

In re Chinyere Alex Ogoke
Respondent-Appellant

Commission No. 2022PR00073

Synopsis of Review Board Report and Recommendation
(September 2024)

The Administrator brought a twelve-count disciplinary Complaint against Respondent, charging him with making false statements to a tribunal; engaging in the unauthorized practice of law; failing to respond to the Administrator's request for information; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, 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). The Complaint alleged that (1) Respondent made false statements to the Immigration Service in Appearance Forms that he filed in eleven immigration cases; (2) he engaged in dishonest conduct by making those false statements; (3) he engaged in the unauthorized practice of law by representing those immigration clients in front of the Immigration Service at a time when he was prohibited from doing so; and (4) he failed to provide requested information to the Administrator.

The Hearing Board found that Respondent had committed the charged misconduct and recommended that Respondent be disbarred.

Respondent filed an appeal in which he argued that the Chair erred in making certain rulings; that Respondent's due process rights were violated; that the Hearing Board erred in finding Respondent engaged in the charged misconduct; and that he should not be disbarred. The Administrator asked the Review Board to affirm the Hearing Board's rulings and factual findings, and to recommend that Respondent be disbarred.

The Review Board recommended that this case be remanded for a new hearing so that Respondent can testify and present evidence, in order to develop a more complete record. Given the recommendation for a remand, the Review Board did not address the other issues raised on appeal.

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

FILED

September 03, 2024

ARDC CLERK

In the Matter of:

CHINYERE ALEX OGOKE,

Respondent-Appellant,

No. 6284533.

Commission No. 2022PR00073

REPORT AND RECOMMENDATION OF THE REVIEW BOARD

SUMMARY

The Administrator brought a twelve-count disciplinary Complaint against Respondent, charging him with making false statements to a tribunal; engaging in the unauthorized practice of law; failing to respond to the Administrator's request for information; and engaging in conduct involving dishonesty, fraud, deceit or misrepresentation, 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). The Complaint alleged that (1) Respondent made false statements to the Immigration Service in Appearance Forms that he filed in eleven immigration cases; (2) he engaged in dishonest conduct by making those false statements; (3) he engaged in the unauthorized practice of law by representing those immigration clients in front of the Immigration Service at a time when he was prohibited from doing so; and (4) he failed to provide requested information to the Administrator.

The disciplinary hearing was held on July 24, 2023. Respondent was represented by counsel at the hearing. The Administrator called one witness, and presented seven exhibits, which were admitted. Based on a sanction imposed on Respondent by the Chairperson ("Chair") of the Hearing Board, Respondent was barred from testifying at the disciplinary hearing about the

allegations in the Complaint or presenting evidence concerning those allegations. Respondent presented no evidence at the hearing.

The Hearing Board found that Respondent committed the charged misconduct and recommended that Respondent be disbarred.

Respondent filed an appeal in which he argues that the Chair erred in making certain rulings; that Respondent's due process rights were violated; that the Hearing Board erred in finding Respondent engaged in the charged misconduct; and that he should not be disbarred. The Administrator asks the Review Board to affirm the Hearing Board's rulings and factual findings, and to recommend that Respondent be disbarred.

For the reasons that follow, we recommend that this case be remanded for a new hearing so that Respondent can testify and present evidence, in order to develop a more complete record. Given our recommendation for a remand, we do not address the other issues raised on appeal.

BACKGROUND

The facts of this case and the procedural background are set out in detail in the Hearing Board's report. (*See* Hearing Bd. Report at 2-17.) We provide a shorter summary.

Respondent

Respondent's Practice: Respondent was admitted to practice law in Illinois in 2005. His law practice involved handling immigration matters, at least in part. His practice, known as the Cardinal Legal Group, PC, was located in Chicago. Respondent was placed on an interim suspension in February 2024, based on the present case.

Prior Discipline (2019): Respondent was previously disciplined in 2019 for failing to safeguard funds in three separate matters, as a result of poor recordkeeping. In that case, the Hearing Board found that Respondent lacked knowledge of his ethical duties; he used his client trust account as a personal account; he did not keep trust account records; and he did not take any

steps to remedy the problems. He was suspended for twenty-one months, stayed after nine months, by twelve months of probation, subject to conditions. *See In re Ogoke*, 2014PR00180 (Hearing Bd., Feb. 8, 2018), *sanction recommendation increased*, (Review Bd., March 11, 2019), *petitions for leave to file exceptions allowed, and Hearing Board's recommendation adopted*, M.R. 029836 (Oct. 21, 2019).

