UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF	:	**IN ATTORNEY DISCIPLINE PROCEEDINGS**
CHEN, Eleanor	:	**Case #D2005-204**
RESPONDENT	:	

BEFORE: John F. Gossart, Jr.
United States Immigration Judge

CHARGE: **8 C.F.R. § 1003.102(j)**, engaged in frivolous behavior in a proceeding before an Immigration Court, the Board of Immigration Appeals or any administrative appellate body under Title II of the INA.

APPLICATIONS: Disciplinary sanctions of nine months, suspension of practice before the Board and Immigration Courts, **8 C.F.R. § 1003.101(a)(3)**

APPEARANCES

ON BEHALF OF RESPONDENT:

Samuel C. Stretton, Esq.
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ON BEHALF OF EOIR OFFICE OF GENERAL COUNSEL:

Jennifer J. Barnes, Esq.
Bar Counsel
Barbara J. Leen, Esq.
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MEMORANDUM OF DECISION AND ORDER

On August 27, 2007, an Attorney Disciplinary Proceeding was conducted in the above cited matter at the United States Immigration Court in Baltimore, Maryland, before this judge.[1] By stipulation of the parties and approval of the Court, the sole issue before me is the discipline to be imposed.[2]

At the conclusion of the proceedings on August 27, 2007, the Court closed the evidentiary record and permitted the filing of closing arguments. With those arguments now received and considered, my decision and order follows.

I. Procedural History

On December 6, 2006, the Executive Office for Immigration Review, Office of General Counsel filed a Notice of Intent to Discipline ("NID") against the Respondent. Filed with the Office of the Chief Immigration Judge, the matter was subsequently assigned to this judge.

Specifically, the Respondent has been charged under **8 C.F.R. 1003.02(j)**[3] with frivolous behavior in filing at least thirty-eight (38) briefs for appeals to the Board of Immigration Appeals ("Board" or "BIA"), which were near identical, devoid of particularity, and offered no substantive legal analysis. **See NID, allegation #2.**

Respondent initially entered a plea denying the charge for disciplinary sanctions. The Respondent also advised the Court that had she known her briefs to the BIA were deficient, she would have immediately corrected them. She noted that the 3rd Circuit Court of Appeals[4] admonished her for deficient briefs. However, prior to the issuance of the NID, she was not

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[1]Appointed to hear this case by the United States Chief Immigration Judge. **8 C.F.R. 1003.106(a)**.

[2]Respondent has conceded to engaging in frivolous behavior before the Board of Immigration Appeal ("BIA").

[3]See **8 C.F.R. 1003.102** for all grounds for disciplinary sanctions.

[4]The United States Court of Appeals for the Third Circuit ordered a public censure of the Respondent with assignment of a practice monitor for one year as appropriate discipline.

aware that her briefs to the BIA were deficient. She advised that neither immigration judges, nor the BIA, nor any government counsel ever advised her that her briefs were deficient.

On August 27, 2007, at the commencement of this disciplinary proceeding, the Court approved the stipulation of the parties with the amended plea wherein the Respondent conceded to frivolous behavior under **8 C.F.R. 1003.102(j)**. Prior to approving the stipulation, the Court directly confirmed the amended answer with the Respondent.

II. Testimony and Evidence Presented

A. Documentary Evidence

The following documentary evidence has been accepted into the record with any objections considered:

(1) General Exhibits:

Exhibit 1: Notice of Intent to Discipline
Exhibit 2: Respondent's Answer
Exhibit 3: Amended Notice of Intent to Discipline
Exhibit 4: Respondent's Answer to the Amended Notice of Intent to Discipline
Exhibit 5: Respondent's Amended and Changed Answer with Joint Stipulation of Parties
Exhibit 6: Court Order Approving Joint Stipulation of Parties

(2) Respondent Exhibits:

Exhibit R-1: Recent case results in the Immigration Court, Philadelphia, PA., for Respondent's Clients
Exhibit R-2: Sample Briefs filed by other attorneys
Exhibit R-3: BIA decisions and Government Motions for Summary Affirmance
Exhibit R-4: Attorney Character Letter of Susan Smolens, Esquire
Exhibit R-5: The Opinion of the Third Circuit Court of Appeals, in the case of In re: Eleanor Chen, Docket No. 06-8037, dated May 24, 2007, imposing public reprimand with a practice monitor for one year
Exhibit R-6: Order of the United States Court of Appeals for the Third circuit substituting Attorney Steven A. Morley for Samuel C. Stretton, Esquire, as the practice monitor for Eleanor Chen

(3) EOIR Exhibits:

EOIR Group Exhibit 1, Subexhibits A-J:
Briefs filed by Respondent in cases referred to as "template briefs."
EOIR Group Exhibit 1A, Subexhibits A-I:
Immigration Judge and BIA decisions on cases with "template briefs."

