

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

Decided and Entered: December 5, 2024

PM-247-24

In the Matter of KEVIN MBEH TABE,
an Attorney.

MEMORANDUM AND ORDER
ON MOTION

(Attorney Registration No. 4663043)

Calendar Date: November 19, 2024

Before: Aarons, J.P., Lynch, Ceresia, McShan and Mackey, JJ.

Monica A. Duffy, Attorney Grievance Committee for the Third Judicial Department, Albany (Alison M. Coan of counsel), for Attorney Grievance Committee for the Third Judicial Department.

Kevin Mbeh Tabe, Frisco, Texas, respondent pro se.

Per Curiam.

Respondent was admitted to practice by this Court in 2009 and maintains a business address in Texas. Respondent has also been admitted to practice in Cameroon, in Maryland and before federal immigration courts. Based upon misconduct arising from respondent's representation of two clients in immigration and asylum matters, the Supreme Court of Maryland suspended respondent for a 90-day term by February 2023 order (*see Attorney Grievance Commn. of Maryland v Tabe*, 483 Md 3, 290 A3d 951 [2023]). In June 2023, respondent was similarly suspended for a 90-day term by the Board of Immigration Appeals (hereinafter BIA) upon his default in disciplinary proceedings before that body concerning the same misconduct.¹ The Attorney Grievance

¹ Respondent was reinstated to the practice of law in Maryland in September 2024 (*see Matter of Reinstatement of Tabe*, 489 Md 184, 323 A3d 470 [2024]), and the BIA

Committee for the Third Judicial Department (hereinafter AGC) now therefore moves to impose discipline upon respondent in this state due to established misconduct in Maryland (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.13; Rules of App Div, 3d Dept § 806.13). Respondent has submitted a response to AGC's motion, wherein he seeks the imposition of discipline less than suspension and, upon respondent's request, the parties were heard at oral argument.

We may discipline an attorney for misconduct committed in a foreign jurisdiction and, in defense, the attorney may assert that the disciplinary proceedings in the foreign jurisdiction lacked due process; that there was an infirmity of proof establishing the misconduct; or that the alleged misconduct forming the basis of discipline in the foreign jurisdiction would not constitute misconduct in New York (*see Matter of Cruikshank*, 230 AD3d 901, 902 [3d Dept 2024]; *see also* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.13 [b]). Inasmuch as respondent presents matters in mitigation, but does not cite any of the available defenses or contest any of the findings of misconduct made by the Supreme Court of Maryland, we deem the misconduct established, grant AGC's motion and turn to the consideration of a disciplinary sanction (*see Matter of Matemu*, 197 AD3d 1433, 1434 [3d Dept 2021]; *Matter of Alexandrovich*, 174 AD3d 1034, 1035 [3d Dept 2019]).²

We are not constrained to impose the same discipline as was rendered by the foreign jurisdiction, but are instead tasked with issuing a sanction that protects the public, maintains the honor and integrity of the profession, and deters others from committing similar misconduct (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.8 [b] [2]). Nonetheless, we have often imposed the same discipline that was imposed in the foreign jurisdiction (*see e.g. Matter of Swayze*, 230 AD3d 906 [3d Dept 2024]; *Matter of Jing Tan*, 149 AD3d 1344 [3d Dept 2017]), unless some additional mitigating or aggravating factor warrants a lesser sanction or upward departure (*see e.g. Matter of Renna*, 225 AD3d 1055, 1057 [3d Dept 2024]).

similarly reinstated him to practice before the Department of Homeland Security and the Executive Office for Immigration Review in October 2024.

² We note that respondent's established misconduct in Maryland also constitutes misconduct in New York, as the rules found to have been violated underlying the Maryland order of suspension are substantially similar to Rules of Professional Conduct (22 NYCRR 1200.0) rules 1.1 (a), 1.3 (a) and (b), 1.4 (a), 1.5 (a), 1.15 (a), (b) (1) and (2), 8.4 (a) and (d).

AGC cites respondent's history, both in Maryland and in this state, as an aggravating factor (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.22 [a]), contending that respondent's conduct in this regard demonstrates a pattern of misconduct with multiple offenses (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.22 [c], [d]). Similarly, AGC notes, as aggravating factors, respondent's failure to timely report his suspensions in Maryland and before the BIA as required (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.13 [d]); his substantial experience in the practice of law (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.22 [i]); and, significantly, the vulnerability of respondent's clients, who AGC argues were prejudiced by his misconduct (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.22 [h]; *see also* *Matter of Ambe*, 182 AD3d 695, 697 [3d Dept 2020]).

Respondent avers in mitigation that that he did not benefit or profit off of his misconduct and that this experience has helped him identify issues with his practice and undertake measures to prevent a reoccurrence of his misconduct (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.32 [c]). While admitting that his conduct was wrongful, he similarly avers that he did not act with a dishonest or selfish motive as to these clients (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.32 [b]). Instead, he emphasizes that he became an attorney to help immigrants legalize their stays in the United States, and that he has represented many immigrants with zeal and passion, often at very low or no fees (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.32 [g]). Lastly, respondent expresses his remorse for failing to notify AGC of his suspensions in Maryland and before the BIA (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.32 [l]), and stresses that he cooperated with the Maryland disciplinary proceeding, ultimately admitting to certain rule violations (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.32 [e]) and complying with the Supreme Court of Maryland's order (*see* ABA Standards of Imposing Lawyer Sanctions standard 9.32 [d]).

The misconduct in Maryland, which respondent does not dispute in this proceeding, involves many of the basic principles in the practice of law, including safeguarding client property, as well as attending and calendaring court appearances. While respondent attests to remedying not only the effects of his misconduct, the record reveals that multiple clients were impacted before he took action to remedy repeated issues he had already faced in his law practice. Given the totality of the circumstances, and in order to protect the public, maintain the honor and integrity of the profession, and deter others from committing similar misconduct, we suspend respondent for 90 days.

Aarons, J.P., Lynch, Ceresia, McShan and Mackey, JJ., concur.

ORDERED that the motion of the Attorney Grievance Committee for the Third Judicial Department is granted; and it is further

ORDERED that respondent is suspended from the practice of law for a period of 90 days, effective immediately, and until further order of this Court (*see generally* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.16); and it is further

ORDERED that, for the period of suspension, respondent is commanded to desist and refrain from the practice of law in any form in the State of New York, either as principal or as agent, clerk or employee of another; and respondent is hereby forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto, or to hold himself out in any way as an attorney and counselor-at-law in this State; and it is further

ORDERED that respondent shall comply with the provisions of the Rules for Attorney Disciplinary Matters regulating the conduct of suspended attorneys and shall duly certify to the same in his affidavit of compliance (*see* Rules for Atty Disciplinary Matters [22 NYCRR] § 1240.15).

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