insofar as Mr. Comstock appeared telephonically and stated to the Judge that he was Respondent. He further admits that the improper telephonic appearances date back to at least July 22, 2011, and occurred during hearings in at least eight more cases not enumerated in the NID.[7] *See* Ex. 11A at 3-5. Lastly, Respondent concedes that his misconduct violated 8 C.F.R. § 1003.102(n), in that he engaged in conduct prejudicial to the administration of justice. *Id.* at 5.

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[4] Disciplinary Counsel called Immigration Judge Linda Spencer-Walters, ACC Ryan Goldstein, and Douglas Comstock. In his defense, Respondent testified on his own behalf, and also called Dr. Sarah Mourra.

[5] 8 C.F.R. § 1003.106(a)(iv) states that in rendering a decision, the adjudicating official shall consider the complaint, the preliminary inquiry report; the NID, the answer, any supporting documents, and any other evidence, including pleadings, briefs, and other materials. The Court also acknowledges and will take into account the closing arguments filed by both Disciplinary Counsel and Respondent.

[6] The eight cases are: (1) [redacted]

[redacted]

[7] The eight cases offered by Respondent are: [redacted]

III. LAW AND ANALYSIS

It is Disciplinary Counsel's burden to prove the grounds for disciplinary sanctions by clear and convincing evidence. 8 C.F.R. § 1003.106(a)(iv). The Court will only impose disciplinary sanctions against a practitioner if it finds it to be in the public interest to do so. 8 C.F.R. § 1003.101(a). Disciplinary sanctions are deemed to be in the public interest if Disciplinary Counsel establishes that the practitioner falls within any of the enumerated categories in 8 C.F.R. § 1003.102. If the Court determines that Disciplinary Counsel has met its burden, it must sustain the charge and decide on a form of punishment, which can be expulsion, suspension, public or private censure, or other sanctions deemed appropriate. 8 C.F.R. §§ 1003.101(a)(1)-(4). Any grounds for discipline set forth in the NID that have not been established by clear and convincing evidence shall be dismissed. 8 C.F.R. § 1003.106(b). In the present case, Disciplinary Counsel set forth four disciplinary charges against Respondent. The Court will sustain three of those charges and dismiss one, and will address its reasoning for doing so below.

a. Charge One

Charge One alleges that Respondent violated only one portion 8 C.F.R. § 1003.102(c). *See* Ex. 1. Specifically, the NID charges Respondent with:

> Knowingly or with reckless disregard making a false statement of material fact or law concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence in violation of 8 C.F.R. § 1003.102(c).

Ex. 1 at 4. Notably, the NID makes no reference to the second portion of 8 C.F.R. § 1003.102(c), which states that a practitioner can be subject to discipline if he "willfully misleads, misinforms, threatens, or deceives any person . . . concerning any material and relevant matter relating to a case, including knowingly or with reckless disregard offering false evidence." 8 C.F.R. § 1003.102(c); *see also* Ex. 1 at 4. If this portion of 8 C.F.R. § 1003.102(c) had been charged in the NID or amended into the NID prior to the hearing so that Respondent had sufficient notice of the portion of the regulation he was alleged to have violated, the Court would have had little difficulty in finding that Disciplinary Counsel had proven, by clear and convincing evidence, that Respondent had willfully misled, misinformed, and deceived an officer of the Department of Justice.[8] Yet it was not charged and as a result, in order to prevail on Charge One, Disciplinary Counsel must prove, by clear and convincing evidence, that Respondent made a false statement to an officer of the Department of Justice.

Disciplinary Counsel has not proven that Respondent made any false statement. Indeed, the evidence in the record shows that none of the false statements were, in actuality, made by Respondent. Instead, they were made by Mr. Comstock when he represented himself to be

[8] It is clear that Respondent concocted, or at a minimum knowingly allowed, a *de facto* office policy in which deceitful appearances were made on the record by Mr. Comstock.

Respondent during the telephonic appearances before various Immigration Judges. Moreover, Disciplinary Counsel has not argued nor offered any evidence which shows that vicarious liability should apply to this provision. As such, Disciplinary Counsel has not met its burden of showing by clear and convincing evidence that Respondent violated 8 C.F.R. § 1003.102(c), and the Court will dismiss Charge One.[9] 8 C.F.R. § 1003.106(b).

b. Charge Two

Charge Two alleges that Respondent violated 8 C.F.R. 1003.102(m). *See* Ex. 1. Section 1003.102(m) provides, in pertinent part, that a practitioner shall be subject to disciplinary sanctions in the public interest if he:

> Assists any person, other than a practitioner as defined in § 1003.101(b), in the performance of activity that constitutes the unauthorized practice of law.