EOIR Group Exhibit 2, Subexhibits A-P:
Briefs filed by Respondent in cases referred to as "template briefs."
EOIR Exhibit 2A, Subexhibits A-O:
Immigration Judge and BIA decisions in cases with "template briefs."
EOIR Group Exhibit 3, Subexhibits A-L:
Briefs file by Respondent in cases referred to as "template briefs."
EOIR Group Exhibit 3A, Subexhibits A-K:
Immigration Judge and BIA decisions in cases with "template briefs."
EOIR Group Exhibit 4, Subexhibits A-D:
Briefs filed by Respondent in cases referred to as "template briefs."
EOIR Group Exhibit 4A, Subexhibits A-C:
Immigration Judge and BIA decisions in cases with "template briefs."
EOIR Exhibit 5:
First letter of proctorship issued by the Third Circuit Court of Appeals assigning attorney Samuel C. Stretton, Esq., as proctor

B. Testimonial Evidence

In addition to the documentary evidence received, the Court heard the testimony of Respondent Eleanor Chen and the testimony of EOIR witness James J. Orlow, Esq., a prominent immigration attorney.

Testimony of Eleanor Chen

Respondent Eleanor Chen testified that she was born in China on November 7, 1966 and immigrated to the United States in 1991 at age 25 years. A graduate of Jilin University in China with a law degree, Chin practiced law for a brief period of time before coming to the United States.

At the time Ms. Chen immigrated to the United States, she did not speak English. By 1995, Ms. Chen spoke English and graduated from Villanova University School of Law with a *juris doctor* degree. In 1995, she was admitted to the bar in Pennsylvania. Additionally, she was admitted to the New Jersey state bar as well. Ms. Chen was also admitted as an attorney to practice before the United States District Court, Eastern District of Pennsylvania, and the Third Circuit Court of Appeals. Ms. Chen also received an L.L.M. in tax law from Villanova and is a Certified Public Accountant.

The Respondent is married with two children, and was naturalized a United States citizen

in 2000. Her husband is a practicing attorney as well. These discipline proceedings are the first proceedings brought against the Respondent as a result of the 3rd Circuit Court of Appeals sanctions.

Initially, the Respondent worked in the accounting and tax division of PriceWaterhouse Coopers in Philadelphia. The Respondent opened her law practice in February, 2003 as a sole practitioner. At that time she had handled a few immigration cases pro bono. Soon after Ms. Chen opened her practice, post 9/11 Special Registration for Citizens of Certain Countries went into effect. Respondent began to practice in the area of immigration law.

From 2003 until 2006, at least 80% of her practice was immigration cases. Presently, the Respondent has some commercial litigation and international law cases. The Respondent still has some immigration cases pending before the Board of Immigration Appeals and the Third Circuit Court of Appeals, and some old cases pending before the Philadelphia Immigration Court. She has no new immigration cases because the "surge of special registration cases is over." She also intentionally reduced her immigration caseload to a minimum. When the Respondent did take immigration cases, between 2003 and 2006, they were primarily asylum and withholding of removal cases. She handled approximately 70 or 80 cases altogether. She charged a $1,000 fee to prepare an asylum application and attend relevant hearings. However, she allowed people "to pay at their own pace." They could pay very little to initiate the process and then pay the balance off later. She testified that a lot of people did not pay her, but she would continue to work on their proceedings in Immigration Court anyway. The Respondent did not ask for a lump sum right at the start. When cases were lost at the Immigration Court and she filed an appeal to the BIA or the Third Circuit, she had a similar arrangement. The Respondent did a substantial number of cases on a pro bono or quasi-pro bono basis. The Respondent testified that she has learned a lesson in how to charge people for representation– she has reduced her case load, and if people do not cooperate or pay her enough to give her the resources to do the research, she will withdraw from representation.

From 2003 until 2005, the Respondent worked seven days a week. She said she never took a day off. She typed all documents herself and made all phone calls, as she had no clerical help. She had no associates, partners, or senior lawyers. She testified that she had no one she felt

she could consult on the practice of immigration law. She was asked how she knew what to file and how to file it, and she said that she reviewed the work of other, active immigration attorneys. She would look at briefs filed in appeal cases to the Third Circuit. The Respondent was shown Respondent's Exhibit 2, a compilation of briefs filed by other attorneys. The Respondent put together this compilation for the hearing before this Court. She got those briefs from clients who gave her copies when they hired her for appeals; their files would include briefs from their former attorneys. The Respondent consulted and relied on some of these briefs, and used them "to a certain degree" as examples. The Respondent represented some of the individuals whose documents are found in Respondent's Exhibit 2, but not all of them. Besides looking at briefs filed by other attorneys, the Respondent also looked at government briefs. She was shown Respondent's Exhibit 3, which she identified as cases where there are decisions and government briefs. Exhibit 3 is comprised of briefs the government filed in response to cases the Respondent filed with the BIA. During the time period the Respondent was writing her own defective briefs to the BIA, she did consider what the government was writing.

