

State Bar Court of California
Hearing Department
San Francisco

Counsel For The State Bar Sherrie B. McLetchie Deputy Trial Counsel 180 Howard Street, 7th Floor San Francisco CA 94105 Telephone: (415) 538-2297 Bar # 85447	Case Number (s) 06-O-12413 [06-O-14167; 07-O-11088; 08-J-13408]-PEM	(for Court's use) PUBLIC MATTER FILED <i>[Signature]</i> MAR 15 2010 STATE BAR COURT CLERK'S OFFICE SAN FRANCISCO
In Pro Per Respondent Nwabueze C. I. Ezeife 480 Roland Way #101 Oakland, CA 94607 Bar # 165472	Submitted to: Settlement Judge	
In the Matter Of: Nwabueze C. I. Ezeife Bar # 165472 A Member of the State Bar of California (Respondent)	STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING ACTUAL SUSPENSION <input type="checkbox"/> PREVIOUS STIPULATION REJECTED	

Note: All information required by this form and any additional information which cannot be provided in the space provided, must be set forth in an attachment to this stipulation under specific headings, e.g., "Facts," "Dismissals," "Conclusions of Law," "Supporting Authority," etc.

A. Parties' Acknowledgments:

- (1) Respondent is a member of the State Bar of California, admitted June 15, 1993.
- (2) The parties agree to be bound by the factual stipulations contained herein even if conclusions of law or disposition are rejected or changed by the Supreme Court.
- (3) All investigations or proceedings listed by case number in the caption of this stipulation are entirely resolved by this stipulation and are deemed consolidated. Dismissed charge(s)/count(s) are listed under "Dismissals." The stipulation consists of 17 pages, not including the order.
- (4) A statement of acts or omissions acknowledged by Respondent as cause or causes for discipline is included under "Facts."
- (5) Conclusions of law, drawn from and specifically referring to the facts are also included under "Conclusions of Law".



- (6) The parties must include supporting authority for the recommended level of discipline under the heading "Supporting Authority."
- (7) No more than 30 days prior to the filing of this stipulation, Respondent has been advised in writing of any pending investigation/proceeding not resolved by this stipulation, except for criminal investigations.
- (8) Payment of Disciplinary Costs—Respondent acknowledges the provisions of Bus. & Prof. Code §§6086.10 & 6140.7. (Check one option only):
- ☒ until costs are paid in full, Respondent will remain actually suspended from the practice of law unless relief is obtained per rule 284, Rules of Procedure.
 - ☐ costs to be paid in equal amounts prior to February 1 for the following membership years:
(hardship, special circumstances or other good cause per rule 284, Rules of Procedure)
 - ☐ costs waived in part as set forth in a separate attachment entitled "Partial Waiver of Costs"
 - ☐ costs entirely waived

B. Aggravating Circumstances [for definition, see Standards for Attorney Sanctions for Professional Misconduct, standard 1.2(b)]. Facts supporting aggravating circumstances are required.

- (1) ☒ **Prior record of discipline** [see standard 1.2(f)]
- (a) ☒ State Bar Court case # of prior case S119251 (00-O-12263)
 - (b) ☒ Date prior discipline effective January 4, 2004, but suspension effective January 26, 2004.
 - (c) ☒ Rules of Professional Conduct/ State Bar Act violations: Rules 4-100(A) [5 counts], 4-100(B)(3), 3-700(D)(1), 3-110(A), 3-700(A)(2), and 1-300(A), and Bus. & Prof. Code sections 6106 [6 counts], 6068(m), 6068(b), and 6103.
 - (d) ☒ Degree of prior discipline Two-year suspension and until rehabilitation stayed, three-year probation, six month actual suspension and until restitution, Ethics School, Client Trust Accounting School, MPRE, compliance with former rule 955.
 - (e) ☐ If Respondent has two or more incidents of prior discipline, use space provided below.
- (2) ☐ **Dishonesty:** Respondent's misconduct was surrounded by or followed by bad faith, dishonesty, concealment, overreaching or other violations of the State Bar Act or Rules of Professional Conduct.
- (3) ☐ **Trust Violation:** Trust funds or property were involved and Respondent refused or was unable to account to the client or person who was the object of the misconduct for improper conduct toward said funds or property.
- (4) ☐ **Harm:** Respondent's misconduct harmed significantly a client, the public or the administration of justice.
- (5) ☐ **Indifference:** Respondent demonstrated indifference toward rectification of or atonement for the consequences of his or her misconduct.