8 C.F.R. § 1003.102(m). The Court finds that Disciplinary Counsel has met its burden of showing by clear and convincing evidence that Respondent assisted Mr. Comstock in the unauthorized practice of law. First, the Court finds that there was assistance from Respondent in each of the improper telephonic appearances. The evidence, including testimony, shows that Respondent had knowledge of the fact that Mr. Comstock was, essentially, impersonating him during the telephonic appearances. Whether Respondent gave Mr. Comstock explicit directions to do so or implicitly allowed the impersonation to happen is of no consequence, although the Court finds more credible Mr. Comstock's assertion that Respondent gave him "instructions" to "take care of the hearings" for which Respondent was unable to appear.[10] That Respondent either instructed or knowingly permitted Mr. Comstock to impersonate him on even one occasion qualifies as assistance in the unauthorized practice of law.

Second, there was clearly unauthorized practice of law. There are unquestionably valid reasons why states require one to pass a bar examination to be admitted to practice law. Mr. Comstock, although in possession of a Juris Doctor degree, has never passed any state bar examination,[11] and has never been admitted as a member of any state bar. While certain regulatory provisions allow law students or law graduates not yet admitted to the bar to appear in Immigration Court under certain circumstances, in no instance did Respondent even ask an Immigration Judge if such an appearance would be proper. *See* 8 C.F.R. §§ 1292.1(a)(2)(iii), (iv) (setting forth the procedure that permits law students or law graduates not yet admitted to the

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[9] Even if the Court were to sustain Charge One, it would not likely materially alter the sanctions to be imposed.

[10] Mr. Comstock testified that if Respondent had not returned from a conflicting court appearance by the time he was scheduled to telephonically appear in Immigration Court, he instructed Mr. Comstock to "take care of the hearing." Respondent testified that he never explicitly told Mr. Comstock to telephonically appear pretending to be him, but that Mr. Comstock must have done so at the direction of the "office," perhaps because the office could not reach Respondent on his cellular phone. The Court finds Respondent's insistence that he never told Mr. Comstock to handle the calls to be disingenuous at best.

[11] Mr. Comstock testified that he has failed the California State Bar Examination four or five times.

bar to appear in Immigration Court in limited circumstances, which would likely not apply to Mr. Comstock's circumstances). As such, Mr. Comstock is not a licensed attorney and could not legally make an appearance, neither as himself nor as Respondent, before any Immigration Court. When Mr. Comstock made the telephonic appearances, it was the unauthorized practice of law. This would be so whether Respondent gave Mr. Comstock explicit instructions to "handle" the calls, or he merely had knowledge of the fact that the misconduct was occurring and failed to stop it.

In his defense, Respondent argues that Mr. Comstock was merely his "messenger", voicing what Respondent instructed him to do. Respondent asserts that Mr. Comstock was only conveying Respondent's notes in the aliens' files and was not exercising his own judgment; thus asserting that Mr. Comstock was not actually practicing law. However, the evidence, including testimony, clearly shows that Mr. Comstock was not a mere messenger. For example, during one hearing, a Department of Homeland Security (DHS) attorney offered to the Court an unfiled I-261, Lodged Charge (I-261), and the Court, as a matter of expedience, accepted the filing and read to Mr. Comstock the new charge and factual allegations contained therein. Mr. Comstock told the Immigration Judge that he did not object to this practice and that he would be able to enter pleadings at that time. He then admitted the new factual allegations, and conceded the new charge. *See* November 18, 2013 DAR hearing in *In re* [redacted].[12] As the I-261 had yet to be filed, there was no way that Respondent could have known what the new factual allegations and charge would be, and could not have possibly given Mr. Comstock direction as to what to say.[13] Moreover, Respondent testified that he did not anticipate Mr. Comstock would have to enter any pleadings because "pleadings had already been taken earlier" in the proceedings. What remains is that Mr. Comstock used his own legal judgment when making the admissions and concession, thus practicing law.