The Respondent said she "never had any questions" from the Immigration Court, the BIA, or the government mentioning that her briefs were defective. Until the Third Circuit raised questions about the briefs she was submitting to that court, no one questioned the briefs she submitted to the BIA. The BIA never submitted an opinion chastising or criticizing her, and none of her briefs were summarily dismissed. Nothing was ever mentioned in a BIA decision. Nor did the Respondent's government opponents condemn, in their briefs or privately to her, her work. No lawyer ever took her aside to suggest that her briefs were sub-par. During the time period in question, the Respondent did not have a lot of experience in immigration law and she had an overwhelming case load. She learned by practicing, and by watching other lawyers practice before the Immigration Court. She thought because the facts were detailed in the client's asylum application and affidavit, she did not have to discuss the facts in more detail in her briefs. She testified that she thought her work was sufficient. The Respondent now recognizes that the procedures she followed were "grossly deficient." She said she accepts responsibility for not complying with the high level of practice required of those who practice before the Immigration Courts and the BIA.

The first time that the Respondent became aware that the briefs she was filing were unacceptable was when she was notified by the Third Circuit in early 2006. There were some opinions in 2005 which admonished her, that she had ignored. After she became aware that her briefs were deficient, she rewrote every brief pending before the Third Circuit. She did not charge her clients additional fees for the re-writing. As a result of her understanding of what she did wrong, she has changed how she writes briefs. She now has someone to consult with on Third Circuit matters– she said she has had an extensive discussion with attorney Morely, who is "waiting to be" her mentor for future work in front of the Board and the Third Circuit; she has seen his entry of appearance as a practice monitor. She has already spoken with him, and he told her he could act as a monitor in current proceedings, as needed. He was unable to appear before this Court because of prior obligations. However, there is no question that he has agreed to serve as her practice monitor. Even if this is not ordered by this Court, it is the Respondent's intention to consult with Mr. Morely in the future if she has questions regarding her immigration practice. She said she will compensate Mr. Morely for his time, and he will provide her with how many hours he has worked so they can arrange a fee agreement. Additionally, Mr. Morely is willing to submit periodic reports to the Court on how the Respondent is handling her immigration cases.

After the Respondent filed corrected briefs in the Third Circuit, the Respondent received the Notice of Intent to Discipline. The first time the Respondent became aware that her briefs before the BIA were deficient was in December, 2006. She was asked if she filed any briefs that were done correctly since these problems arose, and she said she is confident that what she has done subsequently is sufficient. She has filed appeals on behalf of some individuals whose cases were denied at the Immigration Court, and she has had "some positive results" from the BIA. She has received two remands based on her briefs.

Respondent was shown Respondent's Exhibit 1, Tab 1, which she identified as the most recent result of her cases before the Philadelphia Immigration Court, including remands from the Third Circuit and the BIA, based on her briefs. Most of them are briefs she filed after the criticism, although some are from before.

Respondent was asked to tell this Court what steps she is engaging in to avoid any further misconduct. She testified that all her problems were caused by her inexperience; she had just

opened her office and was overwhelmed by her caseload. All of those factors contributed, and when she realized this, it was "too late."

Respondent noted she has since learned a great deal during these difficult times, and takes full responsibility for her actions. She has since tried to reduce her caseload to the minimum, and will not file an appeal for anyone who asks. She said she will also now charge a reasonable fee that will give her the resources and time to do adequate research. With newer clients, the Respondent has received reasonable fees in order to do what she needs to do. The Respondent still works as a solo practitioner, and she said if the business grows and there is a need for more representation she would consider hiring an associate. It is also the Respondent's intention to do more international law work. However, in the short term she still plans to handle some immigration cases. She will consult with more experienced attorneys on these matters, and will see if she has enough time to devote to each case. She will make sure the fee is reasonable. If the client does not have the fee or does not cooperate, she will recommend other attorneys to them. The Respondent has also learned about petitioning to withdraw. She has never done this in the past, but knows now that sometimes it is necessary. The Respondent has hired clerical help, as well. She hired a full-time secretary and a paralegal, approximately one year ago.

