In re Chinyere Alex Ogoke
Attorney-Respondent

Commission No. 2022PR00073

Synopsis of Hearing Board Report and Recommendation
(December 2023)

The Hearing Panel found that Respondent violated Rules of Professional Conduct 3.3(a)(1), 5.5(a), and 8.4(c) when he knowingly made false statements to a tribunal, engaged in dishonest conduct, and engaged in the unauthorized practice of law by meeting with two clients while he was suspended by the Illinois Supreme Court and filing appearance documents in eleven immigration matters while he was suspended by the Board of Immigration Appeals. In addition, he violated Rule of Professional Conduct 8.1(b) when he knowingly failed to respond to the Administrator's request for information and did not comply with a subpoena to appear for a sworn statement. Based on the serious nature of the misconduct and the factors in aggravation, including Respondent's prior discipline, the Hearing Panel recommended that Respondent be disbarred.

BEFORE THE HEARING BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION

In the Matter of:

CHINYERE ALEX OGOKE,

Attorney-Respondent,

No. 6284533.

Commission No. 2022PR00073

REPORT AND RECOMMENDATION OF THE HEARING BOARD

SUMMARY OF THE REPORT

The Hearing Panel found that Respondent knowingly made false statements to a tribunal, engaged in dishonest conduct, and engaged in the unauthorized practice of law by meeting with two clients while he was suspended by the Illinois Supreme Court and filing appearance documents in eleven immigration matters while he was suspended by the Board of Immigration Appeals. In addition, he knowingly failed to respond to the Administrator's request for information and did not comply with a subpoena to appear for a sworn statement. Based on the nature of the misconduct and the factors in aggravation, including Respondent's prior discipline, the Hearing Panel recommended that Respondent be disbarred.

INTRODUCTION

The hearing in this matter was held on July 24, 2023, before a Panel of the Hearing Board consisting of Carol A. Hogan, Chair, Melisa Quinones, and Michael J. Friduss. Rory P. Quinn represented the Administrator. Respondent was present and was represented by Adrian M. Vuckovich.

PLEADINGS AND PREHEARING PROCEEDINGS

On September 7, 2022, the Administrator filed a twelve-count Complaint against Respondent, alleging that he knowingly made false statements of fact or law to a tribunal or failed to correct a false statement of material fact or law (Counts I-XI); practiced law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction (Counts I-XI); engaged in conduct involving dishonesty, fraud, deceit or misrepresentation (Counts I-XI); and knowingly failed to respond to a lawful demand for information from a disciplinary authority (Count XII), in violation of Rules 3.3(a)(1), 5.5(a), 8.1(b), and 8.4(c)of the Illinois Rules of Professional Conduct (2010). Respondent filed his Answer on January 6, 2023, in which he admitted many of the factual allegations but denied intentionally making false statements and engaging in any misconduct.

On April 4, 2023, Respondent sought to stay these proceedings due to a federal criminal indictment that was returned against him in 2021 and remained pending. The indictment charged him with wire fraud in connection with a scheme involving a purported real estate investment business. The Administrator objected to a stay on the grounds that there was no nexus between the criminal charges and the disciplinary charges. The Chair denied the motion to stay. Respondent then filed a motion for supervisory order, asking the Supreme Court to stay the proceedings. The Supreme Court denied the motion for supervisory order on May 23, 2023.

When Respondent appeared for his deposition on May 8, 2023, he declined to answer any substantive questions, citing his fifth amendment privilege against self-incrimination. The Chair subsequently granted the Administrator's motion to compel Respondent to answer questions pertaining to the allegations in this matter, finding that his claims of fifth amendment protection were not well taken. Respondent appeared for a second deposition and again declined to answer any substantive questions.

The Administrator then moved for sanctions, and the Chair found that Respondent's refusal to answer deposition questions was a direct violation of her prior order. As a sanction for Respondent's lack of compliance, the Chair granted the Administrator's request to bar Respondent from testifying at the hearing or presenting evidence that was inconsistent with his refusal to answer questions about the allegations of the Complaint. The Chair denied the Administrator's request to strike Respondent's Answer and to deem the allegations of the Complaint admitted.