Beyond that specific instance, the Court finds implausible Respondent's contention that Mr. Comstock was consistently acting as a mere mouthpiece, and not exercising at least some of his own legal judgment during the improper telephonic appearances. Respondent could not have possibly prepared for and provided notes on every conceivable situation that could arise during at

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[12] Disciplinary Counsel provided a transcript of the primary case, and CDs of the others mentioned in the NID. The Court simply notes that it was unable to play the CDs on the Court's computers (Respondent's Counsel could play them), but all such hearings, as well as those acknowledged by Respondent in the first instance, are available on DAR. In this particular instance, the Court played the DAR recording in Court during Respondent's hearing.

[13] In his closing argument, Respondent moves the Court for permission to supplement the record with copies of the Notice to Appear and the I-261 from *In re* [redacted], and argues that Disciplinary Counsel cannot prove that Mr. Comstock was exercising his own legal judgment. *See* Motion to Supplement at 3; *see also* Closing Argument at 21-22. The Court will admit the supplemental documents despite Disciplinary Counsel's objection to the motion. However, even admitting those documents, the Court's analysis regarding Mr. Comstock exercising his own legal judgment does not change; nor does the Court's conclusion regarding assistance in the unauthorized practice of law. Respondent's contrary contentions in his closing argument and motion regarding anticipation of the I-261are clearly and convincingly belied by his testimony, Mr. Comstock's testimony, the DAR hearing, and other evidence in the record.

least sixteen hearings. Based on the foregoing, the Court finds that Disciplinary Counsel has met its burden of proving, by clear and convincing evidence, that Respondent assisted Mr. Comstock in the unauthorized practice of law. Accordingly, the Court will sustain Charge Two.[14]

c. Charge Three

Charge Three alleges that Respondent violated 8 C.F.R. 1003.102(n). *See* Ex. 1. Respondent concedes this violation. *See* Ex. 11A at 5. Based on said concession and the evidence in the record, the Court finds that Disciplinary Counsel has met its burden of proving by clear and convincing evidence that Respondent engaged in conduct prejudicial to the administration of justice. Indeed, it is inconceivable that the scheme of telephonic representation concocted or tolerated by Respondent was anything other than prejudicial to the administration of justice. Accordingly, the Court will sustain Charge Three.

d. Charge Four

Charge Four alleges that Respondent violated 8 C.F.R. 1003.102(o). *See* Ex. 1. Section 1003.102(o) provides that a practitioner shall be subject to disciplinary sanctions in the public interest if he:

> Fails to provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners.

8 C.F.R. 1003.102(o). In the present case, the Court finds that Respondent failed to provide competent representation in at least two ways. First, as the provision clearly states, competent representation requires "preparation reasonably necessary for . . . representation." *Id.* Respondent's own testimony illuminates the fact that one of the main reasons Mr. Comstock often appeared for and impersonated Respondent was because Respondent was habitually ill-prepared to handle conflicts with his significant caseload.[15] Respondent testified that his calendar was regularly in disarray and as a result, he would often find himself with multiple hearings in different courts (including immigration, criminal, and family courts) scheduled for the same date and time. When these conflicts occurred, Respondent was often otherwise

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[14] The Court denies Respondent's request to hold this charge in abeyance out of concern for Mr. Comstock *in the event* the State were to bring criminal charges against him. The Court notes there are currently no criminal or civil charges pending and for the Court to find there *may* be would call for too much speculation. Moreover, the Court notes that the advisory materials provided with such request state that caution is advised in this regard when the *attorney* is facing an ongoing criminal prosecution. Respondent is currently not the subject of a criminal prosecution.

[15] Respondent is the lone attorney in his law office. He testified that he has approximately 2,000 open cases. 1,500 to 1,600 of those cases are immigration related, which he described as his "bread and butter" cases.

unavailable to appear telephonically and he testified that Mr. Comstock would pass himself off as Respondent during those telephonic appearances before the Immigration Courts.

Mr. Comstock's impersonation of Respondent, which occurred at least sixteen known times, became a *de facto* business practice because Respondent could not keep track of or organize his calendar and caseload and because he never hired a competent office manager or associate attorney.[16] When conflicts arose, rather than seeking continuances or having another licensed attorney appear, as a reasonably prepared and competent attorney would, Respondent permitted his unlicensed legal assistant to represent his clients in Immigration Court. Indeed, Respondent testified that Mr. Comstock is the only other person in his law office who "handles" immigration cases. Such actions do not reflect "preparation reasonably necessary for . . . representation." *Id.* Thus, because Respondent failed to prepare for and resolve caseload conflicts in a way that was both reasonable and lawfully permitted, and instead assisted in the unauthorized practice of law, he failed to provide competent representation to his clients.

