

NOT FOR PUBLICATION

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

MATTER OF:

Jose R. FRANCO-RIVERA, D2021-0219

Respondent

FILED
MAR 02 2022

ON BEHALF OF EOIR: Paul A. Rodrigues, 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, Liebowitz, Appellate Immigration Judge,
Manuel, Temporary Appellate Immigration Judge¹

Opinion by: Liebowitz, Appellate Immigration Judge

LIEBOWITZ, Appellate Immigration Judge

The respondent will be suspended from the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (DHS) for 7 months, effective January 12, 2022.

On March 29, 2021, the United States District Court for the District of Puerto Rico indefinitely suspended the respondent from the practice of law before the court. On November 15, 2021, the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) and the Disciplinary Counsel for the Department of Homeland Security (DHS) jointly petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS. We granted the petition on January 12, 2022.

On December 13, 2021, the respondent filed an opposition to the Joint Petition for Immediate Suspension with the Disciplinary Counsels for EOIR and the DHS. The respondent did not file the opposition with this Board. In his opposition, the respondent stated that he had been reinstated to the practice of law before the federal district court in Puerto Rico on October 12, 2021, and he submitted a copy of the order issued by the United States District Court for the District of Puerto Rico.

The Disciplinary Counsels for EOIR and the DHS subsequently filed a reply to the respondent's opposition and a motion for entry of an order of suspension. In their reply, the

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

Disciplinary Counsels noted that the respondent never notified them of his suspension before the U.S. District Court in Puerto Rico even though he was required to do so. 8 C.F.R. § 1003.103(c). The Disciplinary Counsels also noted that the respondent's suspension before the U.S. District Court in Puerto Rico was based on his suspension before the Supreme Court of Puerto Rico and that the respondent had not notified the Disciplinary Counsels of this suspension either, in spite of his obligation to do so. *Id.* The Disciplinary Counsels acknowledged the respondent's evidence of reinstatement to practice before the U.S. District Court in Puerto Rico but argued that suspension was still warranted. The Disciplinary Counsels, however, changed their requested sanction from indefinite suspension to a 7 month suspension because the respondent's suspension before the U.S. District Court in Puerto Rico was for approximately 7 months.

On January 12, 2022, the respondent filed a response to the Disciplinary Counsels' reply, and, on January 31, 2022, the respondent filed a motion for reconsideration. In the response, the respondent argues that he did notify the Immigration Court of his suspension before the federal court in Puerto Rico, and he submits a copy of the motion to withdraw he allegedly filed with the Immigration Court.² In his motion for reconsideration, the respondent appears to be challenging the immediate suspension order. He claims that indefinite suspension is not a proper sanction in his case and he asks that the suspension be overturned or modified.

To the extent that the respondent is asking us to set aside our immediate suspension order, we deny his request. The respondent has not established that good cause exists for setting aside the order. 8 C.F.R. § 1003.103(a)(4). The respondent does not dispute that he was suspended before the U.S. District Court and the Supreme Court of Puerto Rico. These suspensions provide a proper basis for an immediate suspension order and a final order of discipline. 8 C.F.R. § 1003.103(a)(4) and (b)(2). The fact that the respondent has been reinstated to practice is relevant to the timing of our final sanction, not whether a sanction should be imposed. Accordingly, we deny the respondent's motion for reconsideration of our immediate suspension order.

We further note that the respondent has not filed a specific response to allegations or the charge in the Notice of Intent to Discipline. *See* 8 C.F.R. § 1003.105. The respondent's failure to file a response within the time period prescribed in the Notice of Intent to Discipline constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1).

The Notice of Intent to Discipline proposes that the respondent be indefinitely suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS. As we noted above, however, the Disciplinary Counsels now ask that the respondent be suspended for 7 months because his suspension before the federal court in Puerto Rico was for approximately 7 months. The respondent objects to this sanction and is essentially claiming that he has acted as if he were suspended from practice before the Immigration Court in Puerto Rico by withdrawing from the only immigration case in which he was involved after he was suspended by the U.S. District Court in Puerto Rico.

² Our records indicate that an attorney filed a motion to withdraw with the Immigration Court in Puerto Rico on May 21, 2021, and that the motion was granted on May 25, 2021.

The respondent, however, did not withdraw from his immigration case until almost 60 days after he was suspended by the U.S. District Court in Puerto Rico, and he did not notify the Disciplinary Counsel for EOIR of this suspension. 8 C.F.R. § 1003.103(c). More importantly, the respondent has not established that he stopped practicing immigration law when he was suspended from practice before the Supreme Court of Puerto Rico or that he notified the Disciplinary Counsels of that suspension, which rendered him ineligible to practice before the Immigration Courts, the Board of Immigration Appeals, and the DHS. *See* 8 C.F.R. § 292.1(a) and 1292(a) (indicating who may practice before the Immigration Courts, the Board of Immigration Appeals, and the DHS); 8 C.F.R. § 1001.1(f) (defining “attorney”). The respondent’s statements in his filings suggest that his suspension before the Supreme Court of Puerto Rico occurred a year or more before his suspension before the U.S. District Court in Puerto Rico, and the record does not contain evidence regarding the length of this suspension. It therefore is unclear how long the respondent practiced in immigration proceedings while unauthorized to do so.

Based on the foregoing, we conclude that a disciplinary sanction is warranted in the respondent’s case. *See* 8 C.F.R. § 1003.103(b)(2); 8 C.F.R. § 1003.15(d). We further agree with the Disciplinary Counsels that a suspension of 7 months is most appropriate as the respondent was suspended for approximately 7 months before the U.S. District Court in Puerto Rico. We therefore will honor this amended proposed discipline and will order the respondent suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS for 7 months.

We further conclude that the respondent’s suspension should be effective as of January 12, 2022, the date of our immediate suspension order. While the respondent contends that he effectively complied with the notice requirements of 8 C.F.R. § 1003.103(c) by filing a motion to withdraw with the Immigration Court after his suspension before the U.S. District Court of Puerto Rico, he has not explained why he did not notify the Disciplinary Counsels of his earlier suspension before the Supreme Court of Puerto Rico. The respondent also has not established that he did not practice before the Immigration Courts, the Board of Immigration Appeals, or the DHS while suspended from the practice of law in Puerto Rico. The respondent therefore has not established that the circumstances of his case warrant a suspension that runs concurrent with his suspension before the U.S. District Court of Puerto Rico. The respondent’s suspension instead will be effective January 12, 2022, the date of his immediate suspension order.

ORDER: The Board hereby suspends the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and the DHS for 7 months, effective January 12, 2022.

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.