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as Shaleia's. To the extent that this scenario is likely to recur, and we hope it does not, the GAL has not demonstrated it will likely again evade review.

[3] The GAL is frustrated by the fact that DHHS has obtained its desired outcome through obstinacy and procedural maneuverings. But such complaints fail to provide an exception to the mootness doctrine. Shaleia, the party whose interests are most at stake, asks that we dismiss the appeals. In the absence of an actual case or controversy requiring judicial resolution, it is not the function of our court to render a judgment that is merely advisory.[13] We dismiss the appeals as moot.

APPEALS DISMISSED.

[13] *Kuhn v. Wells Fargo Bank of Neb.*, 278 Neb. 428, 771 N.W.2d 103 (2009).

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. JOSEPH LOPEZ WILSON, RESPONDENT.

811 N.W.2d 673

Filed April 6, 2012. No. S-10-1246.

1. **Disciplinary Proceedings.** A proceeding to discipline an attorney is a trial de novo on the record.
2. **Disciplinary Proceedings: Proof.** Disciplinary charges against an attorney must be established by clear and convincing evidence.
3. **Disciplinary Proceedings.** Violation of a disciplinary rule concerning the practice of law is a ground for discipline.
4. ____. Each attorney discipline case is evaluated in light of its particular facts and circumstances, and consideration is given to the attorney's acts underlying the events of the case and throughout the proceedings.
5. ____. The Nebraska Supreme Court considers six factors in determining whether and to what extent discipline should be imposed: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law.
6. ____. The determination of an appropriate penalty to be imposed on an attorney in a disciplinary proceeding requires the consideration of any aggravating or mitigating factors.

Original action. Judgment of public reprimand.

John W. Steele, Assistant Counsel for Discipline, for relator.

Darnetta L. Sanders, of Sanders Law Office, for respondent.

Joseph Lopez Wilson, pro se.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

INTRODUCTION

On December 30, 2010, the Counsel for Discipline of the Nebraska Supreme Court filed formal charges against Joseph Lopez Wilson, respondent, alleging that respondent violated Neb. Ct. R. of Prof. Cond. § 3-501.1 (competence) and his oath of office as an attorney. See Neb. Rev. Stat. § 7-104 (Reissue 2007). Respondent filed an answer to the charges, and a referee was appointed. In his report and recommendation, the referee recommended a public reprimand. Neither the Counsel for Discipline nor respondent filed exceptions to the referee's report. The Counsel for Discipline moved for judgment on the pleadings as to the facts under Neb. Ct. R. § 3-310(L) of the disciplinary rules. We granted the motion and set the matter of discipline for oral argument. For the reasons that follow, we find that respondent should be and hereby is publicly reprimanded. Further, we find that respondent shall be on monitored probation for a period of 2 years, subject to the terms set forth below.

STATEMENT OF FACTS

Respondent was admitted to the practice of law in the State of Nebraska on September 17, 1986. At all times relevant to these proceedings, he has practiced in Omaha and Bellevue, Nebraska. Respondent has been involved in practicing primarily immigration law for the past 25 years.

The following is a summary of the substance of the referee's findings, which the record supports. In April 2009, respondent was hired by a client to represent him in formal immigration

proceedings and to seek cancellation of removal so the client could legally stay in the United States. In order to achieve this, respondent had to file a "Form EOIR-42B" ("Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents") on behalf of the client with a U.S. immigration court.

On April 14, 2009, a hearing was held before the immigration court. At the hearing, the immigration court directed respondent to file the form EOIR-42B on or before June 12 in preparation for the next hearing, which was to be held June 23. The immigration court advised respondent that if the form EOIR-42B was not filed with the immigration court by June 12, the immigration court would deem the client's claim for cancellation of removal to be abandoned.

On May 8, 2009, respondent filed the form EOIR-42B with the Texas Service Center for the U.S. Citizenship and Immigration Services, which is an administrative agency, and not a court. Respondent failed to file the form EOIR-42B with the immigration court.

At the hearing on June 23, 2009, the immigration court noted that the form EOIR-42B was not in the court file and that the district counsel had not received a copy. Because respondent failed to file the form EOIR-42B with the immigration court, the immigration court deemed the client's claim for cancellation of removal abandoned. The order granted the client voluntary departure from the United States, which was conditioned upon the posting of a $500 bond within 5 days. The order stated in the alternative that if the client failed to post the required bond, the grant of voluntary departure would be withdrawn, and he would be removed from the United States to Mexico.

