

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
LOS ANGELES, CALIFORNIA

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In the Matter of:

Case No: D2007-337

NWOSU, Anthony

Respondent.

IN DISCIPLINARY PROCEEDINGS

ON BEHALF OF RESPONDENT:
Pro Se
1814 Franklin Street, Suite 1020
Oakland, California 94612

ON BEHALF OF THE GOVERNMENT:
Scott Anderson
Bar Counsel
Office of the General Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

Eileen M. Connolly
Appellate Counsel
U.S. Immigration and Customs Enforcement
Appellate and Protection Law Division
Department of Homeland Security
5113 Leesburg Pike, Suite 200
Falls Church, Virginia 22041

ORDER OF THE IMMIGRATION JUDGE

ORDER: It is hereby ordered that:

1. The ground(s) _____ set forth in the Notice of Intent to Discipline have not been established by clear, convincing, and unequivocal evidence and are, hereby, dismissed.
2. The ground(s) **8C.F.R. § 1003.102(e)(1)** set forth in the Notice of Intent to Discipline have been established by clear, convincing, and unequivocal evidence. Any remaining ground(s) set forth in the Notice of Intent to Discipline have not been established by clear, convincing, and unequivocal evidence and are, hereby, dismissed.

The following disciplinary sanction shall be imposed:

- Practitioner shall be permanently expelled from practice before:
- The Board of Immigration Appeals and the Immigration Courts
 - United States Citizenship and Immigration Services
 - Both

Practitioner shall be suspended from practice before:

The Board of Immigration Appeals and the Immigration Courts

United States Citizenship and Immigration Services

Both

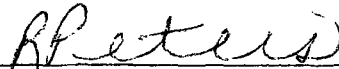
For 18 months effective January 18, 2008

Practitioner shall be publically/private censored

Other appropriate disciplinary sanction

See Final Order of Discipline attached.

Date: May 21, 2008



Rose Peters

United States Immigration Judge

APPEAL: WAIVED/RESERVED

APPEAL DUE BY:

Attached Order and Decision of the Adjudication Official

EOIR 45

CERTIFICATE OF SERVICE

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

TO: PRACTITIONER PRACTITIONER'S ATT/REP DHS/EOIR

DATE: 5/27/08 BY: COURT STAFF J. S. A. [Signature]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
LOS ANGELES, CA 90015

In re: Anthony Nwosu
In Practitioner Disciplinary Proceedings

D2007-337

On Behalf of Practitioner:
Pro Se
1814 Franklin Street, Suite 1020
Oakland, CA 94612

On Behalf of General Counsel:
Scott C. Anderson, Bar Counsel
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

DECISION OF IMMIGRATION JUDGE

Procedural History

Attorney Anthony Nwosu was admitted to the New York Bar in 2002. (See, NY Supreme Court Memorandum and Order dated November 15, 2007). He was admitted to practice before the 9th Circuit Court of Appeals ("9th Circuit"), on March 10, 2004. On July 17, 2007, Mr. Nwosu was suspended from practice before the 9th Circuit for 18 months for "conduct unbecoming a member of the court's bar." The court denied Mr. Nwosu's motion to reconsider its order on August 21, 2007.

On November 15, 2007, the Supreme Court of New York, Appellate Division, issued an order in which Mr. Nwosu was censured. The Supreme Court further held that Mr. Nwosu was unable to establish any of the available defenses to reciprocal discipline.

On January 4, 2008, the Office of General Counsel for the Executive Office for Immigration Review ("Bar Counsel") filed with the Board of Immigration Appeals ("Board"), a Notice of Intent to Discipline with attachments consisting of: a certified copy of the 9th Circuit Appellate Commissioner's Report and Recommendation filed on March 16, 2006; a certified copy of the 9th Circuit Order imposing an 18 month suspension on Mr. Nwosu; a certified copy of the 9th Circuit Order denying Mr. Nwosu's motion for reconsideration; and the Preliminary Inquiry Report. (Exhibit 1). On that same date, Bar Counsel petitioned the Board to immediately suspend Mr. Nwosu from practice before the Board and the Immigration Courts pursuant to 8 CFR §1003.103(a)(1).(Exhibit 2).