The Respondent estimates that she is currently working on 20 international law cases and close to 20 tax or commercial cases. These cases are, comparatively, within her area of expertise. She also has less than five immigration cases pending before the Third Circuit where the briefs have been filed. She has approximately 10 cases before the BIA. Those briefs have already been filed, and they were filed correctly. She has around five cases pending before the Immigration Court, waiting for a hearing. She plans to periodically consult Mr. Morely on these cases, and she has no hesitation about calling him with questions.

Respondent has been a member of the American Immigration Lawyers Association ("AILA") since 2005. She has used the organization's website to ask questions of more experienced attorneys.

The Respondent is very active in the Philadelphia Chinatown. She is a member of the committees of several non-profit organizations. For example, she is the counsel for people from Fujian province in China. She does this pro bono, helping the new immigrants adjust to life in the

United States. She is also a board member for several women's organizations in the Chinese-speaking community, and has been for two or three years. One such organization is the Philadelphia Haihua Chinese Women's Association. This work is also pro bono. The group meets once or twice a month, for several hours each month.

The Respondent said she now understands the proper standards for attorneys, and she has always been very cautious and conscientious. She would never intentionally violate any rule, and she has full respect for the Court and the government. She testified she only wants to helpful. She said she has learned a great deal.

On cross-examination the Respondent testified that she read the stipulation the parties entered into, and that she was indeed overwhelmed by her legal practice. She was asked if she was so overwhelmed that she could not give the necessary individual attention to every case, and she said that was a correct statement. She said she did not realize that she had a problem, and if she had realized it, she would have sought help. She testified that she does not know when she recognized that she was overwhelmed by work. She was asked if she continued to take new cases after she came to this conclusion, and she said that it was because of the surge, meaning the special registration period. Then she said she did not continue to take new clients in her practice when she realized she was overwhelmed. She said she did not know, however, that she had a problem. She just thought she was working too hard and she did not understand that her briefs were insufficient.

The Respondent confirmed that she lost all of the cases listed in the Notice of Intent to Discipline. She was asked if this "tipped her off" that something was wrong. However, she attributes this to a specific ruling from the Third Circuit Court of Appeals relating to asylum cases for ethnic Chinese in Indonesia, which lead to an across-the-board denial in all of her cases, as they all involved this particular group. She was asked if these cases, then, were unwinnable, and she said that one should "always try, or there will never be a new precedent." She was asked if she tried to distinguish her cases from the Third Circuit precedent, and she said she tries to do that now. She did not answer the question of whether she distinguished her cases prior to the beginning of the present disciplinary proceedings. The Respondent was asked why, when she realized she was overwhelmed, she did not reach out to other immigration attorneys. She again

said she did not know because her problems were not pointed out to her.

During the time period relevant to the cases cited in the Notice of Intent to Discipline, the Respondent spent from 8 to 20 hours with clients in preparation for their merits hearings. She spent, on average, one to three full working days reviewing the records of proceedings before filing a notice of intent to appeal. In the cases cited in the Notice, she would spend five to eight hours drafting the briefs for appeal. This includes both the time she spent thinking about the case, and the time it took her to write the briefs– the work was done simultaneously. The Respondent confirmed that several of the briefs in the Notice differ only slightly. She testified that she took about five hours to write each brief. She said if the facts and law were similar, she would base one brief on another, and concedes that several of the briefs are similar in nature.

The Respondent confirmed that she charged clients $1000 for a removal case with a relief application. This fee was the same for all of her asylum clients. She also allowed her clients to "pay at their own pace." They would sometimes give her a small amount to start work, and pay her later. She did not have a minimum amount; some individuals would give her $50 or $100 to start. However, she treated all cases the same regardless of how much the client paid up-front. She said she would have written the same quality of brief for each client.

The Respondent was asked if she understands the different roles a respondent and the government play when the respondent takes an appeal to the BIA. She said that whoever initiates the appeal writes a brief in detail. If the government appealed one of her cases, she would "attack" their brief and explain why she thought the Immigration Judge's decision was correct. When the respondent initiates the appeal, he or she must point out to the Board the reasons for the appeal. The Respondent thought that the briefs did not have to go into great detail regarding the facts of the case, because she looked at government briefs to get examples.

The Respondent re-filed cases with the Third Circuit after disciplinary action was taken against her in cases that were pending. She was asked if she has taken other remedial steps in the cases in the Notice of Intent to Discipline, such as filing motions to reopen. She said that she has not filed any motions to reopen or reconsider. She has not taken any remedial steps to this point in those cases.

