

Falls Church, Virginia 22041

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File: D2017-0413

Date: JAN 22 2018

In re: Andre MICHNIAK, Attorney

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes  
Disciplinary Counsel

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

ON BEHALF OF RESPONDENT: Pro se

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

On October 19, 2017, the respondent was disbarred on consent from the practice of law in Pennsylvania, by the Supreme Court of Pennsylvania. The Disciplinary Counsel for the Executive Office for Immigration Review ("Disciplinary Counsel for EOIR") filed a Notice of Intent to Discipline on November 13, 2017.<sup>1</sup>

The respondent filed an answer to the allegations contained in the Notice of Intent to Discipline on December 15, 2017. 8 C.F.R. § 1003.105(c)(1). We will treat the answer as timely filed.

The respondent acknowledges that he is subject to discipline by the Board. The respondent asks only that the Board grant him 30 days to complete matters pending before the Immigration Courts and DHS (Respondent's Answer at 2-4). The respondent asserts that an earlier imposition of discipline would amount to grave injustice, as he is a solo practitioner, has been a practicing immigration attorney since 1983 and provides pro bono assistance to numerous clients, performs volunteer work, and has glaucoma. *Id.*

The respondent has not established that there is a material issue of fact in his case. In particular, the respondent has not made a prima facie showing that there is a material issue of fact regarding the basis of the proceeding (the order of the Supreme Court of Pennsylvania), and the respondent has not shown that any of the exceptions to the imposition of disciplinary sanctions exist in his case. *See* 8 C.F.R. §§ 1003.106(a); 1003.103(b)(2)(i)-(iii).

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<sup>1</sup> The Disciplinary Counsel for EOIR also petitioned for the respondent's immediate suspension from practice before the Board and the Immigration Courts. 8 C.F.R. § 1003.103(a)(4). The respondent filed an opposed motion, seeking to have the Board stay the immediate suspension order. The petition for immediate suspension is now moot.

Specifically, the respondent has not established, through clear and convincing evidence, that the immediate imposition of discipline would result in grave injustice. 8 C.F.R. § 1003.103(b)(2)(iii). While the respondent seeks to have the Board's final order commence in 30 days, we note that the respondent was disbarred in Pennsylvania with his consent. Disciplinary Counsel for EOIR's "Motion For Summary Adjudication," at 3. Additionally, more than 30 days have now elapsed since the November 21, 2017, effective date of the Pennsylvania disbarment order. Moreover, the Board's final order will not become effective for 15 days. 8 C.F.R. § 1003.105(d)(2). The respondent has had, and will have, sufficient time to finalize matters pending before the DHS and Immigration Courts.

Under the circumstances, the respondent's request for a hearing is denied, and the Board will retain jurisdiction over the case, and issue a final order. 8 C.F.R. § 1003.106(a); Respondent's Answer at 4; Disciplinary Counsel for EOIR's "Motion For Summary Adjudication," at 7. As there is no material issue of fact in dispute, and as the Disciplinary Counsel for EOIR's proposed sanction of disbarment is appropriate, in light of the respondent's disbarment from the practice of law in Pennsylvania, the Board will honor that proposal. *See also* Disciplinary Counsel for EOIR's "Motion For Summary Adjudication," at 2-3. The following orders will therefore be entered.

ORDER: The Board hereby disbars the respondent from practice before the Board, the Immigration Courts, and the DHS. The disbarment will commence 15 days after the date of this order.

FURTHER ORDER: The respondent shall promptly notify, in writing, any clients with cases currently pending before the Board, the Immigration Courts, or the DHS that the respondent has been disbarred from practicing before these bodies.

FURTHER ORDER: The respondent shall maintain records to evidence compliance with this order.

FURTHER ORDER: The respondent is 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, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107.

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.

  
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FOR THE BOARD