Six days before the disciplinary hearing, Respondent filed a motion in which he indicated that he changed his mind about asserting his fifth amendment privilege and was willing to answer substantive deposition questions. He requested that the Chair vacate the order barring him from testifying, order a third deposition to proceed, and reschedule the hearing date. The Chair denied Respondent's motion. At the hearing, Respondent renewed his motion to permit him to testify. The Chair denied that motion. (Tr. 99).

EVIDENCE

The Administrator presented testimony from Toinette Mitchell. The Administrator's Exhibits 1-7 were admitted into evidence, over Respondent's objections. Respondent did not call any witnesses or submit any exhibits, having been barred from testifying and presenting evidence regarding the substance of the Complaint.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Administrator bears the burden of proving the charges of misconduct by clear and convincing evidence. In re Thomas, 2012 IL 113035, ¶ 56. Clear and convincing evidence constitutes a high level of certainty, which is greater than a preponderance of the evidence but less stringent than proof beyond a reasonable doubt. People v. Williams, 143 Ill. 2d 477, 577 N.E.2d 762 (1991). It is the responsibility of the Hearing Board to assess witness credibility, resolve

conflicting testimony, make factual findings, and determine whether the Administrator met the burden of proof. In re Winthrop, 219 Ill. 2d 526, 542-43, 848 N.E.2d 961 (2006). As the trier of fact, we may consider circumstantial evidence and draw reasonable inferences from the evidence presented. In re Green, 07 SH 109, M.R. 23617 (March 16, 2010).1

I. In Counts I-XI, the Administrator charged Respondent with knowingly making false statements to a tribunal, engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, and engaging in the unauthorized practice of law.

A. Summary

By meeting with two clients and filing appearance documents in eleven immigration matters while under suspension, Respondent engaged in the unauthorized practice of law. By indicating in those documents that he was not subject to any order suspending or otherwise restricting him in the practice of law, Respondent knowingly made false statements to a tribunal and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

B. Admitted Allegations and Evidence Considered

Respondent has been licensed to practice in Illinois since 2005. Effective October 21, 2019, the Illinois Supreme Court suspended him from the practice of law for 21 months, with the suspension stayed after 9 months by 12 months of probation. In re Ogoke, 2014PR00180, M.R. 029836 (Sept. 16, 2019). Thus, Respondent's Illinois license was suspended from October 21, 2019, through July 21, 2020. He was on disciplinary probation from July 21, 2020, through July 21, 2021[2]. (Ans. at par. 2).

On April 6, 2020, Respondent sent a letter to the Clerk of the Court for the Executive Office of Immigration Review, acknowledging his suspension until July 21, 2020, and his inability to represent clients until his suspension period ended. (Adm. Ex. 7).

Respondent admits that, on or before July 13, 2020, he met with two individuals, William U. Denson and Benedette Afiachukwu Egwuenu, and obtained their signatures on

Department of Homeland Security (DHS) Notice of Entry of Appearance Form G-28 (Form G-28). (Ans. at pars. 13, 22).

On August 20, 2020, the United States Department of Justice Board of Immigration Appeals (BIA) granted a petition for Respondent's immediate interim suspension from practice before the BIA, the Immigration Courts, and the DHS. (Ans. at par. 2). The Chief Clerk for the BIA directed a letter, dated August 20, 2020, to Respondent at his law firm address, providing a copy of the suspension decision and order. (Adm. Ex. 1).

On September 29, 2020, the BIA ordered that Respondent be suspended from the practice of law before the BIA, the Immigration Courts, and the DHS for nine months, effective August 20, 2020. The Chief Clerk directed a letter, dated September 29, 2020, to Respondent at his law firm address, providing a copy of the suspension decision and order. (Adm. Ex. 4).

Between September 4, 2020, and March 25, 2021, Respondent filed a Form G-28 for each of the following eleven individuals with the United States Citizenship and Immigration Services (USCIS), which is an agency within the DHS. In each form, Respondent indicated that he was entering his appearance on behalf of the following persons in their respective matters before USCIS:

Date of Filing	**Name of Applicant**
September 4, 2020	Aidara Ali Yerima
September 14, 2020	William U. Denson
September 14, 2020	Benedette Afiachukwu Egwuenu
October 1, 2020	Oreofe Paul Olabisi
October 1, 2020	Flourish Momoreoluwa Olabisi
December 12, 2020	Olalere Atanda Olabisi
December 16, 2020	Kafayat Asepeju Yarrow
February 21, 2021	Yemisi Sanusi-Robinson Jr.