Immigration Service Suspension: Based on Respondent's 2019 disciplinary case, the U.S. Board of Immigration Appeals ("the BIA") suspended Respondent for nine months from practicing law before the Department of Homeland Security ("DHS"), and its agencies, which included the U.S. Customs and Immigration Service ("the Immigration Service"). The BIA also suspended Respondent from practicing law before the Immigration Courts and the BIA.

Respondent's Misconduct

Briefly summarized, Respondent filed Appearance Forms (DHS Form G-28) with the Immigration Service, on behalf of clients in eleven immigration matters. In each of those eleven Forms, Respondent represented that he was not subject to any orders suspending or restricting his practice of law. He filed those Forms while he was subject to the BIA's order prohibiting him from practicing law before the Immigration Service, and while he was subject to the Illinois Supreme Court's order placing him on probation in his prior 2019 disciplinary case.

Respondent also met with two of those immigration clients concerning their immigration cases, and had them sign appearance forms, while his license was suspended as a result of his prior 2019 disciplinary case.

Respondent also failed to respond to the Administrator's request for information concerning the immigration matters described above. In 2021, he failed to provide information that was requested; and in 2022, he failed to appear for a scheduled sworn statement, (a "deposition"), even though he had been served with a subpoena directing him to appear.

HEARING BOARD'S FINDINGS AND RECOMMENDATION

Misconduct Findings

The Hearing Board found that Respondent committed the charged misconduct, as set forth in the Complaint. (*See* Hearing Bd. Report at 8-17.) The Hearing Board made the following findings:

Rule 3.3(a)(1): Respondent violated Rule 3.3(a)(1), which states, “A lawyer shall not knowingly ... make a false statement of fact or law to a tribunal.” The Hearing Board found that Respondent knowingly made false statements to the Immigration Service, which is a tribunal, by falsely representing in eleven immigration Appearance Forms that he was not subject to any order suspending or otherwise restricting him in the practice of law, in violation of Rule 3.3(a)(1). (Hearing Bd. Report at 8-11.)

Rule 8.4(c): Respondent violated Rule 8.4(c), which states, “It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.” The Hearing Board found that, by making false statements to the Immigration Service, Respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of Rule 8.4(c). (Hearing Bd. Report at 11-12.)

Rule 5.5(a): Respondent violated Rule 5.5(a), which states, “A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction.” The Hearing Board found that Respondent engaged in the unauthorized practice of law in violation of Rule 5.5(a) by filing Appearance Forms in eleven immigration matters while he was suspended from practicing law before the Immigration Service, based on the BIA order; and by meeting with two of those immigration clients and having them sign Appearance Forms that he prepared, while his license was suspended as a result of his prior discipline. (Hearing Bd. Report at 12-15.)

Rule 8.1(b): Respondent violated Rule 8.1(b), which provides that “a lawyer ... in connection with a disciplinary matter, shall not knowingly fail to respond to a lawful demand for information from ... [a] disciplinary authority.” The Hearing Board found that Respondent’s failure to respond to the Administrator’s request for information in August 2021, and his failure to appear for a deposition in July 2022, constituted a violation of Rule 8.1(b) (Hearing Bd. Report at 15-17); Respondent had no valid reason to ignore the Administrator’s request for information, or to ignore the subpoena directing him to appear for a deposition. The Hearing Board stated, “Respondent’s invocation of the [Fifth Amendment] 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.” (*Id.* at 16.)

Findings Regarding Aggravation and Mitigation

In aggravation, the Hearing Board found that Respondent engaged in a pattern of misconduct; he disregarded the authority of the Illinois Supreme Court and the BIA; the misconduct occurred during Respondent’s Illinois suspension and probation; Respondent’s prior discipline failed to deter him; and he failed to cooperate with the disciplinary proceedings. (*Id.* at 17-19.)

In terms of mitigation, the Hearing Board stated, “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.” (*Id.* at 19.)

Recommendation

The Hearing Board recommended that Respondent be disbarred. (*Id.* at 17.)

