

Falls Church, Virginia 22041

File: D2017-0402

Date: JAN 25 2018

In re: Jonathan HIDALGO, 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: Anthony Radogna, Esquire

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

On October 18, 2017, the United States Court of Appeals for the Ninth Circuit accepted the respondent's resignation from the practice of law in that court with disciplinary proceedings concerning immigration clients pending. On November 1, 2017, the Disciplinary Counsel for the Executive Office for Immigration Review (Disciplinary Counsel for EOIR) petitioned for the respondent's immediate suspension from practice before the Board and the Immigration Courts. The Disciplinary Counsel for the DHS then asked that the respondent be similarly suspended from practice before that agency. We granted the petition on November 20, 2017.

On December 22, 2017, the respondent filed an answer to the Notice of Intent to Discipline filed by the Disciplinary Counsel for EOIR. The answer included a request for a hearing and a motion to set aside the immediate suspension order entered against the respondent.¹ On January 4, 2017, the Disciplinary Counsel for EOIR filed a motion for summary adjudication.

With respect to our November 20, 2017, immediate suspension order, the respondent contends that good cause exists for setting aside the order. In particular, he contends that his current clients are adversely affected by the order both because they have lost their attorney and because he is a

¹ On November 13, 2017, the respondent attempted to file a response to the petition for immediate suspension, but his filing was rejected because it did not include proof of service on the opposing party. In her opposition to the respondent's motion to set aside our immediate suspension order, the Disciplinary Counsel for EOIR indicates that the respondent filed a request to set aside his immediate suspension on November 27, 2017. The record of proceedings does not include this document from the respondent and it is not clear if he filed it with the Board or only served the Disciplinary Counsel for EOIR. Nevertheless, the respondent has reiterated his challenges to the immediate suspension order in his response to the Notice of Intent to Discipline. We therefore have considered his arguments on this issue and have addressed them in this order.

solo practitioner and cannot pass their cases on to another attorney in his firm. The respondent also maintains that the Ninth Circuit never issued a final disposition in his disciplinary proceedings. Accordingly, he contends that the Board should set aside the immediate suspension order against him until he receives a full hearing on the disciplinary charges against him.

The respondent also requests a hearing and argues that summary disciplinary proceedings are not appropriate because there is a material issue of fact regarding allegations 3 and 4 in the Notice of Intent to Discipline. The respondent further argues that reciprocal discipline cannot be imposed because he has demonstrated by clear and convincing evidence that there was such an infirmity of proof in his disciplinary proceedings before the Ninth Circuit that we cannot accept as final the Ninth Circuit's findings. Finally, the respondent maintains that the proposed discipline of disbarment is too drastic under the circumstances.

The Disciplinary Counsel for EOIR opposes the respondent's request to set aside his immediate suspension. The Disciplinary Counsel for EOIR also argues that there are no material issues of fact in the respondent's case and that summary discipline is appropriate.

I. IMMEDIATE SUSPENSION

The respondent has not met his burden of establishing that good cause exists to set aside our November 20, 2017, immediate suspension order. 8 C.F.R. § 1003.103(a)(4); *see also Matter of Rosenberg*, 24 I&N Dec. 744 (BIA 2009). The regulations governing attorney discipline proceedings state that an attorney who has resigned from practice in any jurisdiction while disciplinary proceedings were pending is subject to disciplinary sanctions imposed by this Board. 8 C.F.R. § 1003.102(e). In this case, the Disciplinary Counsel for EOIR filed a petition for immediate suspension of the respondent supported by the Ninth Circuit order accepting the respondent's resignation with disciplinary proceedings pending. The Disciplinary Counsel for EOIR also filed the September 7, 2017, report and recommendation that the appellate commissioner filed with the Ninth Circuit. The report describes the misconduct contained in the Order to Show Cause issued to the respondent in the Ninth Circuit, the respondent's response to the charges, and the appropriate sanction. This evidence was sufficient to establish that immediate suspension of the respondent from practice before the Board, the Immigration Courts, and the DHS was warranted. 8 C.F.R. § 1003.103(a)(4).

