

Falls Church, Virginia 22041

File: D2012-086

Date: DEC 17 2012

In re: RUFINO MARC CARDOSO, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Diane H. Kier
Associate Legal Advisor

The respondent will be indefinitely suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS").

On October 3, 2012, the United States Court of Appeals for the Ninth Circuit disbarred the respondent from the practice of law in that court "[f]or his violations of the court's rules and orders and ethical rules", as set forth in the Ninth Circuit Appellate Commissioner's Report and Recommendation.

Consequently, on October 24, 2012, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency.

Therefore, on November 6, 2012, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent served a "Petition for Reinstatement" on the EOIR Disciplinary Counsel, and the DHS. He apparently intends to have this document serve as an answer to the allegations contained in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(c)(1). The original of this document was not received by the Board, although the record now includes the filing. We will come to the same result we would have reached, even if an answer been properly filed with the Board.

On December 3, 2012, the EOIR Disciplinary Counsel filed a "Motion For Summary Adjudication".

Where a respondent is subject to summary disciplinary proceedings based on disbarment from the practice of law, the regulations now provide that the attorney "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii)." See 8 C.F.R. § 1003.106(a), 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; EOIR Disciplinary Counsel's "Motion for Summary Adjudication", at ¶ 5.

The Board agrees with the EOIR Disciplinary Counsel that there are no material issues of fact at issue. EOIR Disciplinary Counsel's "Motion for Summary Adjudication", at ¶ 5. We find it appropriate to issue a final order on the government's charges.

As to the "exceptions" set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii), 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012), this provides that a final order of disbarment creates a rebuttable presumption that disciplinary sanctions should follow, and such a presumption can be rebutted only upon a showing, by "clear and convincing evidence", that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. *Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010).

None of the exceptions contained in 8 C.F.R. § 1003.103(b)(2), 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012), are implicated in this case. While the respondent apparently contends that he was misunderstood before the Ninth Circuit, the court's October 3, 2012, order indicates that the respondent did not object to the July 6, 2012, report and recommendation of the Ninth Circuit Appellate Commissioner. That report concluded that the respondent had made frivolous filings for years, and lacked competence such that clients may have been harmed:

[The respondent's] filings and his testimony demonstrate little or no understanding of how immigration law is practiced in the court of appeals. . . . [his] conduct in this court has been unworthy of any attorney. [His] recycled and incomprehensible filings reflect an inadequate grasp of his responsibilities toward the court and his clients.

(Ninth Circuit Appellate Commissioner's Report and Recommendation, at 29).

The Notice of Intent to Discipline proposes that the respondent be indefinitely suspended from practice. The DHS asks that the Board extend that discipline to practice before it as well. The government's proposal is appropriate, based on the respondent being disbarred by the Ninth Circuit, and we will honor it. As the respondent is currently under our November 6, 2012, order of suspension, we will deem the respondent's suspension to have commenced on that date.

ORDER: The EOIR Disciplinary Counsel's "Motion for Summary Adjudication" is granted.

FURTHER ORDER: The Board hereby indefinitely suspends the respondent from practice before the Board, the Immigration Courts, and the DHS.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against him.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).



FOR THE BOARD