Date of Filing	Name of Applicant
March 1, 2021	Tetevi Gbikpi-Benissan
March 17, 2021	Mofuluwasho Sarah Lindsey
March 25, 2021	Oluwagbenga David Adeyemi

(Ans. at pars. 5, 14, 23, 32, 40, 48, 56, 64, 72, 80, 88).

The Form G-28 is a four-page document in which a person seeking an immigration benefit or requesting relief from USCIS identifies the attorney or accredited representative who will appear on his or her behalf, indicates consent to the representation, and authorizes USCIS to disclose information to and serve notices upon the attorney or accredited representative. The appearing attorney or accredited representative must provide his or her contact information as well as information about his or her eligibility to represent the applicant/petitioner. On each of the forms at issue, Respondent marked the box indicating he was an attorney and provided his law firm name, address, and telephone number. (Adm. Ex. 2).

Respondent also marked on each form the box indicating he was "an attorney eligible to practice law in, and a member in good standing of, the bar of the highest courts of the following states, possessions, territories, commonwealths, or the District of Columbia." The form directed Respondent to identify where he was licensed and his bar number. On the Yerima, Denson, and Gbikpi-Benissan forms, Respondent identified Illinois as his licensing authority and provided his correct Illinois attorney number. On the Egwuenu and Olalere Olabisi forms, he provided his correct attorney number but did not identify a licensing authority. On the Adeyemi form, he identified Illinois as his licensing authority but did not provide his attorney number. On the Yarrow, Sanusi-Robinson Jr., and Lindsey forms, both the licensing authority and attorney number were left blank. On the Oreofe Olabisi and Flourish Olabisi forms, Illinois was identified as the

licensing authority, but the attorney number listed was 6300447. (Adm. Ex. 2). Respondent's attorney number is 6284533.

Respondent admits that, on each Form G-28, he marked the box indicating that he was not subject to any order suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law. (Ans. at pars. 7, 16, 26, 34, 42, 50, 58, 66, 74, 82, 90; Adm. Ex. 2). The form directed Respondent to provide an explanation if he was subject to any such orders. Respondent did not do so. (Adm. Ex. 2).

In addition to the admissions noted above, Respondent further stated in his Answer, with respect to the Yerima Form G-28, that he "made an error and at all times intended to check the second box, indicating his suspension." (Ans. at par. 7).

Each Form G-28 also indicated the nature of the applicant's matter, i.e., "Form 601," "I 485 Adjustment of Status," "I-130," "I-765," and included attestations signed by the applicants. By their signatures, they indicated that they "requested the representation of and consented to being represented by" Respondent and consented to USCIS disclosing records pertaining to them to Respondent. Most of the individuals further requested, by marking the appropriate box, that USCIS send original notices pertaining to their matters and any secure identity documents to Respondent at his business address. (Adm. Ex. 2).

Respondent signed each Form G-28, declaring under penalty of perjury that the information he provided was true and correct. (Adm. Ex. 2).

On August 11, 2021, the BIA disbarred Respondent from practicing before the BIA, the Immigration Courts, and the DHS. The BIA determined that Respondent engaged in the unauthorized practice of law and exhibited "continued intentional and knowing disregard" for its prior order of suspension by filing at least eleven Forms G-28 while suspended and indicating that

he was not subject to any order suspending him or restricting him in the practice of law. Despite being served with a Notice of Intent to Discipline by email and certified mail, Respondent did not file a response to the allegations against him. In re Ogoke, File No. D2021-0093 (August 11, 2021). (Adm. Ex. 5).

Toinette Mitchell, USCIS disciplinary counsel, testified that the BIA orders suspending and disbarring Respondent are records maintained by USCIS disciplinary counsel as part of their usual practices. (Tr. 37, 47). The orders are posted on the Executive Office of Immigration Review (EOIR) website and are available to the public. (Tr. 41, 48). She testified that Administrator's Exhibit 2 constitutes true and accurate copies of the Forms G-28 at issue. (Tr. 45). They were shared with the Administrator as part of USCIS disciplinary counsel's standard procedures. (Tr. 52). Mitchell was not involved in Respondent's disciplinary proceedings before the BIA. (Tr. 59).