Second, Respondent failed to provide competent representation to his clients because he failed to utilize methods and procedures that would meet the standards of a competent practitioner. *Id.* His failures in method and procedure occurred when he permitted his clients to be represented by Mr. Comstock. Respondent was the attorney of record in all of the cases in which Mr. Comstock telephonically appeared. To be the attorney of record, Respondent filed a form EOIR-28, Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (EOIR-28), which is filed at the request of the alien to be represented. *See* Form EOIR-28. Thus, when Respondent filed the EOIR-28s in each of the cases at issue, his clients requested that *Respondent*, and no one else, be their representative. Respondent's clients consented to him being their representative and paid him for his representation; they did not, and *legally could not,* consent to being represented by Respondent's unlicensed legal assistant. Compounding the situation, Respondent testified that his clients had no knowledge of the fact that Mr. Comstock was the person making telephonic appearances. In the end, no competent practitioner would have a procedure set in place that would permit his clients to be represented, without their knowledge or consent, by an unlicensed legal assistant who has failed the bar exam at least four or five times. Yet Respondent did just that, and consequently failed to provide competent representation.[17]

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[16] It is almost as if Respondent treated Mr. Comstock as an associate "attorney." According to Respondent's testimony, Mr. Comstock is the one who advises him of developments in recent case law because Respondent lacks the time to keep abreast of current legal developments. Mr. Comstock also prepares applications for relief (subject to Respondent's review), routinely meets with clients, and drafts court and appellate briefs.

[17] In his defense of the charge of failure to provide competent representation, Respondent argues that no client received an adverse decision in his or her case and that all have been successful in either securing relief or bond, or they are awaiting a decision. *See* Ex. 11 at 7. This contention is without merit, as at least one of his clients was removed. See IJ Oral Decision, [redacted] (Jan. 14, 2013), affirmed by the Board without opinion in [redacted] (BIA Decision May 20, 2013). Moreover, even if Respondent's argument were true, it would not change the Court's determination that Respondent failed to provide competent representation.

Based on the foregoing, the Court finds that Disciplinary Counsel has met its burden of proving, by clear and convincing evidence, that Respondent failed to provide competent representation to his clients. Accordingly, the Court will sustain Charge Four.

IV. DISCIPLINARY SANCTIONS

If the Court finds that one or more of the grounds for disciplinary action enumerated in the NID have been established by clear and convincing evidence, it shall rule that the disciplinary sanctions set forth in the NID be adopted, modified, or otherwise amended. *See* 8 C.F.R. § 1003.106(b). The Court may impose the following penalties: (i) permanent expulsion; (ii) suspension, including immediate suspension; (iii) public or private censure; or (iv) such other disciplinary sanctions as the Court deems appropriate. *See* 8 C.F.R. §§ 1003.101(a)(1)-(4). According to the American Bar Association's Standards for Imposing Lawyer Sanctions (ABA Standards), "[a]fter misconduct has been established, aggravating and mitigating circumstances may be considered in deciding what sanction to impose." ABA Standards at 9.0.[18] Though such standards are not binding, the Court finds them instructive.

As Respondent conceded misconduct and a violation of 8 C.F.R § 1003.102(o), much of his defense was comprised of presenting mitigating factors to the Court. The Court acknowledges and takes into account those mitigating factors when making its determination of disciplinary sanctions. However, the Court also acknowledges and takes into account the aggravating factors present in the case. A discussion of each and the resultant imposition of sanctions appear below.

a. Aggravating Factors

The ABA Standards state that "aggravating circumstances are any considerations or factors that may justify an increase in the degree of discipline to be imposed." ABA Standards at 9.21. The ABA Standards set forth a list of aggravating factors, and the following factors are a portion of that list most applicable to the case as hand: (1) a pattern of misconduct; (2) multiple offenses; and (3) substantial experience in the practice of law. *Id.* at 9.22.

