

Falls Church, Virginia 22041

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File: D2017-0403

Date:

JAN 25 2018

In re: Salvador ORTIZ, 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 25, 2017, the United States Court of Appeals for the Ninth Circuit accepted the respondent's resignation from the practice of law with disciplinary charges 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.<sup>1</sup> 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

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<sup>1</sup> 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 June 27, 2017, order of the Ninth Circuit detailing the respondent's alleged misconduct in immigration cases he handled before that court. 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 facts listed in the June 27, 2017, order of the Ninth Circuit or pointed to any other impropriety in his proceedings in that court. 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 Ninth Circuit's Order to Show Cause 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 agrees with the respondent that the statements regarding the respondent's professional misconduct in the Ninth Circuit's Order to Show Cause dated June 27, 2017, are allegations and not conclusions. The respondent appears to have no further objection to allegation 3 in the Notice of Intent to Discipline. Accordingly, there appears to be no material issue of fact regarding this allegation.

Second, 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).

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)(i). We disagree.

First, as the Disciplinary Counsel for EOIR notes, the respondent resigned from practice before the Ninth Circuit while disciplinary proceedings were pending. The respondent therefore avoided full disciplinary proceedings in the Ninth Circuit by choice, and he cannot now argue that there was an infirmity of proof because he never received a full hearing.

Second, the respondent has not presented any evidence or argument to indicate that any of the allegations contained in the June 27, 2017, order of the Ninth Circuit are inaccurate or that the Ninth Circuit process was inadequate. The June 27, 2017, order of the Ninth Circuit contains a detailed description of the respondent's misconduct in several matters before the court. The Ninth Circuit gave the respondent the opportunity to respond to the information. Instead of responding, the respondent elected to resign from the Ninth Circuit. The respondent now claims he should have a hearing before EOIR on the Ninth Circuit's allegations, but he has not offered any information to suggest that he was wrongfully charged or processed in the Ninth Circuit. Without some indication to this effect, the respondent cannot meet his burden of establishing through clear and convincing evidence that (1) the Ninth Circuit proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, (2) there was an infirmity of proof in the Ninth Circuit proceeding, or (3) the imposition of discipline would result in grave injustice. 8 C.F.R. § 1003.103(b)(2). 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 June 27, 2017, order of the Ninth Circuit and the respondent's resignation with disciplinary charges pending in the Ninth Circuit. 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.

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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.

  
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FOR THE BOARD