C. Analysis and Conclusions

Counts I-XI of the Complaint charge Respondent with violating Rules of Professional Conduct 3.3(a)1), 5.5, and 8.4(c), based on his filing of notice of appearance forms in eleven immigration matters while under suspension. Due to the similarity of the facts and the identical charges in those counts, we address them collectively.

Knowingly Making False Statements to a Tribunal

A lawyer shall not knowingly make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer. Ill. R. Prof'l Conduct (2010) R. 3.3(a)(1). A "tribunal" includes a court, an arbitrator in a binding arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. Ill. R. Prof'l Conduct (2010) R. 1.0(m). To prove a violation of Rule 3.3(a)(1), the Administrator must establish not only that the statements at issue were false, but that

Respondent made the false statements knowingly. "Knowingly" denotes actual knowledge of the fact in question. A person's knowledge may be inferred from the circumstances. Ill. R. Prof'l Conduct (2010) R. 1.1(f).

There is no question that Respondent's representations that he was under no order suspending him or restricting his practice when he filed the Forms G-28 were false. From August 20, 2020, onward, Respondent was suspended from practicing before the BIA, the Immigration Courts, and the DHS. We find the Administrator proved by clear and convincing evidence that Respondent knowingly misrepresented his eligibility to practice before USCIS by affirmatively indicating that he was not under any suspension or restriction on his practice, when he was in fact suspended by the BIA. We reject Respondent's argument that the Administrator did not prove that he had notice of the BIA's suspension orders. The most significant evidence on this point is Respondent's own answer to paragraph 7 of the Complaint, pertaining to the Form G-28 he filed for Aidara Ali Yerima on September 4, 2020. Respondent not only admitted marking the box indicating that he was not under any restrictions on his practice, he further stated that he "made an error and at all times intended to check the second box, indicating his suspension." Respondent's admission that he intended to indicate his suspension is also an admission that he was aware of the suspension, as he could not have formed that intent unless he knew he had been suspended. Consequently, we find that Respondent was aware of the suspension that was in effect on September 4, 2020, and remained in effect throughout the time period at issue.

The Administrator also presented circumstantial evidence that supports our finding that Respondent had knowledge of the suspension orders. The Chief Clerk for the Board of Immigration Appeals directed two letters to Respondent, on August 20, 2020, and September 29, 2020, each of which enclosed the suspension decisions and orders entered on those respective

dates. Both letters were addressed to Respondent's law firm address, which is the same address Respondent provided on every Form G-28. Based on common sense and experience, and absent evidence to the contrary, we presume that the Chief Clerk complied with her duty to notify Respondent of the suspension decisions and orders and have no reason to believe that the Chief Clerk's correspondence did not reach Respondent. Moreover, the suspension orders were posted on the EOIR website and readily available to Respondent.

We further find that the Administrator proved by clear and convincing evidence that Respondent's false statements were made to a tribunal. USCIS is an administrative agency and, therefore, falls under the definition of tribunal set forth in Rule 1.0(f). Respondent contends that the Administrator failed to prove that he made false statements to a tribunal because "As we all know – or those of us who file appearances – the appearances go to the clerk. They don't go to a tribunal. And the clerk is not the tribunal." Respondent's contention that the forms went only to "the clerk" is based solely on Respondent's counsel's own presumption and not on any evidence in the record. We do not consider unsubstantiated remarks by Respondent's counsel as evidence. Respondent's own Answer also contradicts his counsel's argument. Respondent admitted that he filed the forms at issue "before the USCIS," not before "the clerk." Last, even if we accepted Respondent's contention that he filed the forms with the USCIS clerk, we reject his distinction between filing a document with a tribunal's clerk and filing it with the tribunal itself. A tribunal's clerk, as the recordkeeper for a tribunal, is part of the tribunal and provides the mechanism by which filings are submitted to the tribunal. Filing a document with a tribunal's clerk constitutes filing it with the tribunal.

Accordingly, for all of the foregoing reasons, we find that the Administrator proved by clear and convincing evidence that Respondent knowingly made false statements to a tribunal in

violation of Rule 3.3(a)(1), as charged in Counts I-XI of the Complaint.

Engaging in Conduct Involving Dishonesty, Fraud, Deceit or Misrepresentation

It is misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Ill. R. Prof'l Conduct (2010) R. 8.4(c). Dishonesty includes any conduct, statement or omission that is calculated to deceive, including the suppression of truth and the suggestion of what is false. In re Gerard, 132 Ill. 2d 507, 528, 548 N.E.2d 1051 (1989). To prove dishonesty, there must be an act or circumstance that shows purposeful conduct or reckless indifference to the truth, rather than a mistake. In re Gauza, 08 CH 98, M.R. 26225 (Nov. 20, 2013) (Hearing Bd. at 42).