- (6) ☐ **Lack of Cooperation:** Respondent displayed a lack of candor and cooperation to victims of his/her misconduct or to the State Bar during disciplinary investigation or proceedings.
- (7) ☒ **Multiple/Pattern of Misconduct:** Respondent's current misconduct evidences multiple acts of wrongdoing or demonstrates a pattern of misconduct. See "FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES"
- (8) ☐ **No aggravating circumstances** are involved.

Additional aggravating circumstances:

C. Mitigating Circumstances [see standard 1.2(e)]. Facts supporting mitigating circumstances are required.

- (1) ☐ **No Prior Discipline:** Respondent has no prior record of discipline over many years of practice coupled with present misconduct which is not deemed serious.
- (2) ☐ **No Harm:** Respondent did not harm the client or person who was the object of the misconduct.
- (3) ☒ **Candor/Cooperation:** Respondent displayed spontaneous candor and cooperation with the victims of his/her misconduct and to the State Bar during disciplinary investigation and proceedings. See "FACTS SUPPORTING MITIGATING CIRCUMSTANCES"
- (4) ☐ **Remorse:** Respondent promptly took objective steps spontaneously demonstrating remorse and recognition of the wrongdoing, which steps were designed to timely atone for any consequences of his/her misconduct.
- (5) ☐ **Restitution:** Respondent paid \$ _____ on _____ in restitution to _____ without the threat or force of disciplinary, civil or criminal proceedings.
- (6) ☐ **Delay:** These disciplinary proceedings were excessively delayed. The delay is not attributable to Respondent and the delay prejudiced him/her.
- (7) ☐ **Good Faith:** Respondent acted in good faith.
- (8) ☐ **Emotional/Physical Difficulties:** At the time of the stipulated act or acts of professional misconduct Respondent suffered extreme emotional difficulties or physical disabilities which expert testimony would establish was directly responsible for the misconduct. The difficulties or disabilities were not the product of any illegal conduct by the member, such as illegal drug or substance abuse, and Respondent no longer suffers from such difficulties or disabilities.
- (9) ☐ **Severe Financial Stress:** At the time of the misconduct, Respondent suffered from severe financial stress which resulted from circumstances not reasonably foreseeable or which were beyond his/her control and which were directly responsible for the misconduct.
- (10) ☐ **Family Problems:** At the time of the misconduct, Respondent suffered extreme difficulties in his/her personal life which were other than emotional or physical in nature.
- (11) ☒ **Good Character:** Respondent's good character is attested to by a wide range of references in the legal and general communities who are aware of the full extent of his/her misconduct. Respondent is active within the Nigerian expatriate community.

- (12) ☐ **Rehabilitation:** Considerable time has passed since the acts of professional misconduct occurred followed by convincing proof of subsequent rehabilitation.
- (13) ☐ **No mitigating circumstances** are involved.

Additional mitigating circumstances

Respondent's client in the Burroughs and Atlas matters, Ahuruonye, did not submit any complaint against respondent to the State Bar.

D. Discipline:

(1) ☒ **Stayed Suspension:**

- (a) ☒ Respondent must be suspended from the practice of law for a period of one year.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii) Standards for Attorney Sanctions for Professional Misconduct.
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:
- (b) ☒ The above-referenced suspension is stayed.

(2) ☒ **Probation:**

Respondent must be placed on probation for a period of two years, which will commence upon the effective date of the Supreme Court order in this matter. (See rule 9.18, California Rules of Court)

(3) ☒ **Actual Suspension:**

- (a) ☒ Respondent must be actually suspended from the practice of law in the State of California for a period of nine months.
- i. ☐ and until Respondent shows proof satisfactory to the State Bar Court of rehabilitation and present fitness to practice and present learning and ability in the law pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct
- ii. ☐ and until Respondent pays restitution as set forth in the Financial Conditions form attached to this stipulation.
- iii. ☐ and until Respondent does the following:

E. Additional Conditions of Probation:

- (1) ☐ If Respondent is actually suspended for two years or more, he/she must remain actually suspended until he/she proves to the State Bar Court his/her rehabilitation, fitness to practice, and learning and ability in general law, pursuant to standard 1.4(c)(ii), Standards for Attorney Sanctions for Professional Misconduct.