Pre-Hearing Proceedings

The procedural history, which is relevant to the issue of whether a remand is appropriate, includes the following:

- In September 2022, the Complaint was filed. The first pre-hearing conference was held in December 2022.
- In April 2023, Respondent filed a motion to stay the proceedings, arguing that he needed to assert the Fifth Amendment because of a federal criminal case pending against him. The Administrator objected to the motion, arguing that there was no overlap between the criminal charges, (which related to a real estate fraud), and the disciplinary charges, (which related to immigration matters), and therefore Respondent did not have a legitimate basis to assert the Fifth Amendment. The Chair denied Respondent’s motion, finding that there was no justifiable basis to assert the Fifth Amendment.
- In May 2023, Respondent appeared at a deposition scheduled by the Administrator, but refused to answer questions at the deposition, based on his assertion of the Fifth Amendment. The Administrator filed a motion to compel Respondent to answer questions concerning the charged misconduct.
- In May 2023, Respondent also filed a motion with the Illinois Supreme Court, requesting that the Court stay the proceedings, and reiterating his arguments that he needed to assert the Fifth Amendment because of the federal criminal case pending against him. The Court denied his motion.
- On June 1, 2023, the Chair granted the Administrator’s motion to compel Respondent to answer questions concerning the charged conduct. The Chair issued an order (“the June 1st order”), stating, “Respondent is ordered to respond substantively and answer any deposition question posed to him that relates to the allegations of the Administrator’s Complaint in this matter. Respondent’s claims of fifth amendment protection from answering those questions is not well taken.” (Order, 6/1/23, Common Law Record (“C.”) 564.)
- On June 2, 2023, Respondent moved to reschedule the disciplinary hearing. That motion was granted, and the hearing date was stricken. A pre-hearing conference was scheduled for the end of June.
- On June 13, 2023, Respondent appeared at the second deposition, but refused to answer questions, based on his assertion of the Fifth

Amendment, thereby violating the June 1st order, which directed Respondent to testify.

- On June 23, 2023, the Chair issued an order sanctioning Respondent for violating the June 1st order. The order stated, “Respondent’s refusal to answer questions about the allegations of the Administrator’s Complaint was a direct violation of this Chair’s prior June 1, 2023, Order. As such, the appropriate sanction is that Respondent will be barred from presenting any testimonial evidence at the hearing, or any other type of evidence that is inconsistent with his refusal to answer questions about the allegations of the Administrator’s Complaint at his deposition.” (Order, 6/23/23, C.650.)
- On June 26, 2023, a pre-hearing conference was held, and the disciplinary hearing was scheduled for July 24, 2023.
- On July 18, 2023, Respondent filed a Motion requesting that the disciplinary hearing be reset in order to allow Respondent to testify at a third deposition, based on his voluntary waiver of the Fifth Amendment (“Motion”). The Motion also requested that the order imposing the sanction against Respondent be vacated. (*See* Respondent's Motion to Vacate Order, Order Appearance for Deposition and Reset Trial Date) (C.668-70.)
- The Chair denied the Motion, stating, “Respondent’s Motion is denied.” There was no explanation concerning the reason for denying the Motion. (Order, C.692.)
- The disciplinary hearing was held on July 24, 2023.

ANALYSIS

On appeal, Respondent challenges the denial of his Motion to reset the hearing date in order to allow him to testify at a deposition, and to vacate the sanction. Respondent argues that the case should be remanded to allow him to testify at a deposition, and present evidence at the disciplinary hearing. The Administrator argues that the Chair did not err in denying the Motion.

Procedural, discovery, and evidentiary rulings by the Hearing Board are reviewed for an abuse of discretion. *See In re Chiang*, 2007PR00067 (Review Bd., Jan. 30, 2009) at 10, *petition*

for leave to file exceptions denied, M.R. 23022 (June 8, 2009); *In re Carroll*, 2015PR00132 (Review Bd., Feb. 8, 2018) at 7, *petition for leave to file exceptions allowed*, M.R. 029285 (June 14, 2018); *In re Redell*, 2003PR00066 (Review Bd., Oct. 12, 2005) at 11, *case remanded*, (Jan. 13, 2006). An abuse of discretion occurs when no reasonable person would agree with the position taken by the Hearing Board. *See In re Franklin*, 2019PR00068 (Review Bd., Jan. 20, 2022) at 10, *petition for leave to file exceptions denied*, M.R. 031177 (May 19, 2022).