On January 9, 2008, the Department of Homeland Security ("DHS") also petitioned the Board to similarly suspend Mr. Nwosu from practicing before that agency.(Exhibit 3). In addition, DHS petitioned the Board to impose the same restrictions on respondent's authority to practice before DHS that the Board imposes on respondent's authority to practice before the Board and the

Immigration Courts.(Exhibit 4). On January 10, 2008, Bar Counsel filed a Notice of Service with the Board reflecting that Mr. Nwosu had been served with the Notice of Intent to Discipline.(Exhibit 5). On January 18, 2008, the Board entered an order immediately suspending Mr. Nwosu from practice before the Board, Immigration Courts and the DHS pending final disposition of this proceeding.

On February 1, 2008, Mr. Nwosu filed an answer, and exhibits, to the proposed discipline as provided for in 8 CFR §1003.105(c). On February 5, 2008, he filed a request for a hearing before the court. (Exhibit 6). A pre-hearing conference was held on April 10, 2008 and both parties agreed that this is a reciprocal discipline case but differ on the discipline to be imposed. Bar Counsel seeks identical reciprocal discipline, i.e. 18 months suspension beginning on the date the Board issued its immediate suspension order of January 18, 2008. Mr. Nwosu requests that he be reinstated to practice before the Board, Immigration Courts and DHS immediately. Both parties agreed to hold a hearing on this matter on April 23, 2008. Mr. Nwosu was present in court and Bar Counsel was present via televideo.

Evidence

1. 9th Circuit Disciplinary Proceedings

Bar Counsel presented the order of discipline imposed by the 9th Circuit as well as the Report and Recommendation prepared by the Appellate Commissioner (“AC Report”), who conducted the disciplinary hearings. During that hearing, respondent was present and questioned the court clerk who was a witness against him. The Appellate Commissioner report cites several reasons for disciplining respondent. First, Mr. Nwosu signed a petition for review and brief in *Limon v. Gonzales*, in which he failed to provide his correct address in violation of 9th Circuit rules. The Appellate Commissioner found that Mr. Nwosu’s error caused delay, burdened and inconvenienced the court and had the potential to harm his client. (AC Report at 6)

Second, the Appellate Commissioner found that Mr. Nwosu had provided false or misleading information to the court on three occasions. The first time, October 28, 2004, when Mr. Nwosu told the court clerk that he was not aware that oral argument had been scheduled and that he was not counsel of record. The second misrepresentation, January 31, 2005, when Mr. Nwosu stated to the court that he had not ended his representation of petitioner in *Limon*. The third misrepresentation was during the course of the disciplinary proceedings when Mr. Nwosu denied telling the court clerk that he was not counsel of record in *Limon* and stated that he had not ended his representation of the petitioner in *Limon*. (AC Report at 10-11). The Appellate Commissioner concluded that respondent’s false statements deceived and inconvenienced the court and constitute misconduct. In addition, Mr. Nwosu committed misconduct by abandoning his client which had the potential for serious injury to the petitioner in *Limon*. (AC Report at 11-12).

Third, the Appellate Commissioner found other misconduct because Mr. Nwosu filed defective

briefs in *Limon* and 5 other cases and because he filed petitions for review before he was admitted to the court's bar. As a result, the Appellate Commissioner recommended that Mr. Nwosu be suspended from practicing law before the 9th Circuit Court of Appeals for 5 years. The Court did not impose the recommended sanction and instead imposed an 18 month suspension. Mr. Nwosu's motion to reconsider was denied by the Court.