On June 23, 2009, members of the client's family obtained a $500 cashier's check for the bond. On June 24, respondent's staff began preparing the bond application. On June 25, a member of the client's family posted the bond with the U.S. Immigration and Customs Enforcement.

Respondent timely filed an appeal with the Board of Immigration Appeals (BIA) on behalf of the client. One of the appellate rules in immigration court is that a bond receipt must be filed in the appellate court to fully perfect the appeal.

After the client's family posted the bond, respondent failed to obtain the bond receipt from the client's family or to ensure that the client's family filed the bond receipt. Therefore, the bond receipt was filed late with the appellate court. Based on the lack of proof of timely payment, the BIA vacated the grant of voluntary departure and ordered that the client be removed from the United States to Mexico pursuant to the immigration court's alternate order of removal.

A new lawyer for respondent's client attempted to avoid the client's removal by filing a motion to reopen the case, which was denied. Accordingly, the client was ordered to leave the United States. For completeness, we note that the client appeared at the disciplinary hearing in this case, but was not called to testify.

On December 30, 2010, the Counsel for Discipline filed formal charges alleging respondent violated his oath of office as an attorney and conduct rule § 3-501.1 (competence). Respondent filed his answer, and a referee was appointed. On May 13, 2011, respondent submitted a conditional admission, which was rejected by this court. On June 23, a hearing was held before the referee, at which respondent testified.

In his report filed July 11, 2011, the referee found that respondent violated conduct rule § 3-501.1 (competence), as well as his oath of office as an attorney. The referee noted in his report that respondent fully cooperated with the Counsel for Discipline during the course of the disciplinary proceedings and that respondent had rearranged his office procedures to ensure in the future that immigration filings are done properly. The referee noted the severe nature of missed filing deadlines in the area of immigration law. The referee stated that because respondent has practiced primarily immigration law for 25 years, respondent knew or should have known about the seriousness of missing deadlines. As an aggravating factor, the referee noted that respondent has had two previous disciplinary matters. One matter resulted in a 2-year suspension from the practice of law for hostile, threatening, and disruptive conduct directed toward a client. See *State ex rel. Counsel for Dis. v. Lopez Wilson*, 262 Neb. 653, 634 N.W.2d 467 (2001). The other matter resulted in a private reprimand for the failure to

timely and properly file the form EOIR-42B with the immigration court, a failure he has repeated and which gives rise to the present case. The referee stated that he did not question respondent's present or future fitness to continue with immigration law. As for the discipline imposed, the referee recommended a public reprimand. No exceptions were taken to the referee's report.

The relator filed a motion for judgment on the pleadings as to the facts under § 3-310(L) of the disciplinary rules. On September 30, 2011, this court granted the motion for judgment on the pleadings as to the facts and set the matter of discipline for oral argument. On February 15, 2012, this court entered an order for the parties to submit a proposed monitored probation plan. On March 5, the Counsel for Discipline and respondent moved the court to accept their jointly submitted proposed probation plan, the terms of which are set forth below.

ANALYSIS

[1-3] A proceeding to discipline an attorney is a trial de novo on the record. *State ex rel. Counsel for Dis. v. Bouda*, 282 Neb. 902, 806 N.W.2d 879 (2011). Disciplinary charges against an attorney must be established by clear and convincing evidence. *State ex rel. Counsel for Dis. v. Carter*, 282 Neb. 596, 808 N.W.2d 342 (2011). Violation of a disciplinary rule concerning the practice of law is a ground for discipline. *State ex rel. Counsel for Dis. v. Wintroub*, 281 Neb. 957, 800 N.W.2d 269 (2011).

Because the motion for judgment on the pleadings as to the facts was granted, the only issue before us is the appropriate discipline. See *Bouda, supra*. In attorney discipline cases, the basic issues are whether discipline should be imposed and, if so, the type of discipline under the circumstances. *Id*.

[4-6] This court evaluates each attorney discipline case in light of its particular facts and circumstances, and considers the attorney's acts underlying the events of the case and throughout the proceedings. *Bouda, supra*. We consider six factors in determining whether and to what extent discipline should be imposed: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance of the reputation of

the bar as a whole, (4) the protection of the public, (5) the attitude of the offender generally, and (6) the offender's present or future fitness to continue in the practice of law. *Id.* The determination of an appropriate penalty to be imposed on an attorney in a disciplinary proceeding requires the consideration of any aggravating or mitigating factors. *State ex rel. Counsel for Dis. v. Seyler, ante* p. 401, 809 N.W.2d 766 (2012). We have considered prior discipline including reprimands as aggravators. *State ex rel. Counsel for Dis. v. Nich*, 279 Neb. 533, 780 N.W.2d 638 (2010). We have often said that because cumulative acts of attorney misconduct are distinguishable from isolated incidents, they justify more serious sanctions. *Bouda, supra*.