For the reasons set forth below, we recommend that this case be remanded for a new hearing so that Respondent can testify at a deposition and present evidence at the disciplinary hearing. We also recommend that the remand include a condition requiring Respondent to testify at a deposition.

We recognize that remanding a case is an extraordinary remedy, and we do not make this recommendation lightly. We are reluctant, however, to sanction Respondent based on the record before us, which we believe is insufficient to determine whether or not Respondent should be disbarred.

Respondent's Motion

As set forth above, in July 2023, Respondent filed a Motion requesting that the date of the hearing be reset so he could testify at a deposition, and requesting that the sanction be vacated. In his Motion, Respondent stated that he would voluntarily waive the Fifth Amendment and that he would testify at a deposition. That Motion was denied.

The Motion Should Have Been Granted: The Administrator had tried, unsuccessfully, to obtain Respondent's testimony during depositions in May and June 2023. Granting Respondent's Motion would have allowed the Administrator to obtain the deposition testimony that the Administrator had been trying to obtain.

Granting the motion would have also allowed Respondent to comply with the June 1st order, which was issued in order to compel Respondent to provide deposition testimony. The order directed Respondent to “answer any deposition question posed to him that relates to the allegations of the Administrator’s Complaint.” (Order, C.564.) According to Respondent’s Motion, he was willing to answer deposition questions, as required by the June 1st order.

Granting the Motion would have also allowed for a full hearing on the merits of the case. In his Answer to the Complaint, Respondent denied any wrongdoing. Respondent’s testimony, at a deposition and at the hearing, could have helped clarify the basis of his denials, and given him the opportunity to explain his conduct and present a defense.

Granting the Motion would have also helped to develop the record concerning mitigating and aggravating factors. The record as it stands provides very limited information from which to assess whether or not Respondent is willing and able to comply with the Rules of Professional Conduct; whether Respondent accepts responsibility; whether he understands the seriousness of the misconduct; and whether he is likely to engage in misconduct in the future.

Respondent was willing to testify at a deposition because of the sanction. Thus, the sanction had succeeded in causing Respondent to agree to comply with the discovery rules. If Respondent had been allowed to testify at a deposition, there would have been no further need for the sanction, except to punish Respondent. We note that “the proper purpose of sanctions for discovery violations is to coerce compliance with discovery rules and orders, not to punish a dilatory party.” *See In re Watts*, 2001PR00031 (Review Bd., Jan. 7, 2004) at 12-13, *case remanded* (Jan. 2004) (“Orders barring a respondent from introducing evidence are usually reserved for extreme cases of obstructionist behavior in the proceedings ... and properly so. Such orders significantly impede the respondent's ability to present a defense. Such an extreme sanction should be used very sparingly and only when clearly warranted by the circumstances.”) (citations omitted).

In this instance, Respondent's Motion should have been granted so that the Administrator could have obtained the deposition testimony he was seeking; Respondent could have complied with the June 1st order and satisfied his discovery obligations; and there could have been a full hearing on the merits.

A Short Continuance: We also believe that granting Respondent's Motion would not have caused a significant delay. There is nothing in the record indicating that a short continuance would have prejudiced the Administrator, witnesses, or others. The Administrator called only one witness, who appeared by video, so resetting the hearing would have had only a minimal impact in terms of rescheduling witnesses.

The case had been pending for only ten months at the time of the hearing, and there had not been any lengthy delays. The Complaint was filed in September 2022; the first pre-hearing conference was held in December 2022; and the hearing was scheduled for July 24, 2023. There had been only one continuance in the case, when the hearing was rescheduled from June 13 to July 24, 2023, which was a continuance of just six weeks. The case had moved forward on a steady pace, as a result of the commendable efforts of the Chair.

Based on the record, it appears that the deposition could have been completed quickly. When the Chair ordered Respondent to testify at the second deposition in June 2023, that deposition was scheduled and conducted within two weeks of the Chair's order. Additionally, the parties had already gone through two full depositions in May and June 2023, where the Administrator had asked Respondent questions about the allegations in the Complaint, so the parties would not have needed a significant amount of time to prepare for the deposition.

