

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF IMMIGRATION JUDGE
5107 LEESBURG PIKE, SUITE 1800
FALLS CHURCH, VA 22041

File No: D2005-298

In the Matter of)
)
Michael A. WALKER) IN DISCIPLINARY PROCEEDINGS
)
Respondent)

ON BEHALF OF THE RESPONDENT:

Michael A. Walker
C/O M. Cameron
Walker, Grant & Leighton
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Kwazulu Natal, Durban
Republic of South Africa

ON BEHALF OF DHS:

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DECISION OF THE IMMIGRATION JUDGE

I. Introduction

The Office of General Counsel for the Executive Office of Immigration Review ("EOIR") has instituted disciplinary proceedings against Michael A. Walker ("Respondent"). Bar Counsel for EOIR charged that the Respondent is subject to discipline under 8 C.F.R. § 1003.102(e)(1) of the Rules of Professional Conduct for

reciprocal discipline by suspending the Respondent for six months from practicing law before EOIR. The Respondent challenges all charges against him.

II. Facts

The Respondent was admitted to the Colorado bar in 1994. *Notice to Appear at 2.* On December 27, 2005, the Supreme Court of Colorado entered an order suspending the Respondent from the practice of law in Colorado for six months effective January 27, 2006. The suspension was based on the Hearing Board's finding that the Respondent engaged in unprofessional conduct. The Board found that the Respondent "failed to provide competent representation to his client, failed to reasonably inform his client about the status of his legal matter, failed to communicate with his client, failed to comply with reasonable requests for information from his client, charged an unreasonable fee, billed for work he did not complete, failed to return a file to his client and engaged in conduct prejudicial to the administration of justice." *Notice to Appear at 2.*

The Respondent was disciplined based on his conduct in two cases representing Roberto Ulloa and Toure Daouda. In the *Ulloa* matter, the Hearing board found that there was clear and convincing evidence that the Respondent violated:

1. Colo. RPC 1.3 by failing to pursue a legal matter diligently as evidenced by his inaction.
2. Colo. RPC. 1.1 by failing to provide competent representation when he failed to use his legal skills to "timely analyze the factual and legal elements of his client's legal problems and failed to use methods and procedures to meet the standards of a competent practitioner."
3. Colo. RPC 1.5(a) by charging an unreasonable fee
4. Colo. RPC 8.4(c) by billing for work he did not complete

5. Colo. RPC 1.16(d) by failing to return the file to the client/ the client's authorized agent. *Opinion and Order Imposing Sanctions* at 10.

In the *Daouda* Matter, the Hearing Board found that there was clear and convincing evidence that the Respondent violated:

1. Colo. RPC 1.3 by failing to diligently represent his client as evidenced by his lack of preparation for Daouda's cancellation of removal hearing, specifically his failure to assist in gathering necessary documents
2. Colo. RPC 1.1 by failing to provide competent representation
3. Colo. RPC 1.4 by failing to communicate with his client to the extent necessary to permit Daouda to make informed decisions regarding his representation.
4. Colo. RPC 8.4(d) by engaging in "conduct prejudicial to the administration of justice." *Opinion and Order Imposing Sanctions* at 11.

The Office of the General Counsel for EOIR instituted disciplinary proceedings against the Respondent on April 3, 2006. *Notice of Intent to Discipline* at 1. The Notice of Intent to Discipline ("NID") recommended that the Board of Immigration Appeals ("BIA") impose a "reciprocal discipline" by suspending the Respondent for six months. The Respondent requested a written opinion based on the evidence without further hearings. *Respondent's Motion to issue Decision Based on Evidence* at 1.

III. Synopsis of Law

There is a presumption of misconduct in attorney discipline cases before EOIR as a previous body has already found evidence of misconduct. 8 CFR §1003 (a)(2). However, this presumption may be rebutted by the attorney if he can demonstrate by "clear, unequivocal and convincing" evidence that the underlying disciplinary proceedings:

1. were “so lacking in notice or opportunity to be heard” that a deprivation of due process occurred;
2. there was such a lack of proof establishing the practitioner’s misconduct that there is a clear conviction that the adjudicating official could not, in a manner consistent with his or her duty, accept that the practitioner has committed said misconduct; or
3. the imposition of discipline would result in a grave injustice. 8 CFR §§1003 (a)(2)(i)-(iii). *See also Selling v. Radford*, 243 U.S. 46, 51 (1917).

If the Respondent can prove that any of these conditions existed, the Judge may decline to impose the reciprocal discipline. Before rendering a decision, the Immigration Judge (“IJ”) shall consider: the complaint, the preliminary inquiry report, the NID, the answer and any supporting documents, and any other evidence presented at the hearing. 8 C.F.R. § 1003.106(a)(iv).

