

Falls Church, Virginia 22041

File: D2018-0278

Date: APR 01 2019

In re: Michelle SCOPELLITE, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

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

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

On September 19, 2018, the Presiding Disciplinary Judge for the State Bar of Arizona issued a final order accepting the Consent to Disbarment filed by the parties and disbarring the respondent from the practice of law in Arizona. On October 24, 2018, 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 of Immigration Appeals and the Immigration Courts. The Disciplinary Counsel for the DHS then asked that the respondent be similarly suspended from practice before that agency.

Before we could rule on the petition for immediate suspension, the respondent filed an answer to the Notice of Intent to Discipline supported by an appendix of documents. She also requested that these filings be under seal because they contained privileged and confidential information.¹ The Disciplinary Counsel for EOIR filed a motion for summary adjudication in response to the respondent's answer.

On November 29, 2018, the respondent filed a supplemental answer to the Notice of Intent to Discipline, and, on December 10, 2018, the Disciplinary Counsel for EOIR filed a response. The respondent then filed a second supplemental answer with an alternate motion for resignation on December 27, 2018.

Because we have the parties' responses to the Notice of Intent to Discipline and the time allowed for responding has passed, it is not necessary for us to rule on the petition for immediate suspension. We instead will move directly to addressing whether the Disciplinary Counsel for EOIR has sustained the allegations and charges in the Notice of Intent to Discipline.

¹ The record of proceedings in the respondent's case is not a public record and therefore does not need to be sealed to preserve the privileged or confidential information it contains. We therefore deny the respondent's request as moot.

The Notice of Intent to Discipline charges that the respondent is subject to reciprocal discipline under 8 C.F.R. § 1003.102(e) because she has been disbarred on consent (Notice of Intent to Discipline). In support of this charge, the Disciplinary Counsel for EOIR alleges that, on September 19, 2018, the Presiding Disciplinary Judge for the State Bar of Arizona issued a final order accepting the Consent to Disbarment filed by the parties and disbarring the respondent from the practice of law in Arizona. *Id.* The Disciplinary Counsel submitted a copy of the judge's order (Petition for Immediate Suspension, Attachment 1).

The evidence of the respondent's disbarment on consent in Arizona is sufficient to establish that disciplinary proceedings are appropriate. *See* 8 C.F.R. § 1003.103(b)(2); *see also* 8 C.F.R. § 1003.102(e). When the Disciplinary Counsel for EOIR or the DHS brings proceedings based on a final order of suspension or disbarment, like the one in the respondent's case, the order creates a rebuttable presumption that reciprocal disciplinary sanctions should follow. *See* 8 C.F.R. § 1003.103(b)(2); *see also Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010); *Matter of Truong*, 24 I&N Dec. 52, 54 (BIA 2006); *Matter of Ramos*, 23 I&N Dec. 843, 845 (BIA 2005). The respondent can rebut this 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 infirmity of proof" establishing the misconduct, or that discipline would result in "grave injustice." 8 C.F.R. § 1003.103(b)(2).

The respondent argues that imposing discipline upon her would result in grave injustice. She asserts that she has an impeccable record of wins for her clients, including her immigration clients, that she has an excellent reputation, and that the action of the Arizona Bar was based on fee disputes, not on malfeasance. She claims that she cooperated with the state bar investigations, responded to the complaints against her, and attempted to resolve the complaints through the fee arbitration committee or separate negotiations. She further contends that there were no findings of unreasonable fees or billing irregularities in any arbitration hearing (Respondent's Answer at 1-3).

The respondent claims that she intended to continue to defend herself in the Arizona Bar investigations, but increasing health issues rendered her unable to do so. Because she could not resign from the Arizona Bar with disciplinary proceedings pending, she had to consent to disbarment (Respondent's Answer at 3). The respondent, however notes that the State Bar of Texas has declined to proceed with reciprocal discipline against her (Respondent's Supplemental Answer at 2). She also claims that she remains active and in good standing in Texas (Respondent's Second Supplemental Answer, Ex. A). The respondent asks this Board to follow Texas and not take disciplinary action, or in the alternative, to let her resign. The respondent also requests a hearing.

