

NOT FOR PUBLICATION

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

MATTER OF:

Samuel Adjei SARFO, D2016-0347

Respondent

FILED

JUL 20 2016

ON BEHALF OF EOIR: Nathan S. Hendriksen, Acting Disciplinary Counsel

ON BEHALF OF DHS: Catherine M. O'Connell, Disciplinary Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
Notice of Intent to Discipline Before the Board of Immigration Appeals

Before: Creppy, Appellate Immigration Judge; Mullane, Appellate Immigration Judge; White,
Temporary Appellate Immigration Judge¹

Opinion by White, Temporary Appellate Immigration Judge

WHITE, Temporary Appellate Immigration Judge

The respondent is disbarred from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS"), effective February 10, 2017.

On September 13, 2016, the District Court of Travis County, Texas, 98th Judicial District, issued a Judgment of Partially Probated Suspension, ordering the respondent suspended from the practice of law for 1 year, with an active suspension of 15 days beginning October 1, 2016, and ending October 16, 2016, and the remaining days probated subject to conditions ("2016 Judgment of Suspension"). In 2017, the Disciplinary Counsel for the Executive Office for Immigration Review ("EOIR") and the Disciplinary Counsel for DHS petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS, based on the respondent's suspension in Texas. We granted this petition on February 10, 2017. See 8 C.F.R. §§ 1003.103(a)(1), (4) (discussing grounds for immediate suspension).

On January 24, 2017, the Disciplinary Counsel for EOIR also filed a Notice of Intent to Discipline ("2017 NID") based on the respondent's suspension in Texas, and the Disciplinary Counsel for DHS requested, pursuant to 8 C.F.R. § 1003.105(b), that any discipline imposed restricting the respondent's authority to practice before the Board and the Immigration Courts also apply to his authority to practice before DHS. On February 28, 2017, the respondent filed an

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See 8 C.F.R. § 1003.1(a)(4).

untimely answer to the 2017 NID. *See* 8 C.F.R. 1003.105(c)(1) (providing that the practitioner shall file a written answer to the NID within 30 days of the date of service of the NID unless, on motion to the Board, an extension of time to answer is granted for good cause). On March 24, 2017, the Board granted EOIR Disciplinary Counsel's motion to hold the respondent's disciplinary proceedings in abeyance until the Texas Court of Appeals ruled on the respondent's appeal of the 2016 Judgment of Suspension.

On March 11, 2020, Disciplinary Counsels filed a joint motion to lift the stay and issue a final order in the respondent's disciplinary proceedings, stating that the Texas Court of Appeals has since affirmed the 2016 Judgment of Suspension. On that same date, Disciplinary Counsels jointly filed an amended NID ("2020 NID"), this time alleging, *inter alia*, that the Commission for Lawyer Discipline of the State Bar of Texas initiated new proceedings against the respondent on July 8, 2018, and that the District Court of Travis County, Texas, 201st Judicial District, ordered the respondent disbarred from the practice of law in Texas on February 21, 2019 ("2019 Judgment of Disbarment"). In his response to Disciplinary Counsels' joint motion to lift the stay, the respondent asserted, *inter alia*, that he filed an appeal of the 2019 Judgment of Disbarment with the Texas Court of Appeals, and as such, his disciplinary proceedings should continue to be held in abeyance. On September 2, 2020, the Board denied Disciplinary Counsels' motion to lift the stay, concluding that the 2019 Judgment of Disbarment is not "final" until the appeal from that order is resolved.

On May 11, 2026, Disciplinary Counsels filed a joint motion to lift the stay and issue a final order in the respondent's disciplinary proceedings, claiming that the basis for the stay is no longer relevant, as the Texas Court of Appeals has since affirmed the 2019 Judgment of Disbarment on February 26, 2021. *See Sarfo v. Comm'n for Law Disc.*, No. 03-19-00146-CV, 2021 WL 746052, at *1 (Tex. App. Feb. 26, 2021). To date, we have not received a response from the respondent addressing Disciplinary Counsels' most recently filed joint motion. Because the appeal that necessitated a stay is now resolved, we grant Disciplinary Counsels' joint motion to lift the stay and move forward in the instant disciplinary proceedings.

The 2017 NID and the 2020 NID charged that the respondent, having been subject to final orders of suspension and disbarment in Texas, respectively, is subject to reciprocal discipline under 8 C.F.R. § 1003.102(e). Disciplinary Counsels proposed in the 2017 NID that the respondent be indefinitely suspended from practice in light of the conditional suspension ordered in the 2016 Judgment of Suspension. In the 2020 NID, which operatively superseded the 2017 NID, Disciplinary Counsels propose that the respondent be disbarred from practice in light of his 2019 Judgment of Disbarment.

The respondent filed untimely answers to the 2017 NID and 2020 NID,² and did not seek an extension of time for filing the answer, nor provided any explanation as to why the answers were

² The respondent filed his answer on February 28, 2017, more than 30 days from the January 24, 2017, date of service of the 2017 NID (2017 NID at 5). On April 21, 2020, the respondent filed an answer to the 2020 Joint NID, which is again more than 30 days from its March 11, 2020, date of service (2020 NID, Proof of Service).

filed late. *See* 8 C.F.R. 1003.105(c)(1). The respondent's failure to file timely answers to the NIDs constitutes an admission of the allegations in the NIDs, and the respondent is precluded from requesting a hearing on these matters. *See* 8 C.F.R. § 1003.105(d)(1).