Our finding that Respondent knowingly made false statements to USCIS in eleven separate instances necessarily leads us to find that he engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation. Not only did Respondent falsely state eleven times that there were no restrictions on his practice, he also declared under penalty of perjury eleven times that his representations were true and correct when he knew they were not.

We find that Respondent's false statements were not inadvertent errors. If it were true, as Respondent indicated in his Answer, that he made an error and intended to indicate his suspension, then he should have followed the form instructions and provided an explanation of his suspension. The fact that he did not do so on any of the eleven forms indicates to us that he intentionally omitted information about his suspension. It also defies common sense that Respondent would have made the same mistake eleven times. Furthermore, eight out of the eleven forms had omissions or irregularities with respect to information about where Respondent is licensed and his attorney number. Particularly troubling are the inclusions of an attorney number that is not Respondent's attorney number and Respondent's accompanying declarations that said attorney number was true and correct information. In noting these omissions and irregularities, we do not

find that they constituted misconduct, as there were no charges in the Complaint pertaining to them. We do, however, consider them as circumstantial evidence that supports our finding that Respondent acted intentionally to attempt to conceal information related to his disciplinary history. Accordingly, we find that the Administrator established by clear and convincing evidence that Respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c), as charged in Counts I-XI.

Rule 5.5(a) Engaging in the Unauthorized Practice of Law

Rule 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction. Ill. R. Prof'l Conduct (2010) R. 5.5(a). The Court has stated that Rule 5.5(a) creates a sort of "strict liability" for attorneys. It does not require that the unauthorized practice be intentional or knowing and "makes no exception for the attorney who is uninformed or confused about his status." Thomas, 2012 IL 113035, ¶ 77.

At all times relevant to the Rule 5.5(a) charges at issue, it is undisputed that Respondent was suspended from practicing before the BIA, the Immigration Courts, and the DHS. USCIS is an agency within the DHS. See dhs.gov/operational-and-support-components. It is also undisputed that Respondent filed the Form G-28 notices of appearance with USCIS while he was suspended from practicing before that tribunal. It is also undisputed that, while his Illinois license was suspended, he met with William U. Denson and Benedette Afiachukwu Egwuenu and obtained their consent to his representation of them in their USCIS matters. While Respondent admits to this conduct, he contends it did not constitute the practice of law. We disagree.

The Illinois Supreme Court has held that a "[d]efinition of the term 'practice of law' defies mechanistic formulation." In re Discipio, 163 Ill. 2d 515, 523, 645 N.E.2d 906 (1994). The practice of law encompasses services rendered out of court and includes any activity that involves giving advice or rendering any sort of service that requires the use of any degree of legal

knowledge or skill. In re Howard, 188 Ill. 2d 423, 438, 721 N.E.2d 1126 (1999). We examine the character of the conduct and must consider all of the surrounding circumstances. Discipio, 163 Ill. 2d. at 523-25.

Respondent asserts that his execution and filing of Forms G-28 did not constitute the practice of law because non-lawyer accredited representatives are permitted to file the forms and represent individuals before USCIS. While it is accurate that accredited representatives may represent persons before USCIS, it is also well-established that the fact that a function can be performed by a non-lawyer, such as a paralegal or law clerk, does not mean that it can be legitimately performed by a suspended attorney during the period of discipline. See In re Kuta, 86 Ill. 2d 154, 427 N.E.2d 136 (1981). In Kuta, the Court noted that the public is not aware of the differences between work performed by a paralegal and an attorney, and for the public to see a disciplined attorney performing legal work will lessen the public's regard for the disciplinary process. Id. at 161-62. We find that the Court's reasoning applies here. The public is not aware of the differences between work performed by an attorney and an accredited representative in an immigration matter, so allowing Respondent to perform such work while suspended would have the same effect of lessening the public's regard for the disciplinary process. Moreover, under Respondent's interpretation, he could have continued to represent clients before USCIS despite his suspension because accredited representatives were allowed to do so. That interpretation is clearly contrary to the BIA's suspension orders and would make a mockery of the BIA's authority to regulate attorneys in immigration matters.