First and foremost, Respondent is not in Disciplinary Proceedings because of a one-time occurrence or a momentary lapse in judgment. He is in these proceedings because he established a pattern and practice of misconduct that did not cease until it was discovered. The improper telephonic appearances occurred no fewer than sixteen times over a span of approximately three years. The span of time during the misconduct occurred and the frequency in which occurred are great causes for concern. It shows the Court that not only does Respondent lack proper judgment; he lacks respect for his clients, his employees, colleagues, judges, the Immigration Court as an institution, and the legal profession. On the whole, Respondent's actions denigrated the immigration process and the administration of justice. Further, Respondent has nearly

[18] The ABA Standards are more formally cited as Joint Committee on Professional Sanctions, Standards for Imposing Lawyer Sanctions, available at: http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/corrected_standards_sanctions_may2012_wfootnotes.authcheckdam.pdf.

twenty years of experience as an attorney. That experience should have instilled in him the idea and knowledge that his actions were improper and should have swayed him from allowing Mr. Comstock to impersonate him.

Respondent testified that he knows what he and Mr. Comstock were doing was wrong, and he accepts responsibility for what occurred. However, he did not testify, and the Court does not believe, that he would have voluntarily ceased having Mr. Comstock impersonate him during telephonic appearances. Even though Respondent claims he had a nagging concern that he may get in trouble for his misconduct, the "convenience" of the arrangement won out. His misconduct went on until DHS Assistant Chief Counsel (ACC) Ryan Goldstein figured out the improper procedure that Respondent and Mr. Comstock had in place.[19] It was not until that moment, or the days following, that Respondent was forced to stop having Mr. Comstock appear for him. Perhaps if Respondent had chosen to stop and report his misconduct it could have acted as a mitigating factor, but that is simply not the case. It was not a voluntary decision, which this Court finds to be an aggravating factor.

In addition to the fact that there is no indication that Respondent would have voluntarily stopped his misconduct, there is also no evidence that he has ever informed any Immigration Judge that such misconduct occurred in their courts, apart from Immigration Judge Linda Spencer-Walters.[20] Moreover, there is no evidence that any Immigration Judge outside of the Eloy Immigration Court is even aware they were duped. Respondent permitted Mr. Comstock to impersonate him in at least six Immigration Courts[21] and in front of no fewer than eleven Immigration Judges.[22] Respondent took advantage of the privilege of telephonic appearance that each Immigration Judge granted him and used that grant of privilege to denigrate the Immigration Court process. A truly remorseful person should have attempted to the set the record straight in the cases where the misconduct occurred, and the Court has not seen any evidence that Respondent has attempted to do so. Indeed, the records in those cases remain inaccurate as they show Respondent as having appeared, when in reality it was Mr. Comstock. Because Respondent has not made a significant effort to right his wrongs, the Court is led to

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[19] The Court credits ACC Goldstein's testimony that when "caught," Respondent initially tried to convince ACC Goldstein that he may have sounded different while on the phone with Judge Spencer-Walters because he was calling from a criminal court "closet."

[20] Immigration Judge Spencer-Walters is only aware of the misconduct because it was discovered by ACC Goldstein during a hearing before her.

[21] The misconduct occurred at the: (1) Eloy Immigration Court; (2) Imperial Immigration Court; (3) Tacoma Immigration Court; (4) San Francisco Immigration Court; (5) Los Angeles Immigration Court; and (6) Phoenix Immigration Court.

[22] The Immigration Judges include the Honorable: (1) Renee Renner (occurred in [redacted]); (2) Theresa Scala (occurred in [redacted]); (3) Robert Yeargin (occurred in [redacted]); (4) Joren Lyons (occurred in [redacted]); (5) Lori Bass (occurred in [redacted]); (6) Miriam Hayward (occurred in [redacted]); (7) Carol King (occurred in [redacted]); (8) James DeVitto (occurred in [redacted]); (9) Irene Feldman (occurred in [redacted]); (10) Richard Phelps (occurred in [redacted]); and (11) Linda Spencer-Walters (occurred in [redacted]

believe that he is more remorseful of the fact that he got caught[23], rather than being remorseful due to the damage he caused to the Immigration Courts and system as a whole.

b. Mitigating Factors

Mitigating circumstances "are any considerations or factors that may justify a reduction in the degree of discipline to be imposed." ABA Standards at 9.31. Factors that apply in the present proceedings, which may be considered in mitigation include:

(1) Absence of a prior disciplinary record

The Court acknowledges that Respondent does not have any known prior disciplinary record.