Rule 272: We recognize that Commission Rule 272 provides that a hearing shall not be continued at the request of a party except under extraordinary circumstances. We find that the circumstances here were extraordinary, in that Respondent was prepared to waive his Fifth

Amendment and testify, which would have provided the evidence that the Administrator was seeking, and would have resulted in compliance with the Chair's order to answer questions at a deposition.

Rule 272 also provides that a hearing shall not be continued except upon written motion supported by an affidavit. Although Respondent filed a written motion stating the grounds for the request, he did not file an affidavit. We do not believe that his failure to file an affidavit is significant enough to undermine our recommendation that the case be remanded. The Administrator did not raise the issue of Rule 272 on appeal, and the Chair did not cite Rule 272 as a basis for denying the Motion. We also note that the Chair granted Respondent's first motion to continue the hearing, filed in early June 2023, even though Respondent failed to file an affidavit supporting that motion.

An Offer of Proof: We also recognize that Respondent failed to make an offer of proof concerning his testimony. Nevertheless, given the circumstances of this case, we have reviewed the merits of his argument. *See In re O'Brien*, 2018PR00111 (Review Bd., June 7, 2022) at 7, *petition for leave to file exceptions denied*, M.R. 031366 (Sept. 21, 2022) ("Respondent admitted that she failed to make an offer of proof Accordingly, Respondent has forfeited this issue on appeal. Nevertheless, ... the Review Board reviewed the merits of her argument.").

We strongly urge future respondents to provide an offer of proof when testimony or other evidence is excluded in a disciplinary hearing, in order to avoid waiving or forfeiting any issues on appeal. *See [Abbinante v. O'Connell](#), 277 Ill. App. 3d 1046, 1050, 662 N.E.2d 126 (1996)* ("It is well recognized in Illinois that when evidence is excluded, the failure to make an adequate offer of proof in the trial court results in the waiver of the issue on appeal."); *Malanowski v. Jabamoni*, 332 Ill. App. 3d 8, 14, 772 N.E.2d 967 (1st Dist. 2002) ("The failure to make an offer of proof of excluded testimony waives that issue for purposes of review.").

A Remand: We do not condone or excuse Respondent’s violation of the June 1st order; his delay in deciding to waive the Fifth Amendment; his last minute filing of the Motion; his failure to file an affidavit with the Motion; and his failure to provide an offer of proof; nor do we approve of Respondent’s making baseless allegations of improper conduct by the Administrator’s counsel. Nevertheless, we are convinced that a remand is needed here to make a more complete record, particularly given the high stakes involved.

We note that Respondent has been placed on an interim suspension. Because of that, a remand does not present a risk to the public, since Respondent will not be able to practice law while the remand takes place. In recommending a remand, we have taken into consideration the fact that Respondent will not be practicing law because of the interim suspension.

Thus, based on the unique facts and circumstances of this case, we conclude that the denial of Respondent’s Motion was an error, and the case should be remanded in order to develop the record. We want to emphasize that, in our view, this case provides a very narrow precedent, limited to cases in which a respondent, who is facing disbarment and has a criminal case pending, is sanctioned for violating an order by refusing to testify based on the Fifth Amendment, and subsequently agrees to testify, but is then denied the opportunity to do so.

A Condition Requiring Respondent to Testify

The purpose of the recommended remand is to develop the record, which begins with Respondent’s testifying at a deposition. Our recommendation for a remand is contingent on Respondent’s waiving the Fifth Amendment and testifying at a deposition, as he has represented that he will do. Therefore, we recommend that the remand include a condition stating, “Respondent is ordered to testify at a deposition, and fully answer any question that relates to the allegations of the disciplinary Complaint. Failure to do so will constitute a violation of this condition.”

We trust that Respondent will testify. In Respondent's Motion, he unequivocally represented that he would waive the Fifth Amendment and testify at a deposition. He stated, "After consulting with his family and other advisors, Mr. Ogoke has determined to testify on his behalf in this proceeding and not assert the 5th Amendment." (Motion, C.669.) He also stated, "Respondent has brought this Motion ... [to allow] the deposition of Respondent to go forward at which he will not assert the 5th Amendment" *Id.* Additionally, he stated, "Respondent [has] decided to not assert the 5th Amendment at his deposition." (*Id.* at C.670.) On appeal, Respondent stated in his opening brief, "[T]he matter should be remanded for a new hearing, allowing Mr. Ogoke to testify and present a defense to the charges." (Resp. Brief at 40-41.)