Moreover, the relevant circumstances clearly establish that Respondent did hold himself out and act as an attorney eligible to practice before USCIS despite the fact he was suspended from practicing before that tribunal. In each Form G-28, Respondent identified himself as an attorney,

provided his law firm name and address, provided his attorney number in some instances, and in all instances indicated that he was under no restrictions on his practice. He obtained clients' signatures indicating consent to his representation of them. He set forth information specific to each client, including the nature of the matter for which Respondent was entering his appearance and whether the client chose for USCIS to send notices about his or her matter to Respondent rather than to the client. Respondent filed the forms with USCIS on behalf of each client. Respondent's conduct went beyond performing ministerial services. The character of his conduct was that of an attorney representing clients, and he represented as much to USCIS. For these reasons, we find that Respondent engaged in the unauthorized practice of law before USCIS, in violation of the BIA's order suspending him from practice before that tribunal.

Our finding on this issue is supported by the BIA's August 11, 2021, decision disbarring Respondent. In that decision, the BIA determined that Respondent engaged in the unauthorized practice of law by conduct that included the same conduct before us, namely, the filing of "Notices of Entry of Appearance (Form G-28) in at least 11 cases before USCIS." While the BIA's decision is not binding on us and we make our own findings as to whether the Administrator proved that Respondent violated the Rules of Professional Conduct, we may consider the BIA findings and judgment along with all of the other evidence. See In re Owens, 144 Ill. 2d 372, 378-79 (1991). Our consideration of Respondent's conduct leads us to reach the same conclusion as the BIA. See also In re Dounnisei Kuo Gbalazeh, 231 So. 3d 21 (La. 2017) (finding that a suspended attorney's filing of two Forms G-28 constituted the unauthorized practice of law).

Respondent also engaged in the unauthorized practice of law while his Illinois license was suspended. He admittedly met with two clients, William U. Denson and Benedette Afiachukwu Egwuenu, during this suspension and obtained their consent to his representation in their

immigration matters. It is well-established that a suspended attorney is prohibited from meeting with clients and discussing legal matters. In In re Howard, 188 Ill. 2d 423, 438, 721 N.E.2d 1126 (1999), the Court noted that meeting with clients, obtaining information about their matters, advising them accordingly, and accepting fee advances was "the type of conduct unequivocally precluded" while an attorney was suspended. Here, there was no evidence presented pertaining to whether Respondent accepted fees during his suspension, but that does not preclude us from finding that he engaged in the unauthorized practice of law. The evidence that he met with clients regarding legal matters and obtained their consent to representations he was not authorized to undertake is sufficient to establish a violation of Rule 5.5(a).

Accordingly, we find as to Counts I-XI that Respondent engaged in the unauthorized practice of law in violation of Rule 5.5(a).

II. In Count XII, the Administrator charged Respondent with failing to respond to a lawful demand for information from a disciplinary authority.

A. Summary

By failing to respond to the Administrator's request for information and failing to comply with a subpoena to appear for a sworn statement, Respondent violated Rule 8.1(b).

B. Admitted Allegations

Respondent admitted the following allegations in his Answer. On August 13, 2021, Counsel for the Administrator sent him an email requesting a written response pertaining to his filing of the Forms G-28 at issue in this matter. (Ans. at par. 96). On November 12, 2021, Respondent requested an additional 14 days to respond. Counsel for the Administrator agreed to the extension and asked Respondent to provide dates for his sworn statement. (Ans. at par. 97). At no time did Respondent submit a written response to Counsel for the Administrator's August 13 email or provide dates for his sworn statement. (Ans. at par. 98).

On June 16, 2022, the Administrator personally served Respondent with a subpoena to appear on July 5, 2022, for a sworn statement via video conference. Respondent admits he was served with the subpoena and did not appear. He further states that he "informed a representative of the ARDC that he was asserting the protection of the 5th Amendment to the United States Constitution." (Ans. at par. 99).

C. Analysis and Conclusion

Rule 8.1(b) provides that a lawyer in a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority, except that the Rule does not require disclosure of information otherwise protected by these Rules or by law. Ill. R. Prof'l Conduct (2010) R. 8.1(b).

