U.S. Department of Justice
Executive Office for Immigration Review

Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: D2010-305

Date: FEB 9 2011

In re: TOAN Q. THAI, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

ON BEHALF OF DHS: Eileen M. Connolly
Chief, Immigration Court Practice Section - East

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

On December 24, 2009, the District of Columbia Court of Appeals suspended the respondent from the practice of law for 60 days, with the suspension stayed after the first 30 days in favor of probation for one year, subject to conditions.

Consequently, on January 12, 2010, in a separate disciplinary proceeding, D2010-001, 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 January 27, 2010, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of the proceedings in Case D2010-001. On March 2, 2010, in Case D2010-001, the Board suspended the respondent from practice before the Board, Immigration Courts, and DHS, for 30 days. The respondent has not been reinstated to practice by the Board, and is still suspended from the practice of law in the District of Columbia.

On December 6, 2010, the EOIR Disciplinary Counsel filed a Notice of Intent to Discipline concerning the respondent in this new proceeding, Case D2010-305.

The Notice of Intent to Discipline alleges that, on April 16, 2010, the respondent appeared at the Los Angeles Immigration Court and represented before an Immigration Judge (Notice of Intent to Discipline, at ¶ 8; Preliminary Inquiry Report). The Notice further alleges that the respondent on that date submitted a signed Form EOIR-28 (Notice of Entry as Attorney or Representative) concerning Do (Notice of Intent to Discipline, at ¶ 9; Preliminary Inquiry Report). The respondent represented on that form that he was a member in good standing of the District of Columbia Court of Appeals, the Notice contends, Notice of Intent to Discipline, at ¶ 10; Preliminary Inquiry Report, and also checked a box indicating that he was not subject to any court order suspending him from the practice of law. *Id.*

In light of the respondent's actions in the Do matter, the Notice of Intent to Discipline sets out how, on April 19, 2010, the EOIR Disciplinary Counsel ordered the respondent to cease and desist from further practice, until he was reinstated to practice by the Board (Notice of Intent to Discipline, at ¶ 11; Preliminary Inquiry Report).

The Notice of Intent to Discipline further alleges that, on August 20, 2010, the respondent was suspended from the practice of law in Pennsylvania, but did not inform the Board, or the EOIR Disciplinary Counsel, of such suspension (Notice of Intent to Discipline, at ¶¶ 12-13; Preliminary Inquiry Report).

The Notice of Intent to Discipline also charges that, on October 15, 2010, the respondent appeared before the Los Angeles Immigration Court as counsel in the case of Tranh Truc Truong, A047 942 259 (Notice of Intent to Discipline, at ¶ 14; Preliminary Inquiry Report). The respondent was identified as counsel for Truong, and the respondent did not disclose to the Immigration Judge that he was under an order of suspension from the Board, the Notice alleges (Notice of Intent to Discipline, at ¶ 15; Preliminary Inquiry Report). The respondent argued that proceedings in the Truong matter should be terminated (Notice of Intent to Discipline, at ¶ 16; Preliminary Inquiry Report).

The Notice of Intent to Discipline also asserts that, on October 21, 2010, the respondent appeared before the Los Angeles Immigration Court in the case of Hung Quoc Trinh, A076 756 284 (Notice of Intent to Discipline, at ¶ 18; Preliminary Inquiry Report). The respondent represented to the Immigration Judge that he had been reinstated to practice, the Notice contends (Notice of Intent to Discipline, at ¶ 19; Preliminary Inquiry Report).

The Immigration Judge reset the Trinh case for November 23, 2010, so that the respondent could show that he had been reinstated (Notice of Intent to Discipline, at ¶¶ 22-23; Preliminary Inquiry Report). On that date, the Notice asserts, Trinh appeared without the respondent, and the proceedings were continued until April 1, 2011 (Notice of Intent to Discipline, at ¶¶ 24-26; Preliminary Inquiry Report).

The EOIR Disciplinary Counsel argues that the respondent is subject to discipline in these proceedings for engaging in conduct that is prejudicial to the administration of justice or undermines the integrity of the adjudicative process, 8 C.F.R. § 1003.102(n); for being otherwise subject to disciplinary sanctions in the public interest under 8 C.F.R. § 1003.102, for repeatedly violating the Board's March 2, 2010, suspension order; and for providing false or misleading information concerning his qualifications to practice before the Immigration Courts, in violation of 8 C.F.R. § 1003.102(f). The Notice of Intent to Discipline also argues that the respondent failed to comply with 8 C.F.R.§ 1002.103(c) by informing the EOIR Disciplinary Counsel of a new suspension order in Pennsylvania.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 1003.105(c)(1). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1), (2).

The Notice proposes that the respondent be suspended indefinitely from practicing before the Board and the Immigration Courts. The EOIR Disciplinary Counsel argues that an indefinite suspension order would require the respondent to prove fitness to practice under 8 C.F.R. § 1003.107(b) before being reinstated. The DHS asks that the Board extend that discipline to practice before it as well.

Because the respondent has failed to file an answer, the regulations direct the Board to adopt the proposed sanction contained in the Notice, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. § 1003.105(d)(2).

The proposed sanction is appropriate in light of the uncontested factual allegations, which reveal that the respondent has provided false or misleading information to Immigration Judges concerning his qualifications to practice, has taken action that has caused a delay in an immigration case, and "may be collecting fees for work performed after his suspension, which might limit the ability of aliens to pay for legitimate representation." Notice of Intent to Discipline, at 4. Therefore, the Board will honor the proposed discipline.

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 orders in Case D2010-001. 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(b).

Molly Kendall Clark

FOR THE BOARD