- (2) ☒ During the probation period, Respondent must comply with the provisions of the State Bar Act and Rules of Professional Conduct.
- (3) ☒ Within ten (10) days of any change, Respondent must report to the Membership Records Office of the State Bar and to the Office of Probation of the State Bar of California ("Office of Probation"), all changes of information, including current office address and telephone number, or other address for State Bar purposes, as prescribed by section 6002.1 of the Business and Professions Code.
- (4) ☒ Within thirty (30) days from the effective date of discipline, Respondent must contact the Office of Probation and schedule a meeting with Respondent's assigned probation deputy to discuss these terms and conditions of probation. Upon the direction of the Office of Probation, Respondent must meet with the probation deputy either in-person or by telephone. During the period of probation, Respondent must promptly meet with the probation deputy as directed and upon request.
- (5) ☒ Respondent must submit written quarterly reports to the Office of Probation on each January 10, April 10, July 10, and October 10 of the period of probation. Under penalty of perjury, Respondent must state whether Respondent has complied with the State Bar Act, the Rules of Professional Conduct, and all conditions of probation during the preceding calendar quarter. Respondent must also state whether there are any proceedings pending against him or her in the State Bar Court and if so, the case number and current status of that proceeding. If the first report would cover less than 30 days, that report must be submitted on the next quarter date, and cover the extended period.

In addition to all quarterly reports, a final report, containing the same information, is due no earlier than twenty (20) days before the last day of the period of probation and no later than the last day of probation.

- (6) ☐ Respondent must be assigned a probation monitor. Respondent must promptly review the terms and conditions of probation with the probation monitor to establish a manner and schedule of compliance. During the period of probation, Respondent must furnish to the monitor such reports as may be requested, in addition to the quarterly reports required to be submitted to the Office of Probation. Respondent must cooperate fully with the probation monitor.
- (7) ☒ Subject to assertion of applicable privileges, Respondent must answer fully, promptly and truthfully any inquiries of the Office of Probation and any probation monitor assigned under these conditions which are directed to Respondent personally or in writing relating to whether Respondent is complying or has complied with the probation conditions.
- (8) ☒ Within one (1) year of the effective date of the discipline herein, Respondent must provide to the Office of Probation satisfactory proof of attendance at a session of the Ethics School, and passage of the test given at the end of that session.
- ☐ No Ethics School recommended. Reason: .
- (9) ☐ Respondent must comply with all conditions of probation imposed in the underlying criminal matter and must so declare under penalty of perjury in conjunction with any quarterly report to be filed with the Office of Probation.
- (10) ☐ The following conditions are attached hereto and incorporated:
- | | |
|---|---|
| <input type="checkbox"/> Substance Abuse Conditions | <input type="checkbox"/> Law Office Management Conditions |
| <input type="checkbox"/> Medical Conditions | <input type="checkbox"/> Financial Conditions |

F. Other Conditions Negotiated by the Parties:

- (1) ☒ **Multistate Professional Responsibility Examination:** Respondent must provide proof of passage of the Multistate Professional Responsibility Examination ("MPRE"), administered by the National

Conference of Bar Examiners, to the Office of Probation during the period of actual suspension or within one year, whichever period is longer. **Failure to pass the MPRE results in actual suspension without further hearing until passage. But see rule 9.10(b), California Rules of Court, and rule 321(a)(1) & (c), Rules of Procedure.**

☐ No MPRE recommended. Reason:

- (2) ☒ **Rule 9.20, California Rules of Court:** Respondent must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (3) ☐ **Conditional Rule 9.20, California Rules of Court:** If Respondent remains actually suspended for 90 days or more, he/she must comply with the requirements of rule 9.20, California Rules of Court, and perform the acts specified in subdivisions (a) and (c) of that rule within 120 and 130 calendar days, respectively, after the effective date of the Supreme Court's Order in this matter.
- (4) ☐ **Credit for Interim Suspension [conviction referral cases only]:** Respondent will be credited for the period of his/her interim suspension toward the stipulated period of actual suspension. Date of commencement of interim suspension:
- (5) ☐ **Other Conditions:**

ATTACHMENT TO
STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION

IN THE MATTER OF: Nwabueze Ezeife

CASE NUMBER(S): 06-O-12413 [06-O-14167; 07-O-11088; 08-J-13408]-PEM

FACTS AND CONCLUSIONS OF LAW.