We suggest that, on remand, Respondent's deposition be scheduled immediately, by agreement, to ensure that Respondent has the opportunity to testify, and that he does so. In our view, once a date for a deposition is set, Respondent should be required to adhere to that schedule, absent extraordinary circumstances.

A New Hearing

We also recommend that the parties be afforded a new hearing on remand, in order to allow both sides to make a full presentation of evidence, which may include presenting new witnesses and exhibits. In our view, the remand should not be limited to the evidence already presented, although that evidence may be included in the new hearing.

A new hearing will allow both parties to take steps to create a better record. Respondent will be able to testify, and present witnesses and other evidence. The Administrator will be able to present additional evidence and address certain issues raised on appeal, as needed. We believe that a new hearing, which allows both parties to make new choices, is needed in order to be fair to both sides, and to fully develop the record.

A Different Panel

We also recommend that the case be remanded to a different Panel of the Hearing Board. In our opinion, remanding the case to a different Panel is warranted given the circumstances. We recognize that the Hearing Board Chair in this case was faced with the difficult and challenging task of addressing numerous motions filed by Respondent, in a short period of time, including motions that came close to being frivolous, such as Respondent's motion to subpoena the members of the Inquiry Panel, and motions that were repetitive, such as Respondent's motions concerning the Fifth Amendment. We are aware of the time, effort, and skill required to address the motions filed in this case. We also note that the Chair presided over the disciplinary hearing in a very professional manner.

Given the difficult nature of the first proceeding, we believe that it would be appropriate to remand the case to a different Panel. To be clear, we do not suggest that the members of the Panel were biased in any way, or that they allowed any frustration that they may have experienced to influence their decisions, or that they would do so in the future. However, we believe the best course of action is for a different Panel to preside over the proceedings on remand, which will provide a fresh start to everyone in the case.

Other Issues Raised on Appeal

Given our recommendation for a remand, we will not address any of the other issues on appeal. Respondent raised at least a dozen issues on appeal, and we believe that a remand will resolve a substantial number of those issues. A more developed record will also make it easier to rule on the issues that remain unresolved.

For example, Respondent's arguments concerning the Fifth Amendment will be resolved by Respondent's voluntary waiver of the Fifth Amendment. Respondent's arguments about a lack of notice concerning the witness presented by the Administrator will be also resolved, since the

Administrator will have the opportunity to provide notice concerning witnesses, and Respondent will have the opportunity to depose witnesses.

Respondent's arguments concerning an inadequate foundation for the admission of records may also be resolved, since the Administrator will have an opportunity to provide a more complete foundation for the records, if needed. Respondent's arguments concerning whether he engaged in the charged misconduct may also be resolved. The Administrator will have an opportunity to present additional evidence to prove the charged misconduct, if necessary, including whether Respondent's actions constituted the unauthorized practice of law, and Respondent will have an opportunity to present a defense.

Additionally, Respondent's arguments concerning whether two internal memos prepared by the Administrator are privileged may be resolved, if the Chair decides to do an *in camera* review of those memos. The parties will also have an opportunity to provide more extensive briefing, if necessary, to address Respondent's arguments concerning whether the Administrator has the right to communicate with the Inquiry Panel on an *ex parte* basis. Other issues may also be resolved, or dropped, as a result of the remand.

Relevant Legal Authority

We have considered the cases discussed below, which were remanded to the Hearing Board. Based on those cases, we are convinced that a remand is the appropriate action here.

In *In re Redell*, 2003PR00066 (Review Bd., Oct. 12, 2005), *case remanded*, (Jan. 13, 2006), the Illinois Supreme Court remanded the case for a new hearing, before a different Hearing Board Panel, as recommended by the Review Board. The remand was based on the denial of a motion for a continuance. A week before the hearing, Redell's counsel filed a motion requesting a thirty-day extension. Redell's counsel stated that he was not ready for the hearing because he had not received the exhibits until that morning; he had not taken depositions; his other commitments

had delayed his hearing preparation; and the parties had been discussing discipline on consent. The Hearing Board denied Redell's motion for a continuance. The Review Board found that Redell's motion for a continuance was reasonable, and granting the motion would not have caused any prejudice to others. The Review Board concluded that the Hearing Board abused its discretion by denying the motion, and that Redell was not given a meaningful opportunity to defend against the charges and present mitigating evidence. The fact that the Administrator was seeking disbarment also added weight to the need for a full hearing. Because the Review Board recommended a remand, it did not address any other issues raised on appeal.