It is undisputed that Respondent was aware of the Administrator's requests for information and chose not to respond. We reject his argument that he was not required to respond due to his assertion of his fifth amendment privilege against self-incrimination. A lawyer is entitled to invoke his fifth amendment privilege against self-incrimination in a disciplinary proceeding if the Administrator seeks evidence that could be used against the lawyer in a criminal proceeding. The privilege does not apply to evidence that bears only on one's right to continue to practice law. See Zuckerman v. Greason, 231 N.E.2d 718 (N.Y. 1967). If there are no reasonable grounds to fear self-incrimination, the privilege should not exist. In re Zisook, 88 Ill. 2d 321, 332-333, 430 N.E.2d 1037 (1981). When the privilege does exist, an attorney in a disciplinary proceeding "must appear, as commanded, and claim the privilege as to each incriminating question." Zisook, 88 Ill. 2d at 333.

Pursuant to Zisook, Respondent's invocation of the privilege did not permit him to refuse to appear for his sworn statement or to ignore the Administrator's requests for a written response in their investigation. Moreover, there is no basis before us for Respondent's invocation of the

privilege. Nothing in the record establishes that Respondent had reasonable grounds to fear self-incrimination by providing information about this disciplinary matter. Based on our determination that Respondent had no valid reason to ignore the Administrator's request for information and subpoena, we find that the charge of violating Rule 8.1(b) is proven by clear and convincing evidence.

EVIDENCE IN AGGRAVATION

Prior Discipline

Effective October 21, 2019, Respondent was suspended for 21 months, with the suspension stayed after 9 months by 12 months of probation. In re Ogoke, 2014PR00180, M.R. 029836 (Sept. 16, 2019). This discipline arose from Respondent's misuse of almost $400,000 in settlement and escrow funds in four separate matters. The Hearing Board found that the Administrator did not prove that Respondent's conduct was dishonest. The Review Board reversed two of the Hearing Board's findings of no dishonesty and found dishonesty as to one count of conversion of settlement funds as well as Respondent's communications with one client. The Court entered the sanction recommended by the Hearing Board without addressing the specific findings.

RECOMMENDATION

A. Summary

Based on Respondent's pattern of dishonest behavior and practicing law while suspended, and the significant factors in aggravation, the Hearing Panel recommends that Respondent be disbarred.

B. Analysis

In determining our sanction recommendation, we bear in mind that the purpose of discipline is not to punish the attorney but to protect the public, maintain the integrity of the

profession, and protect the administration of justice from reproach. In re Edmonds, 2014 IL 117696, ¶ 90. In making our recommendation, we consider these purposes as well as the nature of the proven misconduct and any aggravating and mitigating factors. In re Gorecki, 208 Ill. 2d 350, 360-61, 802 N.E.2d 1194 (2003). We seek consistency in recommending similar sanctions for similar misconduct but must base our recommendation on each case's unique circumstances. Edmonds, 2014 IL 117696, ¶ 90.

Respondent's disregard for the suspensions imposed by the Court and the BIA is serious misconduct that demonstrated a lack of respect for those tribunals and jeopardized the interests of the clients for whom he filed appearances. The fact that Respondent repeatedly made false statements about his authorization to practice, under penalty of perjury, makes this misconduct even more egregious.

There is also significant aggravation. Respondent's misconduct was not an isolated instance, but a lengthy pattern of misrepresentation and disregard for the authority of the Illinois Supreme Court and the BIA. It is especially troubling that the misconduct occurred during Respondent's Illinois suspension and disciplinary probation. An attorney who has been disciplined is expected to have "a heightened awareness of the necessity to conform strictly to all of the requirements of the Rules of Professional Conduct." In re Storment, 203 Ill. 2d 378, 401, 786 N.E.2d 963 (2002). It is clear that Respondent's prior discipline did not have the desired effect of preventing further violations of the ethical rules. Consequently, even though Respondent's prior disciplinary proceeding involved different types of misconduct than the misconduct before us, we find it to be a substantial factor in aggravation.