Respondent admits that the following facts are true and that he is culpable of violations set forth below:

06-O-12413 (Burroughs Matter)

FACTS

1. Prior to November 5, 2003, respondent was hired by Blessing Ahuruonye ("Ahuruonye"), principal of NCS Credit Network ("NCS"), to represent NCS on an assigned debt collection matter.
2. On November 5, 2003, respondent filed a complaint on behalf of NCS in *NCS Credit Network v. Burroughs*, Solano County Superior Court Case No. VCM089846 ("Burroughs matter").
3. On December 18, 2003, the defendant in the Burroughs matter filed an answer and a cross-complaint against the assignor of the debt to NCS, Nino Motors, and NCS.
4. Effective January 26, 2004, respondent was suspended from the practice of law.
5. On February 27, 2004, Ahuruonye and respondent executed a Substitution of Attorney in the Burroughs matter which substituted attorney Kelechi Emeziem ("Emeziem") in place of respondent as NCS's attorney, and on March 2, 2004, the Substitution of Attorney was filed.
6. Effective October 26, 2004, respondent's suspension ended.
7. On February 14, 2005, a Substitution of Attorney was filed in the Burroughs matter substituting respondent for Emeziem as NCS's attorney.
8. On April 12, 2005, the court in the Burroughs matter issued an order imposing a \$600 sanction to be paid on or before May 5, 2005, jointly and severally, against respondent and Emeziem. Soon after April 12, 2005, respondent received the court's April 12, 2005 order.
9. No portion of the \$600 sanction was paid by May 5, 2005.
10. On May 16, 2005, counsel for the defendant in the Burroughs matter filed a motion for terminating sanctions against NCS. Soon after May 16, 2005, respondent received the motion for terminating sanctions.

11. On May 19, 2005, the court in the Burroughs matter issued an order scheduling a hearing on defendant's motion for terminating sanctions to take place on June 9, 2005. The court also ordered that any opposition to the motion be filed by May 31, 2005. Soon after May 19, 2005, respondent received the court's May 19, 2005 order, but respondent did not file an opposition by May 31, 2005.

12. On June 2, 2005, respondent filed an untimely opposition to the defendant's motion for terminating sanctions.

13. On June 9, 2005, a hearing was held in the Burroughs matter on the issue of defendant's motion for terminating sanctions. Respondent did not appear at the hearing.

14. On or about July 20, 2005, the Court issued an order granting the defendant's motion for terminating sanctions in the Burroughs matter. Soon thereafter, respondent received the Court's July 20, 2005 order.

15. On July 28, 2005, counsel for the defendant/cross-plaintiff in the Burroughs matter filed a request for entry of default against the cross-defendants. Soon after July 28, 2005, respondent received the request for entry of default, but did not file any opposition to it.

16. On January 17, 2006, the court issued an order entering a default judgment against NCS and Nino Motors and awarded defendant/cross-plaintiff damages, attorney's fees and costs in the amount of \$32,762.94. Soon after January 17, 2006, respondent received the court's January 17, 2006 order, but failed to file a motion to set aside the default.

17. Thereafter, respondent paid \$300 and Emeziem paid \$300 of the \$600 sanction.

CONCLUSIONS OF LAW

1. By not filing a timely opposition to the motion for terminating sanctions, by not appearing at the June 9, 2005 hearing on the motion for terminating sanctions, by not filing an opposition to the request for entry of default and by not filing a motion to set aside the default judgment entered on January 17, 2006, respondent repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

2. By not paying any portion of the \$600 sanction prior to May 5, 2005, contrary to the court's April 12, 2005 order, respondent disobeyed an order of the court requiring him to do an act in the course

of respondent's profession which he ought in good faith have done in violation of section 6103 of the Business and Professions Code.

06-O-14167 (Walsh Matter)

FACTS

1. In or about 2000, respondent was hired by John Walsh ("Walsh") to provide legal services.
2. On March 10, 2006, respondent filed a complaint for damages and attorney's fees against Walsh in *Ezeife v. Walsh*, Kern County Superior Court case number S-1500-CV257710.
3. On August 29, 2006, Walsh, through counsel, submitted a complaint against respondent to the State Bar.
4. On April 18, 2007, respondent and Walsh entered into a settlement agreement and release ("Settlement Agreement") in the *Ezeife v. Walsh* case. The Settlement Agreement contained the following condition: "John Walsh to dismiss his complaint with the State Bar of California within 10 days."

CONCLUSION OF LAW

1. By entering into the Settlement Agreement which contained a condition that Walsh dismiss his State Bar disciplinary complaint as a condition of settlement of the *Ezeife v. Walsh* case, respondent entered into an agreement that a client withdraw a disciplinary complaint in violation of section 6090.5(a)(2) of the Business and Professions Code.