IV. Findings

A. The Respondent Was Not Denied Due Process

The Respondent argues that the Hearing Board failed to consider evidence relevant to the complaint. *Respondent’s Legal Brief* at 3. Specifically, he alleges that the Hearing Board failed to consider several affirmative defenses including client failure to cooperate with counsel, client failure to honor attorney client agreement, client failure to make full disclosure and client failure to provide requested documents. *Id.* at 3-4.

The Respondent was afforded an opportunity to participate in the underlying disciplinary proceedings. In fact, he represented himself. A review of the record shows that he examined witnesses and submitted several documents in his defense. Most importantly, an examination of the Hearing Board’s decision reveals that it examined all relevant documents, testimony and law in making its decision.

B. There Was Sufficient Proof to Establish the Respondent's Misconduct

1. The Ulloa Matter

The Hearing Board reached its conclusion after carefully reviewing the documents and testimony. In the *Ulloa* matter, the Hearing Board found that the Respondent did not adequately represent his client, failed to pursue a legal matter diligently, did not use his legal skills to analyze the factual and legal elements of his client's case, charged an unreasonable fee, charged for work that he did not complete and refused to return a client's file. *Opinion and Order Imposing Sanctions* at 10-11.

The Hearing Board offered proof for each of these findings. It cited the Respondent's inaction as proof of his lack of diligence. It noted that the Respondent worked on the *Ulloa* case for more than a year but could not provide more than a few documents to demonstrate he had done significant work on the case. *Opinion and Order Imposing Sanctions* at 4. The documents he managed to provide did not demonstrate that he had analyzed the facts. *Id.* Moreover, the record was devoid of any evidence that the Respondent had contacted Ulloa's previous attorneys or personally met with Ulloa to discuss legal strategy. *Id.* The Respondent also filed a motion for Ulloa in the incorrect court and subsequently failed to re-file in the correct one when he had the opportunity. *Id.*

2. The Daouda Matter

There is also sufficient evidence to support a finding of misconduct in the *Daouda* matter. The Hearing Board found that the Respondent did not adequately

represent his client, failed to provide competent representation, failed to consult with his client in a manner that would permit informed decision making and engaged in “conduct prejudicial to the administration of justice.” *Opinion and Order Imposing Sanctions* at 11. The Board provided sufficient evidence to support its findings.

It is clear from the record that Daouda misrepresented several key facts that were relevant to his case. *Respondent's Legal Brief* at 18. For example, he claimed he had never been convicted of a crime but has an FBI record. However, this did not absolve the Respondent of his duty to provide competent and effective representation. The Respondent did not adequately prepare for Daouda's cancellation of removal hearing. When Daouda was denied cancellation of removal and his appeals were exhausted, he filed a motion to reopen based on ineffective assistance of counsel. While the BIA denied this motion, it stated that both Daouda and the Respondent were “lax” in their failure to present required documentation. *Respondent's Legal Brief* at 8.

The charge of “conduct prejudicial to the administration of justice,” stemmed from the Respondent attempted to convince Daouda to sign a letter absolving him of any wrongdoing in the case after Daouda filed a complaint with the Office of Attorney Regulation Counsel (“OARC”). *Opinion and Order Imposing Sanctions* at 9. The Respondent did not inform Daouda of the conflict of interest between them regarding the filed complaint. The Respondent did not deny these charges, but instead asserted that he merely “met” with Daouda. *Respondent's Legal Brief* at 19.

C. The Suspension Will Not Result in a Grave Injustice

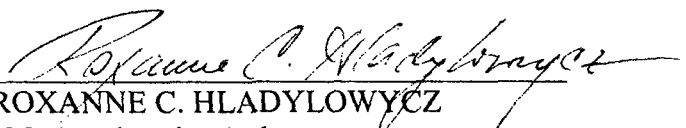
While the Respondent's inability to practice law in Colorado and before the Immigration Courts will be inconvenient for his clients, the Respondent has not presented any evidence detailing especially compelling hardships resulting from this suspension. In fact, there is no evidence that the Respondent's clients would suffer harm at all. This is especially true as the Respondent has accepted a position overseas and is not currently practicing before the State or Federal bar.

V. Order

The Hearing Board based its decision to discipline the Respondent based on careful consideration of the documents and testimony in this case. Imposing reciprocal discipline is appropriate as the Respondent was not denied due process, there was sufficient proof to support to Hearing Board's findings and the suspension will not result in a grave injustice. Therefore, the Respondent should be suspended from practice before the Immigration Court for 6 months.

Date:

APR 11 2007


ROXANNE C. HLADYLOWYCZ
U.S. Immigration Judge