As there is no "admission" to practice before the Board of Immigration Appeals, the Immigration Courts or the DHS, there also is no resignation from practice before these entities. Further, the respondent has not met her burden of establishing that a hearing is appropriate in her case. Specifically, she has not made a *prima facie* showing that there is a material issue of fact or that imposing reciprocal discipline would result in grave injustice. *See* 8 C.F.R. § 1003.106(a)(1).

The respondent does not contest that she has been disbarred on consent in Arizona, and this is sufficient to support the charge in the Notice of Intent to Discipline. In addition, the evidence the respondent has submitted with her Answer to the Notice of Intent to Discipline is not sufficient to establish that she has a reasonable likelihood of showing, during a hearing, that there was an infirmity of proof in the Arizona disciplinary proceedings, that these proceedings deprived her of due process, or that imposing discipline would result in grave injustice (Appendix and Declaration in Support of Respondent's Answer, Ex. A-N). The "Statement of Facts", attached as Exhibit A to respondent's Consent to Disbarment, states that 11 clients and three employees of the respondent's law firm filed complaints with the Arizona State Bar (Appendix, Ex. B at 5). The Arizona State Bar was pursuing charges and allegations against the respondent in a number of these cases before she consented to disbarment. *Id.* Some of the charges were unresolved at the time of the disbarment, but this fact alone does not show that she has a reasonable likelihood of establishing that there was a deprivation of due process or an infirmity of proof during her state proceedings.

The evidence also does not establish that she has a reasonable likelihood of establishing, during a hearing, that imposing reciprocal discipline on the basis of a disciplinary disbarment in Arizona will result in grave injustice. We are sympathetic to the respondent's health concerns, but, if she believes that there were no disciplinary violations underlying her Arizona disbarment, she should seek to withdraw her consent to disbarment and litigate her case in Arizona. It is not appropriate to relitigate issues related to the merits of the State disciplinary proceedings in this forum. *See Matter of Kronegold*, 25 I&N Dec. at 161-62; *cf. Matter of Rodriguez-Ruiz*, 22 I&N Dec. 1378, 1379-80 (BIA 2000) (stating that the Board cannot go behind a State court order to determine whether it acted in conformity with State law but must instead accord "full faith and credit" to the court's judgments).²

Based on the foregoing, we deny the respondent's request for a hearing. We further conclude that the Disciplinary Counsel for EOIR has sustained the charge against the respondent and that she is subject to reciprocal discipline due to her disbarment in Arizona.

The Notice of Intent to Discipline proposes that the respondent be disbarred from practicing before the Board and the Immigration Courts. The Disciplinary Counsel for the DHS asks the Board to extend that discipline to practice before that agency as well. The proposed sanction is appropriate in light of the respondent's disbarment in Arizona. We therefore will honor the proposed discipline and will order the respondent disbarred from practice before the Board, the Immigration Courts, and the DHS. The respondent's disbarment will commence upon issuance of this order.

² The respondent's evidence that an assistant disciplinary counsel for the State Bar of Texas has recommended that the bar not pursue reciprocal discipline against the respondent also does not establish that imposing reciprocal discipline is unwarranted. The disciplinary regulations governing these proceedings state that it is in the public interest for "the Board to impose disciplinary sanctions against any practitioner who falls within one or more of the categories enumerated in this section." 8 C.F.R. § 1003.102. Being subject to an order of disbarment is one of the categories. 8 C.F.R. § 1003.102(e).

ORDER: The Board hereby disbars the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS. The disbarment will commence upon issuance of this order.

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 her.

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 of Immigration Appeals, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107.

A handwritten signature in cursive script, appearing to read "W. M. [unclear]", is written above a horizontal line.

FOR THE BOARD