In *In re Watts*, 2001PR00031 (Review Bd., Jan. 7, 2004), *case remanded*, (Jan. 2004), the Court remanded the case for a new hearing, as recommended by the Review Board. The case was remanded to allow Watts to present additional evidence. The Hearing Board had limited Watts' testimony as a sanction for discovery violations, and had precluded Watts from presenting the testimony of a witness, as well as a document that Watts offered. The Review Board concluded that the Hearing Board's rulings significantly impeded Watts' ability to defend herself, and that Watts should be given an opportunity to present all relevant evidence in her defense and in mitigation. The Review Board also concluded that having a full hearing was particularly important because the Administrator was seeking disbarment. The Review Board did not address the Hearing Board's findings of misconduct or the sanction recommendation, because those issues would ultimately depend on the record that was developed on remand.

In *In re Serritella*, 2003PR00115 (Review Bd., Aug. 18, 2005), *case remanded*, (2005), the Court remanded the case for a hearing on Count III of the disciplinary Complaint, as recommended by the Review Board. The Hearing Board Chair had granted Respondent's motion for summary judgment on Count III. The order granting summary judgment provided no reasoning for the ruling. The Review Board concluded that the Hearing Board erred in granting summary

judgment on Count III because several issues of fact existed. The Review Board recommended that the case be remanded to the original Hearing Board Panel, and that the other issues on appeal be held in abeyance. The Court remanded the case for a hearing on Count III, and to re-evaluate the recommended sanction, if necessary.

In *In re Meyer*, 1995PR00948 (Review Bd., July 16, 1998), *approved and confirmed*, M.R. 15209 (Jan. 28, 1999), the Court remanded the case for a new hearing, as recommended by the Review Board. The remand was based on the Review Board's finding that the Hearing Board erred in admitting the deposition of a witness, who had refused to answer certain questions during the deposition. The Review Board found that Respondent had been deprived of the opportunity to fully cross examine that witness. The Review Board was particularly concerned because the Administrator was seeking disbarment. The Review Board stated that because it was recommending that the case be remanded, it did not need to address any other issues on appeal. The Review Board also indicated that it believed other issues raised on appeal could be resolved as a result of the remand. Although the Review Board recommended that the case be heard by a different Hearing Board Panel, the Court remanded the case to the original Panel.

In *In re Haith*, 2009PR00139 (Review Bd., Jan. 5, 2012), *case remanded*, M.R. 25209 (May 18, 2012), the Court remanded the case, as recommended by the Review Board, for a hearing concerning the appropriate sanction, including the presentation of mitigating and aggravating evidence. The remand was based on the fact that Haith did not have an opportunity to present evidence at the disciplinary hearing. Haith had failed to appear at the disciplinary hearing due to ill health, and he had failed to notify the Hearing Board that he was ill. His attorney had also failed to appear. The Hearing Board proceeded with the hearing, and found that Respondent engaged in the charged misconduct, and recommended a six-month suspension, until further order of the Court. The Review Board concluded that the Hearing Board was correct in going forward with the

hearing, and affirmed the Hearing Board's findings of misconduct. Nevertheless, the Review Board remanded the case to allow Haith to present evidence concerning the sanction. The Review Board stated, "[W]ithout the benefit of a more complete record regarding the evidence in both aggravation and mitigation of Respondent's misconduct, we do not have the evidence before us with which to make a fair and complete assessment of the appropriate sanction recommendation in this matter." *Haith*, (Review Bd.) at 15.