The Respondent testified that she has met with Mr. Morely twice since he was named by

the Third Circuit as her proctor, both times approximately one week before the proceedings before this Court. The first time she met with him was in his office and they talked for half an hour to an hour. The second time they met was at the Philadelphia Immigration Court, when they were both waiting for hearings. They talked in the hallway for a few minutes. They agreed that she should come to him when she has something to review, since she has nothing currently pending before the Third Circuit or the BIA. Since he has been named as her mentor she has met with him for less than an hour in total. She plans to talk about her general practice and how to improve herself as a lawyer. His role is to review her work product. She also discussed with him his experience running a law practice. The Respondent also testified that Susan Smolen, an attorney and friend of the family, talks with her about the immigration law.

Testimony of Bar Counsel Witness James J. Orlow

The credentials of attorney James J. Orlow were stipulated to and he was accepted as an expert on immigration law and practice. He was retained by Bar Counsel to review the thirty-eight briefs in question and then provide an expert opinion on their adequacy. After review he was able to reach an opinion.

Mr. Orlow reviewed 36 files, of which two were redundant, and he declined to review one other file because there was a conflict between the client and one of his own partners. The review occurred in the offices of the Philadelphia Immigration Court, in an unused courtroom. Mr. Orlow reviewed the files during the period between July 25 through August 14. He spent approximately 20 or 21 hours reading files and making notes, and then two more hours organizing his finding into a more comprehensible format.

Mr. Orlow came up with two taxonomies to make sense of the files he was reviewing. One was a classification of the files into "short brief," "long brief," and "other." Then, when he saw what the Respondent had done thereafter, what he called short brief became one and two, long brief was three, and other was four. He did not start with the government's taxonomy before he started reading. Then he set up in his head "what is frivolous behavior." He wanted to know what he was looking at and "where it fit in the context of things." The lowest form of activity

would be criminal, then frivolous, then negligent or ineffective, and then ordinary practice, better than average, and superior. He does not know whether frivolous behavior, as described by the regulation, includes negligent or ineffective behavior. He thinks frivolous is more purposeful then negligent activity.

In reviewing the records, Mr. Orlow concluded that the briefs were frivolous, except that if one read any brief standing alone, it would appear negligent or ineffective. However, it only became frivolous in a pattern when they were all read together, especially the template briefs that were used. One would only know it was a template if he read three or four files. Mr. Orlow was asked whether any of the 36 files he reviewed reached an acceptable standard. He said maybe one or two did, but the problem for him was that the pattern sunk in and dominated what he saw. A few, individually, were below average but not ineffective. In Mr. Orlow's opinion, in one case there was a real defense for the alien but the claim was never made. He was a homosexual who had been beaten by the police, but this issue was not explored. He would have tried the case differently. In his opinion, the issue was touched on but it was not the ground on which the case was tried.[5]

In Mr. Orlow's opinion, the Respondent used template briefs with some exceptions. The introductory paragraph recited facts relating to the individual case. Then the argument would be a template. In some cases it would be verbatim, and in others a few sentences would be changed. In no case was the controlling issue ever discussed. In all but two of the cases, the asylum case was late-filed, but this issue is omitted from the notices of appeal, the briefing, and the arguments in the briefs. There was one case where late filing was not an issue, and there were two cases where the applications were a little bit late but the judges overlooked the issue. The consequence of a late filing is that the asylum claim is barred. Regardless of the facts underlying each case, the late-filing issue was controlling. Mr. Orlow said that in each case, it was one ground, if not the sole ground, for the Immigration Judge's denial. There were a few cases that "mildly" addressed the exceptions to the late-filing rule, but mostly the issue was "absolutely missing" from the

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[5]The testimony about this particular case is not considered. The matter before this Judge is not a Lozada action (ineffective assistance of counsel. **Matter of Lozada, 19 I&N Dec. 637 (BIA, 1988).**

brief. Of the 36 briefs Mr. Orlow reviewed, there were none he found acceptable.

On cross-examination, Mr. Orlow said that he reviewed the files of 36 aliens involved in 34 cases (two of them were derivative). He did not review another case made available to him. In two cases, the applications were a little bit late, and the Immigration Judge did not consider late filing to be an issue in that case. In a third case, which was an arriving alien situation, the issue also did not come up. There was a fourth case where there had been an affirmative asylum application that was referred. In at least 32 out of 36 cases, there was a late filing issue that was determinative and could have been the only thing the judge could have decided the case on. However, that is dependent on the individual judge's preference in terms of how they write their opinions. Nevertheless, in each of those 32 cases the late filing issue controlled the asylum claim, but not the withholding or CAT claims. Mr. Orlow said that, based on the records he had, he could not determine whether the Respondent was actually responsible for the late filing of the asylum application, because he could not figure out when she came into contact with the clients. Sometimes it was clear that the Respondent only got into the process after the application had been filed. Mr. Orlow then explained the exceptions to the one-year filing deadline. In the 32 cases where there were issues of late filing, Mr. Orlow was not able to ascertain based on the record whether the aliens would qualify for the exceptions. What he could determine was that, even if they had, the exceptions were never raised, briefed, or argued. While the record did not necessarily reflect the basis for claiming an exception, "the asylum claim was put forward as if it was not late-filed."