07-O-11088 (Atlas Matter)

FACTS

1. Prior to December 29, 2005, respondent was hired by Ahuruonye to represent NCS in an assigned debt collection matter.
2. On December 29, 2005, respondent filed a complaint on behalf of NCS in *NCS Credit Network v. Atlas Financial Services*, Alameda County Superior Court case number WG05248713 ("Atlas matter").
3. On April 28, 2006, respondent filed a request for entry of default judgment ("request for default") in the Atlas matter.

4. On June 29, 2006, the court in the Atlas matter issued an order rejecting the request for default based on deficiencies in respondent's request for default. Soon thereafter, respondent's received the court's order, but respondent's office staff did not advise respondent of the receipt of the June 29, 2006 order.

5. On June 30, 2006, the court in the Atlas matter issued an order requiring respondent to file a revised request for default addressing each deficiency outlined in the court's June 29, 2006 order within 60 days of the June 30, 2006 order, and to file a case management statement by September 11, 2006. Soon after June 30, 2006, respondent's office received the court's June 30, 2006 order, but respondent's staff did not advise respondent of the receipt of the June 30, 2006 order.

6. Respondent did not file a revised request for default within 60 days of the June 30, 2006 order, nor did he file a case management statement by September 11, 2006, as ordered by the court on June 30, 2006.

7. On September 13, 2006, the court in the Atlas matter issued an order requiring respondent to file a case management statement no later than November 14, 2006, and to file the revised request for default no later than October 2, 2006. In addition, the Court issued an order to show cause ("OSC"), scheduled an OSC hearing to take place on November 29, 2006, and ordered respondent to file a declaration no less than five days before the OSC hearing explaining why sanctions should not be imposed against him for failing to file a case management statement, failing to file a revised request for default, and for failing to comply with the court's June 30, 2006 order. The court ordered respondent to appear at the OSC hearing. Respondent's office received the court's September 13, 2006 order shortly after September 13, 2006, but respondent's staff did not advise respondent of the receipt of the September 13, 2006 order.

8. Respondent did not file a case management statement by November 14, 2006, did not file a revised request for default by October 2, 2006, and did not file a declaration in response to the OSC, as ordered by the court on September 13, 2006.

9. On November 29, 2006, the court issued a notice continuing the OSC hearing to December 6, 2006. Respondent's office received the November 29, 2006 notice shortly after November 29, 2006, but respondent's staff did not advise respondent of the receipt of the November 29, 2006 order.

10. On December 13, 2006, the court in the Atlas matter issued an order imposing sanctions against respondent in the amount of \$250 for his failure to file a revised request for default. The court ordered respondent to pay the sanctions within 30 days of the December 13, 2006 order. In addition, the court rescheduled the OSC hearing to February 13, 2007, and ordered respondent to appear at the February 13, 2007 hearing. The court also ordered respondent to file a declaration no less than five days before the hearing explaining why he failed to comply with the court's September 13, 2006 order and ordered respondent to file a written response under oath explaining why the Atlas matter should not be dismissed. The court further ordered that the case would be dismissed if respondent did not file a written response to the OSC. Soon after December 13, 2006, respondent's office received the court's December 13, 2006 order, but respondent's staff did not advise respondent of the receipt of the December 13, 2006 order.

11. Thereafter, respondent failed to pay the \$250 sanctions, failed to file a declaration explaining why he failed to comply with the court's September 13, 2006 order and failed to file a written response under oath explaining why the Atlas matter should not be dismissed for failure to prosecute.

12. On February 13, 2007, a hearing was held in the Atlas matter. Respondent did not appear at the hearing. On February 13, 2007, the court dismissed the Atlas matter for respondent's failure to prosecute.

13. On February 23, 2007, the Court in the Atlas matter submitted a report regarding respondent to the State Bar.

14. On July 22, 2009, respondent paid \$250 in sanctions to the Court.

CONCLUSIONS OF LAW

1. By not filing a revised request for default and not filing a case management statement as ordered by the court on June 30, 2006, and September 13, 2006, by not filing a declaration responding to the OSC as ordered by the court on September 13, 2006, by not paying the \$250 sanctions within 30 days of the December 13, 2006 order, as ordered by the Court on December 13, 2006, by not appearing at the February 13, 2007 hearing, as ordered by the court on December 13, 2006, by not filing a declaration, as ordered by the court on December 13, 2006, by not filing a written response under oath,

as ordered by the court on December 13, 2006, and by not appearing at the February 13, 2007 hearing, as ordered by the court on December 13, 2006, respondent disobeyed orders of a court requiring him to do acts in the course of respondent's profession which he ought in good faith have done in violation of section 6103 of the Business and Professions Code.