We believe that *Redell*, *Watts*, *Serritella*, *Meyer*, and *Haith* provide guidance here in terms of the need for a remand in this case. As in *Redell*, Respondent in this case was not given a meaningful opportunity to defend against the charges and present mitigating evidence; Respondent's motion in this case was reasonable; there had not been any egregious delays in the proceedings here; and granting Respondent's Motion here would not have caused any prejudice to others. As in *Watts*, the sanction in this case significantly impeded Respondent's ability to defend himself, and he should have been given an opportunity to present evidence concerning his defense and in mitigation. As in *Serritella*, additional facts are needed here, and the order concerning the relevant motion provided no reasoning for the ruling. As in *Meyer*, Respondent in this case was unable to fully develop the record, and there are other issues raised on appeal that can be resolved or addressed as a result of a remand. As in *Haith*, a more complete record is needed in this case, including the presentation of mitigating and aggravating evidence, in order to make a fair and complete assessment of whether or not disbarment is appropriate. Additionally, in this case, as in *Redell*, *Watts*, and *Meyer*, the fact that the Administrator is seeking disbarment adds weight to the need for a remand.

We recognize that in some cases, the Court has rejected the Review Board's recommendation to remand the case, and, instead, imposed the sanction recommended by the Hearing Board, or the dissenting member of the Review Board. See *In re Vander Weit*,

2002PR00068 (Review Bd., July 18, 2005), *petition for leave to file exceptions allowed, remand denied, and the Hearing Board's recommendation adopted*, M.R. 20387 (Dec. 13, 2005) (although the Review Board recommended remanding the case based on the Chair's denial of Vander Weit's motion to postpone the disciplinary hearing, instead of remanding the case, the Court imposed the sanction recommended by the Hearing Board, which was a twelve-month suspension and payment of restitution); *In re Johnson*, 2001PR00053 (Review Bd., Nov. 27, 2002), *petition for leave to file exceptions allowed, remand denied, and the Hearing Board's recommendation adopted*, M.R. 18594 (March 19, 2003) (although the Review Board recommended remanding the case for additional findings concerning the amount Johnson overcharged his clients, instead of remanding the case, the Court imposed the sanction recommended by the Hearing Board, which was a three-month suspension and payment of restitution); *In re Petty*, 1998PR00025 (Review Bd., Dec. 27, 1999), *petition for leave to file exceptions allowed, remand denied, and the recommendation of the dissenting member of the Review Board adopted*, M.R. 16607 (March 22, 2000) (although a majority of the Review Board Panel recommended that the case be remanded to allow Petty to make a record as to whether he was entitled to probation, the Court imposed the sanction recommended by the dissenting member of the Review Board, which was a three-year suspension, until further order of the Court). Nevertheless, we believe that the appropriate remedy here is to remand the case in order to create a better record.

CONCLUSION

We have given careful consideration to all of the arguments made by the parties. For the reasons set forth above, we recommend that the matter be remanded for a new hearing, before a different Hearing Board Panel, so that Respondent can testify at a deposition, and both parties can present evidence at the disciplinary hearing, in order to develop a more complete record. We also recommend that the remand include a condition stating, "Respondent is ordered to testify at a

deposition, and fully answer any question that relates to the allegations of the disciplinary Complaint. Failure to do so will constitute a violation of this condition.”

Respectfully submitted,

J. Timothy Eaton
David W. Neal
Pamela E. Hill Veal

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 Review Board, approved by each Panel member, entered in the above entitled cause of record filed in my office on September 3, 2024.

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

**BEFORE THE REVIEW BOARD
OF THE
ILLINOIS ATTORNEY REGISTRATION
AND
DISCIPLINARY COMMISSION**

In the Matter of:

CHINYERE ALEX OGOKE,

Respondent-Appellant,

No. 6284533.

Commission No. 2022PR00073

**PROOF OF SERVICE
OF THE REPORT AND RECOMMENDATION
OF THE REVIEW BOARD**

I, Andrea L. Watson, hereby certify that I served a copy of the Report and Recommendation of the Review Board on the parties listed at the addresses shown below by email and regular mail, by depositing it with proper postage prepaid, by causing the same to be deposited in the U.S. Mailbox at One Prudential Plaza, 130 East Randolph Drive, Chicago, Illinois 60601 on September 3, 2024, at or before 5:00 p.m. At the same time, a copy was sent to Counsel for the Administrator-Appellee by e-mail service.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

Michelle M. Thome,
Clerk

/s/ Andrea L. Watson

By: Andrea L. Watson
Deputy Clerk

FILED

September 03, 2024

ARDC CLERK