Mr. Orlow was also asked about the issue of homosexuality in the particular case he testified about earlier. He thinks it could have been tried in more detail. He was asked to look at Tab F of Government's Exhibit 1A. The testimony was summarized in detail by the Immigration Judge when issuing her opinion. Mr. Orlow said that the testimony had not been fully developed; what was missing was evidence about why a male homosexual would have a problem in that particular society but not in others. "There was an expert witness missing." The brief covered the record that had been made, which, in Mr. Orlow's opinion, was insufficient for the issue. He would have presented additional, expert testimony on the issue. He sees this instance as a case of

negligence rather than frivolousness.[6]

On re-direct, Mr. Orlow confirmed that late filing pretermits an Immigration Judge from being able to grant an asylum claim. If one has not gotten an asylum claim based on the facts, however, he or she is unlikely to be granted withholding of removal or CAT. When cases are pretermitted, there is no basis for appeal that has legal merit. The only grounds for an appeal would be if "you say you are going to fight this case all the way up to the Supreme Court to change the law." In Mr. Orlow's experience, he has seen meritless appeals filed. He believes this is "litigation for delay," which is frivolous behavior.

In response to questions from the Court, Mr. Orlow testified that he did not read all of the available transcripts unless he read the Immigration Judge's opinion and needed clarification. He recalls reading pleadings in at least two, if not more, cases where the Respondent, speaking on behalf of the alien, said the application was for withholding only, conceding the time bar in the asylum claim. There were other cases where the Respondent said that there was a time-bar issue but she would seek an exception. Mr. Orlow does not recall whether, in those cases, the exception was actually advanced during the trial. He did review briefs where the Respondent argued that the Immigration Judge erred in not granting an exception. She apparently made this argument in the briefs in all cases. However, she did not tie her argument back to the record.

III. Position of the Parties

Respondent

The Respondent acknowledges wrongdoing and now concedes to the violation of "frivolous behavior." However, the Respondent asserts that her behavior was neither intentional nor willful. She became a sole practitioner, without mentor or guidance in a complicated area of law, and soon became overwhelmed with many cases.

The Respondent has pointed out her academic successes in the United States after coming here without knowledge of the English language.

Shortly after she began her practice, she was swamped with many cases by the Special

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[6]Id.

Registration law, and immigration became her primary focus. In representing her clients, she thought she was practicing properly. Many of her cases she claims were pro bono or quasi pro bono. Many clients did not pay her as required until the Third Circuit Court of Appeals took actions against her. She was unaware that her lawyering was deficient. And she did not realize her briefs to the BIA were deficient until she received the NID.

The Respondent pointed out that had she been notified by any immigration practitioner, the Immigration Court, or the BIA, she would have taken action immediately. The Respondent noted that she did review briefs filed by other immigration lawyers as well as the government and found those briefs to be simplified. Thus she contends she had no reason to believe that her briefs were deficient, let alone that she was engaging in "frivolous behavior."

The Respondent pointed out a number of corrective measures she has taken since sanction by the federal court and the issuance of the NID. These include, among others:

- rewriting all her briefs to the Third Circuit Court of Appeals
- supervision by a court-appointed proctor
-reducing her (immigration) caseload
- hiring support personnel for her office[7]
- improved office practices
- retainer requirements and proper fees
- consulting with AILA through her membership

Finally, the Respondent has advised the Court that all her problems resulted from her inexperience and by the time she realized she was in trouble it was too late. The Respondent acknowledges full responsibility for her actions. She noted that she was trying to help people and never intended to engage in wrongdoing. She has told the Court that she has learned from her mistakes and that they will not be repeated.

The Respondent requests the following discipline be imposed by the Court: a private letter of reprimand, a public censure and a supervised proctorship similar to that imposed by the Third Circuit Court of Appeals.

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[7]Previously, Respondent did all of her own work without any support personnel.

Bar Counsel

EOIR Bar Counsel seeks a nine (9) month suspension from practice before the Immigration Courts and the BIA.[8] While Bar Counsel acknowledges that Respondent is remorseful, they state:

> her remorse does not absolve her of the responsibility of facing the consequences of her actions. Respondent performed a great disservice to her clients and to EOIR when she ignored the facts of her clients cases in favor of filing virtually identical briefs that did not discuss the individual cases or the basis for the appeals with any particularity. Respondent's violations are egregious in number and the number of times in which she engaged in frivolous behavior before the Board of Immigration Appeals cannot be ignored. **Government's Closing Argument, at pages 3 & 4.**

It is the position of Bar Counsel that the Respondent knew or had reason to know that she was engaging in frivolous behavior when she filed template briefs before the BIA. In part, Bar Counsel asserts that it is not proper for the Respondent to claim "ignorance" when she has conceded to the misconduct in her amended pleading.