(2) Absence of a dishonest or selfish motive

Respondent argues that he was not driven to misconduct by a dishonest or selfish motive, which, in part, may be true. However, the motivation to make more money, and take on more cases than one can competently handle can be considered a selfish motive and certainly played a part in Respondent's misconduct. Consequently, the Court will afford this factor some but not a significant amount of weight when considering mitigating circumstances.

(3) Personal or emotional problems

Respondent went to great lengths attempting to convince the Court that the stress of dealing with his mother's illnesses and dementia was a significant cause of his misconduct. The Court however, is not convinced. For one, Respondent has not been his mother's primary caregiver at his home for some time; she has been living in an assisted-living facility for over two years and his misconduct continued long after she began living there. Based on the testimony of Dr. Sarah Mourra, the Court will assume there is a condition called "caregiver burnout." However, Dr. Mourra has never met with, diagnosed, or treated Respondent, and he has never been diagnosed with caregiver burnout or any other personal or emotional problem. He is not undergoing any particular counseling at this time, and only alluded to a suggestion that he knows a counselor and could seek out help, perhaps "over lunch". Thus, the Court finds that this evidence and testimony carries little weight as a mitigating factor.

(4) Timely good faith effort to make restitution or to rectify consequences of misconduct

Respondent did put forth a timely effort to make his misconduct known to Immigration Judge Spencer-Walters, although only after he was unable to convince ACC Goldstein that he had been talking to Judge Spencer-Walters from a criminal court closet. Beyond that, the Court has seen no evidence which shows that he has made any effort to inform any of the other Immigration Judges who were duped by his misconduct. The Court does acknowledge that

[23] Or, to use Respondent's own words, he finally failed to "dodge the bullet."

Respondent voluntarily disclosed to the undersigned, for purposes of these proceedings, additional instances of telephonic misconduct not specifically alleged by Disciplinary Counsel.

(5) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings

The Court acknowledges Respondent's disclosures and appreciates his cooperative attitude during these proceedings.

(6) Remorse

Respondent has indicated that he is remorseful and accepts full responsibility for the misconduct.[24] However, the Court is unsure whether that remorse stems from being caught or from the knowledge that he disrespected and denigrated the immigration process, or some combination of both. Frankly, the Court cannot say that the protestations of remorse during the proceedings seemed wholly sincere. Accordingly, the Court finds Respondent's remorse carries some, though not substantial, weight as a mitigating factor.

Beyond the mitigating factors discussed above, the Court also acknowledges that as a solo practitioner, any sanction which includes a suspension will cause a loss of income to Respondent, and may affect his family, his law practice, and his employees that rely upon him as a practicing attorney. Respondent provided evidence of his monthly expenses, and testified to the fact that he has three children, two of whom attend UCLA (one of whom is in law school). Interestingly, Respondent did not provide any evidence of his current income or recent tax returns. However, Respondent did state that neither of his children in higher education qualified for need-based financial aid, and that he pays out of pocket for their schooling. Respondent testified that his daughter received a $15,000 scholarship for her attendance at UCLA law school last year. When asked if she would receive it again for the rapidly upcoming school year, Respondent testified that he was not sure. This leaves the Court with two impressions, and it is unclear to the Court which is more accurate: (1) that a $15,000 scholarship is insignificant to Respondent and his family in light of substantial financial resources; or (2) that Respondent did not want to disclose the fact that his daughter was receiving a scholarship again in an effort to increase the Court's sympathy for him and his family.

c. Sanctions

In the NID, Disciplinary Counsel proposes that pursuant to the relevant ABA standards, Respondent should be suspended from the practice of law in front of the Board and Immigration

[24] Interestingly, Respondent testified that he accepts "full responsibility" rather than "blame." According to a law review article submitted by Respondent, which he offered in support of his contention that he was in fact remorseful, "[a]ccepting blame admits that [you] did something morally wrong and [you] deserve blame for the consequences of this wrongdoing. Accepting responsibility can mean any number of things, for instance when a maintenance worker 'takes responsibility' for cleaning someone else's mess." Ex. 10, tab H at 63. "People often attempt to take responsibility for things even though they deny that they deserve blame." *Id.*