However, even if we disregard the untimeliness of the respondent's most recent answer to the 2020 NID, the respondent has essentially admitted, or can be deemed to have admitted, all of the factual allegations set forth in the 2020 NID. *See* 8 C.F.R. § 1003.105(c)(2). In relevant part, the respondent admitted that on February 22, 2018, the Texas Court of Appeals affirmed the 2016 Judgment of Suspension issued by the district court (*see* 2020 NID, Attachment 2). The respondent also admitted that a new disciplinary action was initiated against him, and that on July 21, 2019, another district court issued an order disbaring him from the practice of law in Texas (*see* 2020 NID, Attachments 1, 3). While the respondent in his answer indicated that he appealed the latter order in 2019, Disciplinary Counsels have shown that the Texas Court of Appeals has since affirmed the district court's order of disbarment on February 26, 2021 (*see* Disciplinary Counsels' Mot., Attachment 1). The respondent does not dispute that the 2019 Judgment of Disbarment is now final.

Notwithstanding the respondent's admissions, the respondent requested a hearing, asserting that there are "material issues of fact in dispute" and largely challenging the propriety of the underlying disciplinary actions and sanctions in his disciplinary proceedings in Texas. The respondent contends that the Board should grant him a full hearing on his 2016 Texas suspension "before deciding whether or not to issue a reciprocal disbarment." Disciplinary Counsels, on the other hand, argue that the respondent did not make a *prima facie* showing that there are any material issues of fact in dispute with regard to the basis for discipline in the instant proceedings (Disciplinary Counsels' Mot. at 3-4). Disciplinary Counsels argue that the respondent remains subject to summary disciplinary proceedings pursuant to 8 C.F.R. § 1003.106(a)(1), and that the Board should retain jurisdiction over the case and issue a final order (Disciplinary Counsels' Mot. at 4).

We agree that summary disciplinary proceedings are proper, and a hearing is not necessary in this case. The respondent has not made a *prima facie* showing that there is a material issue of fact in dispute regarding the basis for summary disciplinary proceedings. *See* 8 C.F.R. § 1003.106(a). The respondent's admission that he has been disbarred in Texas, and undisputed fact that this order of disbarment is now final, are sufficient to establish that disciplinary proceedings are appropriate. *See* 8 C.F.R. §§ 1003.102(e), 1003.103(b)(2).

When the Disciplinary Counsel for EOIR or DHS initiates disciplinary proceedings based on a final order of suspension or disbarment, the order gives rise to a rebuttable presumption of professional misconduct and that disciplinary sanctions shall follow. *See* 8 C.F.R. § 1003.103(b)(2). The respondent can rebut the presumption only by demonstrating by clear and convincing evidence that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an "infirmary of proof" establishing the misconduct, or that discipline would result in "grave injustice." 8 C.F.R. §§ 1003.103(b)(2)(i)-(iii). Notably, the respondent did not expressly refer to these factors in his answer to the 2020 NID.

To the extent that the respondent's disagreement with the outcome of his Texas disciplinary proceedings can be construed as alluding to a "due process" challenge, the record before us shows no deprivation of due process, as respondent was accorded a full and fair opportunity to present his case and defend himself against the state disciplinary charges at a jury trial and on appeal (*see, e.g.,* Disciplinary Counsels' Mot., Attachment 1; 2020 NID, Attachment 2). *See Matter of Kronegold*, 25 I&N Dec. 157, 161 (BIA 2010) (where "[n]otice and an opportunity to be heard [were] clearly not at issue," "there is no showing of deprivation of due process" (citation omitted)); *see also* 8 C.F.R. § 1003.103(b)(2)(i). To the extent that the arguments can be construed to imply that there was an "infirmity of proof," the record shows that the Texas Court of Appeals thoroughly considered, but ultimately rejected, the same evidentiary and legal challenges to his state disciplinary proceedings and sanctions that the respondent presented before us in his untimely answer to the 2020 NID. *See Sarfo*, No. 03-19-00146-CV, 2021 WL 746052, at *3-*6. We cannot conclude that the respondent established, by clear and convincing evidence, that there was such an "infirmity of proof" in his state disciplinary proceedings so as to give rise to the clear conviction that the 2019 Judgment of Disbarment could not be accepted as final in the instant proceedings. 8 C.F.R. § 1003.103(b)(2)(ii). Finally, as noted by Disciplinary Counsels, the respondent has made no argument implicating the "grave injustice" ground for the regulatory exception to summary discipline proceedings (Disciplinary Counsels' Mot. at 4). 8 C.F.R. § 1003.103(b)(2)(iii).

We conclude that Discipline Counsels have presented sufficient evidence to sustain the disciplinary charge against the respondent in the 2020 NID. In particular, Disciplinary Counsels have established that the that the respondent is subject to reciprocal discipline due to his disbarment in Texas. *See* 8 C.F.R. §§ 1003.102(e), 1003.103(b)(2). The sanction of disbarment proposed in the 2020 NID is appropriate in light of the respondent's disbarment in Texas. We will therefore order the respondent disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. Because the respondent is currently suspended under our February 10, 2017, order of immediate suspension, we will deem his disbarment to have commenced on that date.

The following orders will be entered.

ORDER: The Board hereby disbars the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS, effective February 10, 2017.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order. 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 the DHS.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107.