2. By not filing a revised request for default, by not filing a case management statement, by not filing a declaration in response to the OSC, by not filing a written response explaining why the Atlas matter should not be dismissed, and by not prosecuting the Atlas matter, respondent repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

08-J-13408 (Ninth Circuit Discipline)

FACTS

1. By order filed August 28, 2008, the United States Court of Appeals for the Ninth Circuit ("Ninth Circuit") adopted the Appellate Commissioner's June 27, 2008 Amended Report and Recommendation in *In re Nwabueze C.I. Ezeife, Esq., aka Dozie Ike Ezeife, Admitted to the Bar of the Ninth Circuit: July 27, 1993*, imposed on respondent a monetary sanction of \$3,240.50, placed him on probation for 12 months, and ordered that respondent during the period of his probation successfully complete no fewer than 12 hour-units of continuing legal education, certified by the State Bar, in the areas of immigration law and federal appellate practice, in addition to those hour-units required of all active attorneys, and submit a status report after 12 months documenting his compliance with the terms of his probation, including proof that he is a member in good standing with the State Bar and every other bar of which he is a member, with no pending disciplinary matters.

2. The Ninth Circuit found that respondent "filed a deficient and inadequate motion for stay and failed to file a response to the government's motion to dismiss in *Alvarez Figueroa v. Gonzales*, No. 05-75157."¹ However, the Ninth Circuit also found that the client was not harmed "because the court granted the stay motion, denied the motion to dismiss, and appointed pro bono counsel to represent the petitioner."

¹ This, and all further quoted language, is from the June 27, 2008 Amended Report and Recommendation, pages 20 through 29.

3. The Ninth Circuit found that respondent in *Hernandez Partida v. Gonzales*, No. 05-73427 failed to inform the court in his response to an OSC why a petition for review of Board of Immigration Appeals ("BIA") opinion should not be dismissed that the BIA's opinion misstated that the Immigration Judge ("IJ") held that the petitioner failed to make an adequate showing of hardship. In fact, the IJ held that petitioner lacked sufficient continuous physical presence in the United States. Also, respondent did not file a reply to the government's response to the OSC in which the government erroneously argued that the IJ had made an unreviewable hardship determination. Based on that argument, the Ninth Circuit dismissed the petition for review for lack of jurisdiction. Despite the "clear error by the BIA . . . perpetuated by the [Ninth Circuit], no motion for reconsideration was filed." As in *Alvarez Figueroa v. Gonzales*, new counsel stepped in, and averted harm to the client by filing "an emergency motion to reinstate the petition, which was granted."

4. The Ninth Circuit found that respondent violated Ninth Circuit Rule 36-3(b) by citing to an unpublished deposition of the court in the opening briefs filed in *Murillo Casillas v. Gonzales*, No. 05-70031, *Paz Guzman v. Gonzales*, No. 05-72638, and *Monroy Terron v. Gonzales*, No. 05-75790.

5. The Ninth Circuit found that respondent filed a deficient brief in *Hernandez v. Gonzales*, No. 04-72062 by omitting citations to the record, raising a due process argument but failing to adequately discuss the IJ's error or prejudice arising from alleged due process violation, failing to discuss *Lanza v. Ashcroft* (9th Cir. 2004) 389 F.3d 917, and that respondent's deficient brief "burdened the court's judges and staff." The Ninth Circuit also found that respondent's filing of the brief "was frivolous because it failed to discuss relevant law and raised an issue lacking in legal or factual merit."

CONCLUSIONS OF LAW

6. By filing a deficient and inadequate motion for stay and by failing to file a response to the government's motion to dismiss in *Alvarez Figueroa v. Gonzales*, by failing to inform the court in his response to an OSC in *Hernandez Partida v. Gonzales* that the BIA's opinion contained a significant misstatement of the record below and by not filing a reply to the government's response to the OSC which also contained a significant misstatement of the record below, and by filing a deficient brief in *Hernandez v. Gonzales* by omitting citations to the record, raising a due process argument but failing to adequately discuss the IJ's error or prejudice arising from alleged due process violation, and by failing

to discuss *Lanza v. Ashcroft*, respondent repeatedly failed to perform legal services with competence in wilful violation of rule 3-110(A) of the Rules of Professional Conduct.