2. Other Evidence Presented by Bar Counsel

In addition to the evidence of disciplinary proceedings against Mr. Nwosu before the 9th Circuit and New York State Bar, (Exhibits 1, and 7), Bar Counsel presented documents from David Ndudim's 9th Circuit disciplinary proceedings, printouts from websites relating to Mr. Nwosu and "Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court" Form EOIR-28, filed in two cases by Mr. Nwosu subsequent to his suspension in the 9th Circuit. (Exhibit 7). The first EOIR-28 was filed on August 21, 2007, with the San Francisco Immigration Court. It reflects that Mr. Nwosu checked the box on the front of the form indicating "I am not subject to any order of any court...suspending me...in the practice of law..." On the reverse side of the form, he wrote, "Subject to 9 Circuit Suspension." (Exhibit 7, tab 14). The second EOIR-28 was filed on September 28, 2007, and leaves the question regarding whether he is subject to suspension unanswered with no remarks on the reverse. (Exhibit 7, tab 15). Bar Counsel questioned Mr. Nwosu during the hearing regarding their proffered evidence.

3. Mr. Nwosu's Evidence

A. Documentary Evidence

Mr. Nwosu offered documents from his 9th Circuit disciplinary proceedings, transcripts from the disciplinary proceedings of his co-counsel in *Limon*, and documents from his NY State Bar disciplinary proceedings. (Exhibit 6). In addition, he submitted a brief arguing that he was denied due process by the 9th Circuit because he did not learn of alleged misrepresentations made in co-counsel's disciplinary proceedings until after the fact and that he should have been allowed a new hearing (Exhibit 6). These were the same arguments presented to the 9th Circuit in his motion to reconsider. (Exhibit 6, tab 6). At the hearing, Mr. Nwosu offered evidence that he is the registered owner of one of the two websites advertising his services. (Exhibit 8).

B. Testimony

Mr. Nwosu presented his own testimony at his hearing before this court on April 23, 2008. He testified that he was denied due process by the 9th Circuit because he was not properly informed of the perjury charge based upon co-counsel's testimony, and that he did not find out these new facts until after he was ordered suspended from practice. He stated that he has appeared in over 2,000 *pro bono* or low fee cases from 2002 to 2004. He states that his mistake in *Limon* was allowing his co-counsel to handle most of the case. New York is the only state in which he is admitted to the bar and his practice is limited to immigration law. He admits that he received

notice of the discipline charges against him in the 9th Circuit, including perjury, by way of the Order Show Cause issued to him. Prior to his suspension, Mr. Nwosu attended classes and received tutoring on his weaknesses. He erroneously assumed that like in England, he could waive himself into the 9th Circuit.

Although he admits that he had the opportunity to call witnesses, Mr. Nwosu did not call any witnesses at the 9th Circuit hearing because he thought it was a simple matter. He also admits that he cross-examined the 9th Circuit court clerk, whom he describes as inconsistent. He reiterated that he did not end his representation in the *Limon* case, contrary to the Appellate Commissioner's findings. It is his opinion that the 9th Circuit did not consider his motion to reconsider. Mr. Nwosu admits that he did not inform EOIR Office of General Counsel of his 9th Circuit suspension in July 2007 and furthermore that he continued to practice before the Immigration Court after his suspension. He did not learn of his EOIR suspension until Judge Webber in San Francisco handed him a copy of the BIA order.

Mr. Nwosu claims that he has not held himself out to the public as an immigration lawyer since his suspension. He recognizes the web pages presented by Bar Counsel (Exhibits 7, Tabs 12 and 13), but explains that Tab 12 is not his website, but is instead owned by people in India who were trying to market it to him, but he brought that to an end when he was suspended. Mr. Nwosu admits that he has a website registered to him (Exhibit 7, Tab 13), because it is a way for people to contact him. He has referred prospective clients to other attorneys while on suspension. Even if he were to take down the website, it would not disappear because of links to other websites that he does not control. Mr. Nwosu admits that his current website does not state that he is currently suspended from practicing immigration law before the 9th Circuit, BIA, Immigration Courts or DHS.

Regarding the EOIR-28 forms signed and filed with an Immigration Court after his 9th Circuit suspension, (Exhibit 7, tabs 14 and 15), Mr. Nwosu testified that these were mistakes on his part and that he prepared them in a hurry. He recognizes that he failed to check the appropriate box on the form that he was subject to suspension, but notes that he did reflect his suspension on the back of the EOIR-28 (Exhibit 7, tab 14).

