

Falls Church, Virginia 22041

File: D2012-019

Date:

MAR 26 2012

In re: CYRIL O. CHUKWURAH, 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 suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for 36 months.

On November 21, 2011, the District 4 Grievance Committee, Evidentiary Panel 4D for the State Bar of Texas, actively suspended the respondent from the practice of law for a period of 36 months beginning November 10, 2011, and ending November 9, 2014. Consequently, on February 7, 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 February 14, 2012, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed a timely answer to the allegations contained in the Notice of Intent to Discipline on February 22, 2012. 8 C.F.R. § 1003.105(c)(1). On March 5, 2012, the EOIR Disciplinary Counsel filed a "Motion For Summary Adjudication". The respondent filed a response on March 15, 2012.

Where a respondent is subject to summary disciplinary proceedings based on suspension 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 ¶ 3.

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, and deny the respondent's request for a hearing.

The EOIR Disciplinary Counsel contends that the respondent is subject to disciplinary sanctions because he has been suspended from the practice of law in Texas. Under 8 C.F.R. § 1003.102(e), a practitioner who “[i]s subject to a final order of . . . suspension” is subject to disciplinary sanctions by the Board. *Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010). The respondent notes that he has filed an appeal with the Texas Board of Disciplinary Appeals (Respondent’s Filing, EOIR Disciplinary Counsel’s “Motion for Summary Adjudication” at ¶7). He does not, however, show that the suspension has been stayed pending appeal. If the respondent is successful concerning his appeal of the Texas suspension order, he may then take appropriate action, such as seeking to reopen this disciplinary order.

The respondent argues that his suspension in Texas resulted from racism and abuse of authority. He contends that the Board should disregard his suspension in Texas. Respondent’s Answer, Respondent’s Response.

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 suspension 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, supra*, at 160-61. In considering whether reciprocal discipline is appropriate, the Board conducts a “deferential review” of the underlying proceedings. *Id.*

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.

First, the respondent does not show that “the underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.” 8 C.F.R. § 1003.103(b)(2)(i), 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012). The respondent’s suspension in Texas resulted after proceedings in which the respondent was permitted to be represented by counsel, and heard. EOIR Disciplinary Counsel’s “Motion for Summary Adjudication”, at ¶ 5; *Matter of Kronegold, supra*, at 161.

Next, the respondent does not show that “there was such an infirmity of proof establishing the attorney’s professional misconduct as to give rise to the clear conviction that the [adjudicator] could not, consistent with his or her duty, accept as final the conclusion on that subject.” 8 C.F.R. § 1003.103(b)(2)(ii); 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012). Despite the respondent’s conclusory and unsupported claims of malice by the Texas disciplinary authorities, “. . . the present proceedings are not the proper venue for the respondent to re-litigate those charges”, EOIR Disciplinary Counsel’s “Motion for Summary Adjudication”, at ¶ 6, and the respondent fails to show that there is a material issue of fact in dispute concerning this factor.

Neither does the respondent show that imposing identical reciprocal discipline would result in “grave injustice.” See 8 C.F.R. § 1003.103(b)(2)(iii); 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012).

The Notice of Intent to Discipline proposes that the respondent be suspended from practice for 36 months. 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's suspension in Texas, and we will honor it. As the respondent is currently under our February 14, 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 suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for 36 months.

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