The respondent now appears to assert that an order accepting resignation in lieu of disciplinary proceedings should not provide a proper basis for immediate suspension because it does not constitute a final disposition of the disciplinary charges. The respondent's argument is contrary to the regulations governing immediate suspension. 8 C.F.R. §§ 1003.102(e) and 1003.103(a)(1) and (4).

Further, the respondent has not shown that good cause exists for setting aside the immediate suspension. The respondent has not challenged any of the allegations of misconduct discussed in the September 7, 2017, report and recommendation filed in the Ninth Circuit. To the contrary, he appears to have conceded the charges and the appellate commissioner of the Ninth Circuit concluded that the misconduct was worthy of suspension. *See* Notice of Intent to Discipline, Attachment 2 at 12-14, 17, and 19. The appellate commissioner then recommended that the

respondent's offer to no longer practice before the Ninth Circuit be construed as a request to resign with disciplinary proceedings pending. The respondent was given the opportunity to respond to the report and recommendations, but he did not do so. Ultimately, the Ninth Circuit adopted the appellate commissioner's report and recommendations in full and construed the respondent's statement that he would no longer practice before the court as a resignation with disciplinary proceedings pending. *See* Petition for Immediate Suspension, Attachment 1. The respondent has not identified any impropriety in this proceeding.

In addition, while he claims that his suspension has resulted in hardship to his clients, the effect of an immediate suspension order on an attorney's clients generally does not establish good cause for setting aside an immediate suspension order. *Cf. Matter of Kronegold*, 25 I&N Dec. 157, 162 (BIA 2010) (noting that if the financial hardship accompanying suspension from the practice of law was in itself adequate to establish grave injustice, then almost any attorney whose livelihood was based on his legal practice could avoid reciprocal discipline). Moreover, the respondent has not presented evidence of client hardship, and the facts listed in the September 7, 2017, report and recommendation filed with the Ninth Circuit suggest that immediate suspension of the respondent is in the public interest. We therefore will deny the respondent's request to set aside the immediate suspension order. *See* 8 C.F.R. § 1003.103(a)(4); *see also Matter of Rosenberg*, 24 I&N Dec. at 745-46.

II. ANSWER TO NOTICE OF INTENT TO DISCIPLINE

The respondent has requested a hearing on the charges against him and has claimed that disbarment is not appropriate in his case. We will deny the respondent's request for a hearing and will proceed with summary disciplinary proceedings.

To obtain a hearing, the respondent must make a prima facie showing that there is a material issue of fact in his case. 8 C.F.R. § 1003.106(a). The respondent has denied allegations 3 and 4 in the Notice of Intent to Discipline and has claimed there is a material issue of fact with respect to these allegations. The Disciplinary Counsel for EOIR, however, has established that no material issue of fact exists with respect to either allegation.

First, the Disciplinary Counsel for EOIR indicates that the respondent's denial of allegation 4 is immaterial to these proceedings. Accordingly, the respondent has not made a prima facie showing that there is a material issue of fact regarding allegation 4. 8 C.F.R. § 1003.106(a).

Second, the respondent is not correct that allegation 3 is inaccurate and unsupported by the record. The allegation states that the Ninth Circuit "concluded" that the respondent engaged in "repeated violations of the court's rules and orders and the rules of professional conduct, and conduct unbecoming to a member of the court's bar." The respondent argues that the Ninth Circuit never "concluded"; the respondent claims the court only alleged. The respondent, however, is incorrect. In the September 7, 2017, report and recommendation the appellate commissioner filed with the Ninth Circuit, the appellate commissioner stated that the respondent's response to the order to show cause appeared to be a concession of the charges. The appellate commissioner further concluded that the respondent's misconduct was worthy of suspension under the applicable standards of conduct. *See* Notice of Intent to Discipline, Attachment 2, at 17 and 19. The Ninth

Circuit adopted the appellate commissioner's report and recommendation in full. Accordingly, the Ninth Circuit concluded that the respondent had committed professional misconduct, and there is no material issue of fact with respect to allegation 3 in the Notice of Intent to Discipline.

