

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: February 23, 2012

D-6-12

In the Matter of NOEL P. MPAKA,
an Attorney.

COMMITTEE ON PROFESSIONAL
STANDARDS,

MEMORANDUM AND ORDER

Petitioner;

NOEL P. MPAKA,

Respondent.

(Attorney Registration No. 4337119)

Calendar Date: February 7, 2012

Before: Mercure, Acting P.J., Rose, Lahtinen, McCarthy and
Egan Jr., JJ.

Peter M. Torncello, Committee on Professional Standards,
Albany (Michael G. Gaynor of counsel), for petitioner.

Richard M. Maltz, New York City, for respondent.

Per Curiam.

Respondent was admitted to practice by this Court in 2005.
He resides in New Jersey.

Petitioner charged respondent with violating DR 1-102 (a) (3), (4), (5) and (7) of the former Code of Professional Responsibility (see former 22 NYCRR 1200.3 [a] [3], [4], [5], [7]) and Rule 8.4 (b), (c), (d) and (h) of the Rules of Professional Conduct (see 22 NYCRR 1200.0 rule 8.4 [b], [c], [d],

[h]).¹ The petition was based entirely upon a March 2011 disciplinary decision of the Office of the Chief Immigration Judge of the United States Department of Justice, Executive Office for Immigration Review. This decision indefinitely suspended respondent, on consent, from practicing law before the immigration courts because respondent practiced law before the immigration courts subsequent to the loss of his lawful immigration status in August 2007. Having granted petitioner's motion for and order declaring that no factual issues are raised (see 22 NYCRR 806.5) and having heard respondent in mitigation, we now find respondent guilty of the charged misconduct.

Respondent has expressed remorse for his misconduct, explained the circumstances under which he came to practice before the immigration courts when he himself was in this country illegally, and has submitted letters which persuasively set forth his otherwise good character. He has also submitted a valid employment authorization card, expiring June 13, 2012.

Under all of the circumstances presented, we conclude that respondent should be suspended from the practice of law for a period of one year. However, we stay the suspension upon the conditions that respondent maintain lawful immigration status in this country and respondent not be the subject of any further disciplinary action, proceeding or application commenced by petitioner (see generally Matter of Waite, 87 AD3d 1200 [2011]). Respondent may apply for termination of his suspension after the one-year period has expired. Any such application shall be served upon petitioner, which may be heard thereon.


Mercure, Acting P.J., Rose, Lahtinen, McCarthy and Egan Jr., JJ., concur.

¹ According to the petition, the conduct occurred prior to and after the enactment of the Rules of Professional Conduct. The charged subsections of the former and new rule are the same.

ORDERED that respondent is found guilty of the professional misconduct charged and specified in the petition; and it is further

ORDERED that respondent is suspended from the practice of law for a period of one year, effective immediately, and until further order of this Court, which suspension is stayed upon the terms and conditions set forth in this Court's decision.

ENTER:

A handwritten signature in black ink that reads "Robert D. Mayberger". The signature is written in a cursive, slightly slanted style.

Robert D. Mayberger
Clerk of the Court