

NOT FOR PUBLICATION

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

MATTER OF:

Matthew T. LUENING, D2024-0019

Respondent

FILED

OCT 29 2024

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Toinette M. Mitchell, Disciplinary Counsel

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Clark, Appellate Immigration Judge; Creppy, Appellate Immigration Judge; Liebowitz,
Appellate Immigration Judge

Opinion by Clark, Appellate Immigration Judge

CLARK, Appellate Immigration Judge

The respondent was suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (“DHS”) for 60 days, effective February 22, 2024. On June 13, 2024, we denied his first motion seeking reinstatement to practice because he had not met his burden of establishing that he had complied with the terms of his suspension. We also extended his suspension for 60 days given his noncompliance.

On August 21, 2024, the respondent filed a second motion seeking reinstatement. The Disciplinary Counsel for the Executive Office for Immigration Review (“EOIR”) and the Disciplinary Counsel for DHS oppose the respondent’s motion for reinstatement.¹ After considering the arguments and evidence from both parties, we will deny the respondent’s second motion for reinstatement.

On December 15, 2023, the Supreme Court of Wisconsin issued an order suspending the respondent from the practice of law in Wisconsin for 60 days, effective January 26, 2024. The

¹ All references in this decision to Disciplinary Counsels or the Government are references to the Disciplinary Counsels for EOIR and DHS.

suspension was based, in part, on the respondent's failure to adhere to Wisconsin's rules of professional conduct, despite two prior disciplinary actions.²

On February 5, 2024, the Disciplinary Counsels jointly petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. We granted the Joint Petition for Immediate Suspension on February 22, 2024. Further, because the respondent did not file a timely answer to the Notice of Intent to Discipline ("NID") and because the proposed sanction of a 60-day suspension was appropriate considering his suspension in Wisconsin, our April 18, 2024, final order of discipline suspended the respondent from practice before the Board, the Immigration Courts, and DHS for 60 days, effective February 22, 2024, the date of our immediate suspension order.

On May 14, 2024, the respondent filed a motion seeking reinstatement to practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. He claimed he has been reinstated to the practice of law in Wisconsin and that he met the definition of attorney contained in 8 C.F.R. § 1001.1(f). *See* 8 C.F.R. § 1003.107(a)(1) (discussing requirements for reinstatement). In support of his motion, he presented evidence that he has been reinstated to the practice of law in Wisconsin (Respondent's Mot.) (attachment). *See* 8 C.F.R. § 1003.107(a)(1).

The Disciplinary Counsels did not dispute that the respondent met the definition of attorney set forth in 8 C.F.R. § 1001.1(f). The Disciplinary Counsels, however, opposed the respondent's motion for reinstatement on the ground that he had not complied with his period of suspension. *See* 8 C.F.R. § 1003.107(a)(3) (indicating that, if a practitioner failed to comply with the terms of his or her suspension, the Board shall deny the motion for reinstatement).

In particular, the Disciplinary Counsels maintained that the respondent had practiced before DHS, and specifically, U.S. Citizenship and Immigration Services ("USCIS"), by preparing and filing documents related to seven clients with applications before USCIS between April and May 2024 (Joint Opp. at 2-3, Exhs. 1-7). The respondent did not respond to the Disciplinary Counsels' opposition or otherwise reconcile the evidence of his practicing law before DHS during the period of his suspension.

We found the respondent did not establish that he did not violate the terms of his suspension before the Board of Immigration Appeals, the Immigration Courts, and DHS as the Disciplinary Counsels alleged. We accordingly denied the respondent's motion for reinstatement on June 13, 2024, and ordered that he remain suspended for an additional 60 days, effective immediately. 8 C.F.R. § 1003.107(a)(3).

On August 21, 2024, after this additional 60 days of suspension had expired, the respondent filed a second motion for reinstatement. In his second motion, the respondent argues that he

² The Wisconsin Office of Lawyer Regulation also charged the respondent with violating several of EOIR's rules of professional conduct; however, the court dismissed those counts, finding they should have been plead under EOIR's rules.

continues to meet the definition of attorney contained in 8 C.F.R. § 1001.1(f), and that he is entitled to reinstatement to practice before the Board, the Immigration Courts, and DHS. The Disciplinary Councils, however, again oppose the respondent's motion for reinstatement.

In their opposition, the Disciplinary Councils admit that the respondent meets the definition of attorney contained in 8 C.F.R. § 1001.1(f) (Joint Opp. at 2, Aug. 29, 2024). The Disciplinary Councils nevertheless contend the respondent continued to practice law in violation of our June 13, 2024, order extending his suspension for 60 days, and they provide two examples of this supported by evidence (Joint Opp. at 2-3 and Attachments 1 and 2, Aug. 29, 2024). The Disciplinary Councils further argue that the respondent now has violated two suspension orders and should be disbarred (Joint Opp. at 3, Aug. 29, 2024).

The respondent has not responded to the Disciplinary Councils' opposition or otherwise reconciled this evidence of his continued practicing of law before DHS during the period of his extended suspension.

Given this additional evidence of noncompliance with our June 13, 2024, continuing order of discipline, we will deny the respondent's motion for reinstatement. *See* 8 C.F.R. § 1003.107(a)(3) (stating that, if a practitioner failed to comply with the terms of the suspension, the Board "shall deny" reinstatement and indicate the circumstances under which the practitioner may apply for reinstatement).

The Disciplinary Councils claim that the respondent should be disbarred for his continued disregard for our suspension orders. In the absence of a Notice of Intent to discipline, we instead order that the respondent must wait 60 days from the date of this order to seek reinstatement to practice before the Board, the Immigration Courts or DHS.

ORDER: The respondent's motion for reinstatement is denied.

FURTHER ORDER: The respondent remains suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and DHS.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior orders. The respondent must notify the Board of any further disciplinary action against him.

FURTHER ORDER: The contents of the order shall be made available to the public, including at the Immigration Courts and appropriate offices of DHS.

FURTHER ORDER: The respondent may not petition this Board for reinstatement to practice before the Board, the Immigration Courts, and DHS under 8 C.F.R. § 1003.107 until 60 days after the date of this order.