7. By filing a brief in *Hernandez v. Gonzales* which did not discuss relevant law and raised an issue lacking in legal or factual merit, respondent presented a claim in litigation that was not warranted under existing law in wilful violation of rule 3-200(B) of the Rules of Professional Conduct.

8. By citing to an unpublished deposition of the court in the opening briefs filed in *Murillo Casillas v. Gonzales*, *Paz Guzman v. Gonzales*, and *Monroy Terron v. Gonzales*, in violation of Ninth Circuit Rule 36-3(b), respondent violated section 6068(a) of the Business and Professions Code.

FACTS SUPPORTING AGGRAVATING CIRCUMSTANCES

Multiple/Pattern of Misconduct

The misconduct within case number 08-J-13408 involving six different clients includes multiple acts of wrongdoing – as found by the Ninth Circuit -- which amounts to a pattern. In addition, the *Burroughs* and *Atlas* matters are similar to one another as respondent failed to perform with competence and failed to obey court orders in both. The *Walsh* matter brings the total number of client matters in which misconduct occurred to nine.

FACTS SUPPORTING MITIGATING CIRCUMSTANCES

Cooperation

By entering into this stipulation respondent displayed cooperation with the State Bar in this proceeding.

AUTHORITIES SUPPORTING DISCIPLINE.

The Standards

Standard 2.4(b) requires reproof or suspension for a respondent who has wilfully failed to perform services in which he was retained.

Standard 2.6(a) requires that a violation of Business and Professions Code section 6068 shall result in disbarment or suspension depending on the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Standard 2.10 requires that a violation of any provision of the Business and Professions Code not specified in the standards, i.e., section 6090.5, shall result in reproof or suspension according to the gravity of the offense or harm, if any, to the victim, with due regard to the purpose of imposing discipline set forth in standard 1.3.

Standard 1.7(a) provides that if a member is found culpable of professional misconduct in any proceeding which discipline may be imposed and the member has a record of one prior imposition of discipline as defined by standard 1.2(f), the degree of discipline imposed in the current proceeding shall be greater than that imposed in the prior proceeding unless the prior proceeding was so remote in time to the current proceeding and the offense for which it was imposed was so minimal in severity that imposing greater discipline in the current proceeding would be manifestly unjust.

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Case Law

In *In the Matter of Bach* (Review Dept. 1991) 1 Cal. State Bar Ct. Rptr. 631 the attorney, who had a prior 30-day-and-until-restitution suspension from the practice of law, was found culpable of violating former rule 6-101 (predecessor to rule 3-110) and section 6068(m) with regard to one client, violating former rules 2-111(A)(2) (predecessor to rule 3-700) and 6-101(A)(2), and section 6068(m). Thus, the gravamen of Bach's misconduct was the failure to perform legal services with competence and failure to communicate with one client and the abandonment of one client, and the failure to communicate with the other client, plus failure to cooperate with the State Bar in three charged client matters. The Review Department gave Bach "middle of the range of weight" for his pro bono activities. He was suspended for nine months and until payment of restitution to the one client from whom he had taken an advance fee, but the Review Department indicated that it would have imposed greater discipline but for the fact that the misconduct for which Bach was originally disciplined was "roughly contemporaneous" with the misconduct for which he was disciplined in this case.

In *Lister v. State Bar* (1990) 51 Cal.3d 1117, Lister, who had a prior private reproof, was also suspended for nine months for abandoning three clients, failing to turn over a client file to successor counsel, giving incompetent legal advice, failure to communicate, failure to return an unearned fee, and failure to cooperate with the State Bar's investigation.

STATE BAR ETHICS SCHOOL.

Because respondent has agreed to attend State Bar Ethics School as part of this stipulation, respondent may receive Minimum Continuing Legal Education credit upon the satisfactory completion of State Bar Ethics School.

PENDING PROCEEDINGS.

The disclosure date referred to on page 2, paragraph A (6), was March 4, 2010.

COSTS OF DISCIPLINARY PROCEEDINGS

Respondent acknowledges that the Office of the Chief Trial Counsel has informed respondent that as of March 4, 2010, the costs in this matter are approximately \$8,175. Respondent further acknowledges that should this stipulation be rejected or should relief from the stipulation be granted, the costs in this matter may increase due to the cost of further proceedings.