Bar Counsel also argues that the BIA is not duty-bound to notify attorneys for the filing of "inadequate briefs;" this should not be considered a mitigating factor. However, Bar Counsel did note that the BIA did point out inadequacies in several decisions.

Nor should the representation of clients on a pro bono basis be a mitigating factor for the imposition of disciplinary sanctions, according to Bar Counsel. Rather, it is pointed out that Respondent was paid by her clients or was supposed to be paid (referring to Respondent's testimony before this Court.)

Finally, bar Counsel notes that the purpose of attorney discipline "is to protect the public from unfit attorneys..." citing **Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (PA, 1986)**. Accordingly, Bar Counsel argues that Respondent has failed to demonstrate that she is competent to practice law at this time because she has "failed to present any objective evidence

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[8]The Department of Homeland Security ("DHS") filed a **Motion for Reciprocal Discipline** on December 29, 2006.

that she has improved her practice before EOIR."[9] **Government's Closing Argument, at page 8.**

A nine-month suspension from the practice of immigration law is requested to be an appropriate discipline.

IV. Statement of the Law

Disciplinary sanctions for practice before Immigration Courts and the BIA are government by regulation. See **Subpart G– Professional Conduct for Practitioners– Rules and Procedures, 8 C.F.R. 1003.101 et. sequel.** The grounds for the imposition of disciplinary sanctions are found at **8 C.F.R. 1003.102**:

> "It is deemed to be in the public interest for an adjudicating official or the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section, but these categories do not constitute the exclusive grounds for which disciplinary sanctions may be imposed in the public interest..."

Specifically, **8 C.F.R. 1003.102(j)** states:

> "A practitioner who falls within one of the following categories shall be subject to disciplinary sanctions in the public interest if he or she:
> (j) engages in frivolous behavior in a proceeding before an Immigration Court, the Board, or any other administrative appellate body under title II of the Immigration and Nationality Act, provided:
> (I) A practitioner engages in frivolous behavior when he or she knows or reasonably should have known that his or her actions lack an arguable basis in law or in fact, or are taken for an improper purpose, such as to harass or to cause unnecessary delay..."

Persons who violate their professional duties can face disciplinary sanctions to include suspension. When a hearing is conducted before an adjudicating official (includes immigration judges), **8 C.F.R. 1003.106**:

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[9]It has been pointed out to the Court that Respondent did not file any corrected briefs on any pending cases before the BIA that were cited in the NID. Nor did she file any motions to reopen or reconsider these cases.

(b) Decision. The adjudicating official shall consider the entire record, including any testimony and evidence presented at the hearing and, as soon as practicable after the hearing, render a decision. If the adjudicating official finds that one or more of the grounds for disciplinary sanctions enumerated in the Notice of Intent to Discipline have been established by clear, unequivocal and convincing evidence, he or she shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified, or otherwise amended.

V. Findings of the Court

There is no dispute that the Respondent has engaged in frivolous behavior and is subject to disciplinary sanctions. The sole issue is the sanctions to be imposed.

Firstly, the evidence clearly establishes frivolous behavior through the filing of numerous "template" briefs which do not analyze the facts of the case with the law. Thus, this conduct constitutes actions taken for improper purpose, such as to cause unnecessary delay. **8 C.F.R. 1003.12(j)(i)**. The expert witness for Bar Counsel, James J. Orlow, Esq., has concluded that the briefs filed with the BIA "were frivolous, except that if one read only one brief standing alone, it would appear negligent or ineffective." He opined, "The Respondent used template briefs with some exceptions." And more significantly, the Respondent now concedes to the charge.

I balance the significance of the violation with all testimony and evidence presented by both parties and conclude that public or private censure and proctorship are not sufficient discipline. I also conclude that a nine-month suspension is excessive and not necessary. This is not a case of malfeasance but rather, misfeasance or nonfeasance.

I am satisfied with the overall credibility of Ms. Chen. She entered a complicated area of law without proper training. She attempted to learn quickly and represent a large caseload due to Special Registration without the benefit of knowledge and experience.[10] In her mind she thought she was performing sufficiently, albeit her representation before the BIA was woeful. She has taken sufficient corrective measures as outlined in her testimony to avoid further misconduct.