Courts. Ex. 1 at 4. Disciplinary Counsel suggests that by applying the appropriate standards and considering the aggravating and mitigation factors, Respondent's suspension should be for a period of two years. *Id.* In response, Respondent requests that the Court apply a one-year suspension, with all but thirty days held in abeyance and unserved upon the successful completion of probation. Ex. 11A at 20. Thus, in lieu of suspension, Respondent requests a public censure and one year of "probation." *Id.* In addition to the probationary period, Respondent requests that there be limitations on his practice, including a prohibition on telephonic appearances for a period of six months. *Id.* at 20-21. The Court, considering both proposals, will adopt neither and will craft an appropriate sanction that takes into consideration the egregiousness of Respondent's misconduct, the need to protect both the public and the integrity of the Immigration Court process, and the aggravating and mitigating factors in his case.

In making its determination of sanctions, the Court acknowledges that there are sympathetic factors in Respondent's case. He is a solo practitioner in a law practice that predominantly deals in immigration law, though he also earns income apart from his immigration law practice by representing clients in criminal and family courts. He has employees and a family who rely upon him to make ends meet, and he contributes financially to his mother's care. He has been cooperative during these proceedings. However, there are significant aggravating factors described above as well.

Though Disciplinary Counsel's request for the imposition of a two-year suspension is not without merit, considering the sympathetic factors described, especially as they relate to Respondent's family, the Court will impose a lesser period of suspension, combined with a future limitation on practice. The Court finds that a sixteen-month suspension, which is one month of suspension for each known case of improper impersonation, is an appropriate period of suspension from the practice of law before the Immigration Courts, the Board, and the DHS, when combined with a limitation of his ability to make telephonic court appearances in the future. This, of course, does not prevent him from continuing his criminal and family court appearances, though the Court acknowledges that future reciprocal discipline could conceivably occur.

The Court is not convinced that Respondent has developed adequate practices and procedures to prevent similar instances of overbooking in the future. Respondent alleges to have instituted a new, electronic calendaring system, though he does not know the name of it. He hopes to strive for only "98% to 99%" efficiency with respect to double-booking court appearances with this new system. Respondent stated that, in the future, if he discovers at the last minute that he is double-booked, he would, essentially, give his criminal court clients short shrift by making sure that it is "definitely" the Immigration Court hearing for which he appears. This is not particularly reassuring, as the needs of clients could be pitted against each other simply by virtue of the type of proceedings they are in. Nor is it even clear how this could be the case considering Respondent indicated that on some occasions when Mr. Comstock made Immigration Court appearances for him it was because a criminal court judge required Respondent's actual presence.

In addition to a suspension, the Court finds that a future ban on telephonic appearances is required to protect the public and the dignity of the Court system. Specifically, the Court will prohibit the respondent from making telephonic appearances before the Immigration Courts for seven years from today's date, *to wit*, until August 13, 2021.

In addition, the Court will order Disciplinary Counsel to serve expeditiously a copy of this decision on each of the Immigration Judges listed in Footnote 22, so that they may take any steps they deem necessary to correct the inaccurate records in the cases listed.

The Court does not enter this order lightly. However, the egregiousness of Respondent's misconduct, combined with its pattern and practice, warrants these sanctions.

Accordingly, the following orders are hereby entered:

IT IS HEREBY ORDERED that the charge under 8 C.F.R. § 1003.102(c) be dismissed.

IT IS FURTHER ORDERED that the charges under 8 C.F.R. §§ 1003.102(m), (n), and (o) be sustained.

IT IS FURTHER ORDERED that Respondent be suspended from the practice of law before the Immigration Courts, the Board of Immigration Appeals, and the Department of Homeland Security for a period of sixteen months.[25]

IT IS FURTHER ORDERED that Respondent be prohibited from appearing telephonically in the Immigration Courts for seven years, *to wit*, until August 13, 2021.

IT IS FURTHER ORDERED that Disciplinary Counsel serve a copy of this decision on all judges mentioned in Footnote 22.

DATE: 8-13-14

Brett M. Parchert
Adjudicating Official/Immigration Judge

[25] The DHS's motion for reciprocal discipline is granted only insofar as Respondent is suspended from practice for a sixteen-month period. The Court has not included the Board in the seven-year prohibition on telephonic appearances because the Board holds no hearings, except for occasional oral arguments, at which attorneys are physically present.