WAIVER OF REFERRAL TO STATE BAR COURT PROGRAM FOR RESPONDENTS WITH SUBSTANCE ABUSE AND/OR MENTAL HEALTH CONDITIONS.

In signing this stipulation, respondent hereby acknowledges that the State Bar Court's separate program for respondents with substance abuse or mental health conditions has been fully explained to him, that he has had an opportunity to request to be considered for that program, and that he has specifically waived any such consideration.


(Do not write above this line.)

In the Matter of Nwabueze C. I. Ezeife	Case number(s): 06-O-12413[06-O-14167; 07-O-11088; 08-J-13408]-PEM
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SIGNATURE OF THE PARTIES

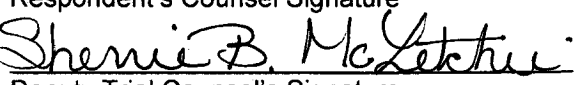
By their signatures below, the parties and their counsel, as applicable, signify their agreement with each of the recitations and each of the terms and conditions of this Stipulation Re Fact, Conclusions of Law and Disposition.

3/5/2010
Date


Respondent's Signature

Nwabueze C. I. Ezeife
Print Name

3-8-10
Date

Respondent's Counsel Signature

Deputy Trial Counsel's Signature

Print Name
Sherrie B. McLetchie
Print Name

(Do not write above this line.)

In the Matter Of
Nwabueze C. I. Ezeife

Case Number(s):
**06-O-12413 [06-O-14167; 07-O-11088;
08-J-13408]-PEM**

ORDER

Finding the stipulation to be fair to the parties and that it adequately protects the public,
IT IS ORDERED that the requested dismissal of counts/charges, if any, is GRANTED without
prejudice, and:

- ☒ The stipulated facts and disposition are APPROVED and the DISCIPLINE
RECOMMENDED to the Supreme Court.
- ☐ The stipulated facts and disposition are APPROVED AS MODIFIED as set forth
below, and the DISCIPLINE IS RECOMMENDED to the Supreme Court.
- ☐ All Hearing dates are vacated.

The parties are bound by the stipulation as approved unless: 1) a motion to withdraw or modify
the stipulation, filed within 15 days after service of this order, is granted; or 2) this court modifies
or further modifies the approved stipulation. (See rule 135(b), Rules of Procedure.) **The
effective date of this disposition is the effective date of the Supreme Court order herein,
normally 30 days after file date. (See rule 9.18(a), California Rules of Court.)**

Date

March 15, 2010

Judge of the State Bar Court

LUCY ARMENDARIZ

CERTIFICATE OF SERVICE

[Rule 62(b), Rules Proc.; Code Civ. Proc., § 1013a(4)]

I am a Case Administrator of the State Bar Court of California. I am over the age of eighteen and not a party to the within proceeding. Pursuant to standard court practice, in the City and County of San Francisco, on March 15, 2010, I deposited a true copy of the following document(s):

STIPULATION RE FACTS, CONCLUSIONS OF LAW AND DISPOSITION AND ORDER APPROVING

in a sealed envelope for collection and mailing on that date as follows:

- ☒ by first-class mail, with postage thereon fully prepaid, through the United States Postal Service at San Francisco, California, addressed as follows:

**NWABUEZE C. I. EZEIFE
EZEIFE & ASSOCIATES
480 ROLAND WAY #101
OAKLAND, CA 94607**

- ☐ by certified mail, No. , with return receipt requested, through the United States Postal Service at , California, addressed as follows:

- ☐ by overnight mail at , California, addressed as follows:

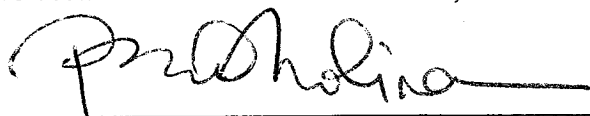
- ☐ by fax transmission, at fax number . No error was reported by the fax machine that I used.

- ☐ By personal service by leaving the documents in a sealed envelope or package clearly labeled to identify the attorney being served with a receptionist or a person having charge of the attorney's office, addressed as follows:

- ☒ by interoffice mail through a facility regularly maintained by the State Bar of California addressed as follows:

SHERRIE B. McLETCHIE, Enforcement, San Francisco

I hereby certify that the foregoing is true and correct. Executed in San Francisco, California, on March 15, 2010.



Bernadette C.O. Molina
Case Administrator
State Bar Court