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[10]The character letter of attorney Susan R. Smolens, an immigration attorney, states that "she is a dedicated and honest attorney who puts [in] long hours and most days into the practice of law." And later in the letter, "Her flaw was her desire to help clients whom she could not turn away, to the point where she was overwhelmed with work." **See Respondent's Exhibit R-4**.

The proctorship ordered by the Third Circuit Court of Appeals will permit her immigration cases to be reviewed and supervised. Her proctor, Steven A. Moreley, Esq., is known to this Court as an excellent immigration attorney.

Further, the record reflects the favorable character of Ms. Chen. She has successfully learned English, become a United States citizen, graduated from a fine law school, and received an advanced law degree. She is also a Certified Public Accountant. These are credentials that speak to dedication, commitment, and work ethics.

Ms. Chen is remorseful. Her words to the Court, her written statement, and her demeanor have convinced me of this. And she has taken corrective measures that are necessary for the proper practice of immigration law with our courts and the BIA.

However, there are three unfavorable factors that lead me to conclude that the proper disciplinary sanction in this case is a sixty (60) day suspension from practice before the Board of Immigration Appeals, Immigration Courts, and the Department of Homeland Security.

Firstly, the transgressions in thirty-eight (38) cases are significant. All of these case appeals were dismissed. Had the Respondent provided proper advocacy in these cases, perhaps some might have been successful or resulted in remand. See generally, the testimony of James J. Orlow, Esq.

Secondly, the Respondent had some indication of deficiencies in her briefs to the Third Circuit Court of Appeal prior to that Court bringing disciplinary proceedings against her.

> "In making that reference the **Agusalim**[11] panel noted that Chen had been engaging in a pattern of disregarding the interests of her clients, ignoring the Court's rules and wasting the Court's resources despite the Court having given her warnings and criticisms concerning this conduct, including seven orders of the clerk pointing out that Chen had failed to comply with court procedures."

See **United States Court of Appeals for the Third Circuit, C.A. Misc. Record No. 06-8037, In the Matter of Eleanor Chen, (2007)**. It follows then that Respondent should have been

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[11]The Disciplinary Proceedings against Chen were initiated when the merits panel in **Agusalim v. Gonzales, 181 Fed. Appx. 144 (3rd Cir. 2006)** referred the matter of Chen's conduct to the Disciplinary Committee.

alerted to probable deficiencies with her filings to the BIA.[12]

Finally, it is difficult to comprehend the Respondent's testimony that she spent five to eight hours preparing and drafting the briefs for appeal. These briefs are not lengthy, nor do they provide any appreciable legal analysis with the facts. Rather, many are merely three to four pages in length with template legal arguments. I must reject that they are the product of five to eight hours of an attorney's time.

Accordingly, the orders of the Court are herein attached.

November 8, 2007
Date

John F. Gossart, Jr.
United States Immigration Judge
Baltimore, Maryland

[12]This Court rejects the Respondent's argument by inference that the BIA, Immigration Judges, or government attorneys should have notified her or had some duty to notify here of these deficiencies. Moreover, the Pennsylvania **Rules of Professional Conduct** note that the Rules of Professional Conduct are rules of reason.

At **Rule 1.1**, Competence:

> – "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation."

And at **Rule 1.3**, Diligence:

> – "A lawyer shall act with reasonable diligence and promptness in representing a client."

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF	:	**IN ATTORNEY DISCIPLINE PROCEEDINGS**
CHEN, Eleanor	:	**Case #D2005-204**
RESPONDENT	:	

BEFORE: John F. Gossart, Jr.
United States Immigration Judge

CHARGE: **8 C.F.R. § 1003.102(j)**, engaged in frivolous behavior in a proceeding before an Immigration Court, the Board of Immigration Appeals or any administrative appellate body under Title II of the INA.

APPLICATIONS: Disciplinary sanctions of nine months, suspension of practice before the Board and Immigration Courts, **8 C.F.R. § 1003.101(a)(3)**

APPEARANCES

ON BEHALF OF RESPONDENT:

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ON BEHALF OF EOIR OFFICE OF GENERAL COUNSEL:

Jennifer J. Barnes, Esq.
Bar Counsel
Barbara J. Leen, Esq.
Associate General Counsel

ORDER

It is this 8th day of November 2007, by the United States Immigration Court, sitting at Baltimore, Maryland,

ORDERED:

I. that Respondent be suspended from the practice of law before the Board of Immigration Appeals, Immigration Courts and the Department of Homeland Security for a period of sixty (60) days; and

II that Respondent be reinstated after successful completion of the suspension pursuant to **8 C.F.R. 1001.1(f)**.

11-8-07
Date

John F. Gossart, Jr.
United States Immigration Judge
Baltimore, Maryland