The respondent further has not established that he is entitled to a hearing due to an infirmity in the Ninth Circuit proceedings. 8 C.F.R. § 1003.106(a); 8 C.F.R. § 1003.103(b)(2); *Matter of Truong*, 24 I&N Dec. 52 (BIA 2006). The regulations governing disciplinary proceedings state that, in summary proceedings "based upon a final order of disbarment or suspension, or a resignation while a disciplinary investigation or proceeding is pending (i.e., reciprocal discipline), a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct. 8 C.F.R. § 1003.103(b)(2). Disciplinary sanctions shall follow unless the attorney can rebut the presumption by demonstrating, through clear and convincing evidence, that one of three circumstances exists. 8 C.F.R. § 1003.103(b)(2)(i) – (iii).

In this case, the respondent argues that he has rebutted the presumption of misconduct by establishing that the second circumstance exists, namely, that there was such an infirmity of proof establishing his misconduct in his disciplinary proceedings in the Ninth Circuit that we cannot accept the Ninth Circuit's conclusion as final. 8 C.F.R. § 1003.103(b)(2)(ii). We disagree.

First, as the Disciplinary Counsel for EOIR notes and as we have stated several times, the respondent appears to have admitted his misconduct to the Ninth Circuit. This admission weighs against the respondent's argument that there was an infirmity of proof in his proceedings.

Second, while the respondent did not have a disciplinary hearing before the Ninth Circuit, the lack of a hearing was due to his own failure to respond in a timely manner to the charges against him. See Notice of Intent to Discipline, Attachment 2, at 16. The Ninth Circuit warned him that a failure to respond to the order to show cause in a timely manner would be deemed a waiver of his right to a hearing, and the court granted his request for an extension of time to answer. The court also sua sponte granted the respondent a second extension and again warned him of the consequences of failing to respond. The respondent, however, did not file an answer in a timely manner, did not acknowledge that his answer was late when it was filed, and did not request acceptance of the answer despite its untimeliness. The respondent therefore does not appear to have been unfairly deprived of a hearing in the Ninth Circuit.

Further, the Ninth Circuit gave the respondent the opportunity to respond to the report and recommendation of the appellate commissioner, but the respondent did not file a response. The respondent also has not argued that he was unfairly prevented from doing so.

Based on the foregoing, the respondent has not met his burden of establishing, by clear and convincing evidence, that there was such an infirmity of proof establishing his misconduct in his disciplinary proceedings in the Ninth Circuit that we cannot accept the Ninth Circuit's conclusion as final. 8 C.F.R. § 1003.103(b)(2)(ii). Accordingly, we will deny the respondent's request for a hearing, and we will proceed in summary proceedings.

III. DISCIPLINARY SANCTION

The Notice of Intent to Discipline proposes that the respondent be disbarred from practice before the Board and the Immigration Courts. The Disciplinary Counsel for the DHS has asked that this discipline be extended to practice before that agency as well. The respondent argues that disbarment is too drastic, but disbarment is appropriate in light of the uncontested facts set forth in the September 7, 2017, report and recommendation and later adopted by the Ninth Circuit in its October 18, 2017, order. We therefore will order the respondent disbarred from practice before the Board, the Immigration Courts, and the DHS. Further, as the respondent is currently under our November 20, 2017, order of suspension, we will deem his disbarment to have commenced on that date.

ORDER: The Board hereby denies the respondent's motion to set aside the immediate suspension order entered against him and disbars the respondent from practice before the Board, the Immigration Courts, and the DHS. The disbarment is deemed to have commenced on November 20, 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.



FOR THE BOARD