Applicable Law

Mr. Nwosu is currently on an 18 month suspension imposed by the 9th Circuit Court of Appeals. The BIA has also suspended him pending imposition of a final administrative decision. 8 CFR §1003.103(a)(2). Mr. Nwosu was placed in summary discipline proceedings (i.e. reciprocal discipline) because of the 9th Circuit's order of suspension which creates a rebuttable presumption of professional misconduct. 8 CFR §1003.103(b)(2). A practitioner may rebut the presumption by demonstrating by clear, unequivocal, and convincing evidence that: the underlying proceedings lacked due process; that there was an infirmity of proof of the attorney's misconduct; or that the imposition of discipline would result in grave injustice. *Id.*

The adjudicating official must consider the entire record, including any testimony and evidence presented at the disciplinary hearing . 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, that official shall rule that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted, modified or otherwise amended. If suspension is ordered, the time period shall be specified. 8 CFR §1003.106(b).

Findings

The court finds that Mr. Nwosu failed to demonstrate by clear and convincing evidence that the underlying discipline proceedings in the 9th Circuit lacked due process, that there was an infirmity of proof of his misconduct there or that the imposition of discipline would result in grave injustice. Despite Mr. Nwosu's arguments to the contrary, the record reflects that he was notified of the charges against him, and had a full and fair hearing, which included the opportunity to question witnesses and present evidence in his behalf. The Appellate Commissioner who presided over the hearing outlined the evidence and reasons for finding professional misconduct by Mr. Nwosu. Although the Appellate Commissioner recommended a much longer suspension, the 9th Circuit decided to only impose 18 months. Mr. Nwosu argued in this hearing, as he did in his unsuccessful motion to reconsider before the 9th Circuit, that due process required a second hearing because of newly discovered evidence. The record reflects and the court finds that Mr. Nwosu's case was fully considered and comported with due process.

Mr. Nwosu argued during his hearing that further suspension would result in grave injustice because he is suffering financial strain. He is paying rent for offices that are not being used so as not to ruin his credit. He is married with three children, he has five adopted children, his mother lives with him and he cannot afford to pay for his father's medications. However Mr. Nwosu also said that it was not about the money but he wanted to help people, that immigration law is his passion. While on suspension Mr. Nwosu has been supporting himself with earnings from his car dealership in Fremont and an import/export company he owns. Although the court understands that respondent is suffering some financial strain, he has failed to show that it rises to the level of grave injustice. Accordingly, the court finds that respondent has failed to rebut the presumption of professional misconduct and reciprocal discipline is therefore appropriate.

Bar Counsel argues that identical reciprocal discipline is the norm and should be imposed in this case. The court finds that identical reciprocal discipline should be imposed in this case. In his favor, Mr. Nwosu has presented the fact that the New York Bar only censured him and did not impose identical reciprocal discipline. He testified that he has contributed to the immigrant community by appearing in over 2,000 cases, *pro bono*, between 2002-2004. The cases he accepted before the 9th Circuit were either *pro bono* or for a low fee. For example, in the *Limon* case he only charged \$2,000.

These favorable factors were considered by the 9th Circuit who nevertheless imposed an 18 month suspension. In addition, the record reflects that Mr. Nwosu failed to properly answer the question regarding his 9th Circuit suspension on the form the EOIR-28 in two cases before the

Immigration Court. Writing it in the comments on the back of one of the EOIR-28 forms does not relieve him of the obligation to answer the specific question on the front of the form. Mr. Nwosu further testified that he never notified the Office of the General Counsel of EOIR of his 9th Circuit suspension, as required in 8 CFR §1003.103(c). Mr. Nwosu does not practice law in New York. He exclusively practices immigration law and his office is located in California. As argued by Bar Counsel, New York has less interest in imposing identical reciprocal discipline in this case since he does not practice there. Accordingly, the court finds it appropriate to impose identical reciprocal discipline in this case.

Order: The court orders that the disciplinary sanctions set forth in the Notice of Intent to Discipline be adopted. Mr. Nwosu is ordered suspended before the Board of Immigration Appeals, the Immigration Court, and DHS for 18 months effective as of January 18, 2008.

May 21, 2008



Rose Peters
Immigration Judge/Adjudicating Official

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