The evidence presented in this case establishes that respondent failed to timely file the form EOIR-42B with the immigration court and the bond receipt with the BIA on behalf of his client. The harshness of missed deadlines in the area of immigration law was known or should have been known to respondent, because he has practiced immigration law for 25 years. Respondent's failure demonstrated a lack of competence with regard to the matter involved in the representation of his client. Additionally, respondent has had two previous disciplinary matters, one which resulted in a 2-year suspension and the other which resulted in a private reprimand arising from this same issue. However, we note as mitigating factors that respondent has fully cooperated with the Counsel for Discipline during the disciplinary proceedings and has taken steps to ensure future immigration filings are done properly.

We have considered the record, the findings which have been established by clear and convincing evidence, and the applicable law. Upon due consideration, the court finds that respondent should be and hereby is publicly reprimanded. Further, the court finds that respondent shall be placed on probation for a period of 2 years. The court accepts the parties' jointly proposed monitored probation plan. Respondent's monitored probation is therefore subject to the following terms:

(1) Respondent will initially be monitored by Darnetta L. Sanders, a Nebraska attorney, who has agreed to abide by the terms of this probation plan, including that she will report

any violations of this probation plan or the Nebraska Rules of Professional Conduct to the Counsel for Discipline;

(2) Respondent freely, knowingly, and specifically waives any attorney-client privilege between himself and his monitoring attorney, and respondent agrees to obtain a waiver of attorney-client privilege by a client only to the extent necessary to permit the monitoring attorney to access the case file;

(3) Respondent will provide his monitoring attorney with a monthly list of cases for which respondent is then currently responsible, said list to include the following information for each case:

(a) the date the attorney-client relationship began;

(b) the general type of case (i.e., immigration, divorce, adoption, probate, contract, real estate, civil litigation, criminal);

(c) the date of last contact with the client;

(d) the last type and date of work completed on the file (pleadings, correspondence, document preparation, discovery, court hearing);

(e) the next type of work and date the work should be completed on the case;

(f) any applicable statute of limitations and its date; and

(g) the identification of all funds received from the clients to be paid over to the government as bonds or filing fees (e.g., asylum, cancellation of removal).

(4) Respondent will reconcile his trust account within 7 working days of receiving the bank statement for his trust account and shall furnish a copy of the reconciliation to his monitoring attorney within 3 days of completing the reconciliation;

(5) During the period of his monitored probation, respondent will have written fee agreements with all clients and, if it is an immigration matter, then the fee agreement shall specifically set forth the form of relief that respondent is attempting to achieve for the client (e.g., asylum, cancellation of removal);

(6) Respondent will provide the monitoring attorney with copies of all contingency fee agreements and settlement sheets during the term of probation. Included with the settlement sheets shall be copies of all trust account checks written to or for the benefit of the identified client;

(7) The monitoring attorney shall submit a quarterly compliance report to the Counsel for Discipline;

(8) Respondent will review with the monitoring attorney respondent's office practices, and respondent will continue to work to develop efficient office procedures that protect the clients' interests; and

(9) Respondent agrees not to violate the Nebraska Rules of Professional Conduct.

CONCLUSION

We find that respondent violated conduct rule § 3-501.1 and his oath of office as an attorney. See § 7-104. It is the judgment of this court that respondent should be and hereby is publicly reprimanded. It is the further judgment of this court that respondent shall be placed on monitored probation for a period of 2 years, subject to the terms set forth above. Respondent is directed to pay costs and expenses in accordance with Neb. Rev. Stat. § 7-114 (Reissue 2007), as well as § 3-310(P) and Neb. Ct. R. § 3-323 within 60 days after an order imposing costs and expenses, if any, is entered by this court.

JUDGMENT OF PUBLIC REPRIMAND.

STATE OF NEBRASKA EX REL. COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, RELATOR, V. BART A. CHAVEZ, RESPONDENT.

812 N.W.2d 282

Filed April 6, 2012. No. S-11-070.

Original action. Judgment of disbarment.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

PER CURIAM.

INTRODUCTION

This case is before the court on the voluntary surrender of license filed by respondent, Bart A. Chavez, on February 22,