Respondent's failure to fully cooperate in this proceeding further aggravates his misconduct. Respondent did file an answer, participate in pre-hearing conferences, and appear at

hearing. However, in addition to failing to cooperate with the Administrator's investigation, he also refused to comply with the Chair's order directing him to answer deposition questions, which resulted in him being barred from testifying and presenting evidence on the allegations of the Complaint. "An attorney has an obligation to fully cooperate during the course of a disciplinary proceeding, and the failure to do so is an aggravating factor to be considered in recommending a sanction." In re Gray, 2016PR00045, M.R. 029543 (Nov. 15, 2018) (Hearing Bd. at 27-30). While Respondent strenuously asserts that he was entitled to decline to cooperate with discovery based on his fifth amendment privilege against self-incrimination, the applicable case law says otherwise when, as here, the disciplinary charges did not create reasonable grounds to fear self-incrimination. See Zisook, 88 Ill. 2d 321, 332-33, 430 N.E.2d 1037. Respondent's last minute change of heart and request for a third chance to answer deposition questions was untimely and cannot reasonably be viewed as an effort to cooperate.

There is no mitigation for us to consider. As a consequence of Respondent's own decisions, the Panel had no opportunity to ascertain whether Respondent accepts responsibility or feels remorse for his conduct.

The Administrator asks us to recommend that Respondent be disbarred and cites in support In re Sorkin, 95 CH 752, M.R. 14191 (Jan. 29, 1998), and In re James, 2104PR00072, M.R. 27383 (Sept. 21, 2015). The attorney in Sorkin continued to represent a client after the Court suspended him for one year. He was found to have acted dishonestly by misrepresenting to a judge that he believed he had leave to finish pending cases after he was suspended and by filing with the Court an inaccurate client list and an affidavit that falsely stated he had no clients as of the date of his suspension. The Review Board concluded that disbarment was appropriate because Sorkin's

conduct included not only the unauthorized practice of law, but dishonesty to a tribunal. Sorkin, 95 CH 752 (Review Bd. at 12).

The attorney in James was disbarred after he advised two clients regarding their immigration matters and prepared and filed immigration applications and related documents for those clients while he was suspended. He was found to have acted dishonestly by failing to disclose his suspension to the clients, altering one client's application to conceal the fact that he prepared it while he was suspended, and failing to refund fees he accepted for work he was not authorized to complete. James, 2104PR00072. James differed from Respondent in that he did not participate at all in his disciplinary proceeding. We do not consider this to be a significant distinction, though, in light of Respondent's failure to fully cooperate in this matter.

Respondent cites In re Magallanez, 06 CH 57, M.R. 21557 (May 18, 2007), in support of his contention that a lesser sanction is warranted. Magallanez was censured, on consent, for holding himself out as an attorney for approximately five years after he had been removed from the master roll for failure to register and pay his registration fees. Magallanez's unauthorized practice of law consisted of maintaining a sign outside of his place of employment that read "Alberto Magallanez, III, Attorney at Law," sending letters on behalf of his father in which he indicated he was an attorney, representing his father in litigation related to his father's purchase of a house, and filing a pleading on behalf of a friend related to a building code violation. Unlike Respondent, Magallanez cooperated with the Administrator, expressed remorse, was not charged with dishonesty or making a false statement to a tribunal, and had no prior discipline.

Based on the presence of extensive dishonesty in connection with the unauthorized practice of law, we find this case more similar to Sorkin and James than to Magallanez. Magallanez is

distinguishable due to the absence of the dishonest conduct and significant aggravation that is present in this case.

In light of the proven serious misconduct, the failure of prior discipline to prevent Respondent from committing further ethical violations, and his lack of cooperation in this proceeding, we have no reason to believe that Respondent is willing or able to abide by the Rules of Professional Conduct in the future. It is our determination that his continued practice of law would present a danger to clients and the integrity of the legal profession. We do not make a recommendation of disbarment lightly, but believe it is necessary in this case to protect the public and the profession. Accordingly, we recommend that Chinyere Alex Ogoke be disbarred.

Respectfully submitted,

Carol A. Hogan
Melisa Quinones
Michael J. Friduss

CERTIFICATION

I, Michelle M. Thome, Clerk of the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois and keeper of the records, hereby certifies that the foregoing is a true copy of the Report and Recommendation of the Hearing Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on December 19, 2023.

/s/ Michelle M. Thome
Michelle M. Thome, Clerk of the
Attorney Registration and Disciplinary
Commission of the Supreme Court of Illinois

[1] At the close of the Administrator's case, Respondent made a motion for directed finding, which was denied.

[2] Paragraph 1 of the Complaint contains typographical errors with respect to the dates of Respondent's suspension and probation. We have corrected the dates for purposes of our recitation.