NOT FOR PUBLICATION

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

MATTER OF:

Nathan W. CHOI, D2022-0031

Respondent

FILED
JUN 21 2022

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

ON BEHALF OF DHS: Toinette M. Mitchell, 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; Brown, Temporary Appellate Immigration Judge[1]

Opinion by Appellate Immigration Judge Creppy

CREPPY, Appellate Immigration Judge

The respondent will be disbarred from practice before the Board of Immigration Appeals ("Board"), the Immigration Courts, and the Department of Homeland Security ("DHS"), effective March 28, 2022.

On November 17, 2021, the Disciplinary Board, Washington State Bar Association ("WSBA"), entered a Notice of Resignation in Lieu of Discipline based on the respondent's filing of an affidavit resigning from his membership in the WSBA on November 12, 2021. On March 3, 2022, the Disciplinary Counsel for the Executive Office for Immigration Review ("EOIR") and the Disciplinary Counsel for DHS filed an Amended Joint Notice of Intent to Discipline ("NID"), as well as a Joint Petition for Immediate Suspension, based upon the respondent's resignation in Washington. We granted the Joint Petition for Immediate Suspension on March 28, 2022.

On April 1, 2022, the respondent filed an answer to the NID in which he requests a hearing. The respondent argues that although he resigned in lieu of discipline, he did not admit the allegations made by the WSBA and none of the allegations were otherwise proven by the WSBA. On April 18, 2022, Disciplinary Counsels for EOIR and DHS filed a motion for summary adjudication. Disciplinary Counsels argue that summary disciplinary proceedings are proper because there are no issues of material fact in dispute in the respondent's case, and that 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).

exception for infirmity of proof is not applicable because the respondent's voluntary resignation from the practice of law with disciplinary charges pending forestalled the disciplinary proceedings.

To obtain a hearing, the respondent must make a prima facie showing in his answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii). 8 C.F.R. § 1003.106(a)(1). The regulations in 8 C.F.R. § 1003.103(b)(2)(i) through (iii) list the following exceptions:

> (i) The underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
> (ii) There was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the adjudicating official could not, consistent with his or her duty, accept as final the conclusion on that subject; or
> (iii) The imposition of discipline by the adjudicating official would result in grave injustice.

8 C.F.R. § 1003.103(b)(2)(i)-(iii). The respondent has not satisfied his burden of showing that referral of his case to the Chief Immigration Judge for a hearing is warranted.

The respondent has not made a prima facie showing that there is a material issue of fact in dispute regarding the basis for the instant disciplinary proceedings. *See* 8 C.F.R. § 1003.106(a). The respondent does not dispute the alleged fact that he resigned while a disciplinary proceeding is pending, and his resignation provides the basis for summary disciplinary proceedings (*see* Respondent's Answer at 2, ¶¶ 2-3; NID at 1). *See* 8 C.F.R. § 1003.103(b)(2).

The respondent likewise has not made a prima facie showing that there is a material issue of fact in dispute with regard to one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii). *See* 8 C.F.R. § 1003.106(a)(1). The affidavit the respondent filed with the WSBA acknowledged service of the Third Amended Formal Complaint and Notice to Answer in relation to his Washington disciplinary proceedings, and indicated that rather than defend himself against the allegations, he wished to permanently resign from membership in the WSBA (Respondent's Resignation Form, ¶¶3, 5). The respondent in his answer to the NID has not otherwise alleged that he lacked notice or an opportunity to be heard in his Washington disciplinary proceedings (*see* Respondent's Answer at 1-4). *See* 8 C.F.R. § 1003.103(b)(2)(i).

Like Disciplinary Counsels, we will construe the respondent's repeated assertions in his answer that there is "no infirmity of proof establishing [his] professional misconduct" as a scrivener's error, and that the respondent intended to express the opposite (Respondent's Answer at 3-4). The respondent has not satisfied his burden of demonstrating that a hearing is warranted based on "an infirmity of proof establishing [his] professional misconduct." 8 C.F.R. § 1003.103(b)(2)(ii). First, the respondent resigned from his membership in the WSBA while disciplinary proceedings were pending. The respondent therefore avoided full disciplinary proceedings by choice, and he cannot now argue that there was an infirmity of proof because he chose not have a full hearing. Second, the respondent has not presented any evidence that would tend to indicate that the allegations of misconduct contained in the WSBA's Third Amended Formal Complaint were

inaccurate, inadequate, or unsupported by the relevant Washington Supreme Court's Rules of Professional Conduct. The respondent in his answer to the NID has only generally alleged, without specificity or proof, that he was "harassed . . . and untreated unfairly by the entire legal community in Washington State," and that the WSBA initiated an investigation against him "on their own accord due to political motives" because he ran for election for judicial positions with the Washington State Supreme Court and Washington Court of Appeals (*id.*). In contrast to the respondent's bare assertions, the Third Amended Formal Complaint lodged 13 counts of alleged misconduct and provided detailed descriptions of the alleged facts underlying each count. The respondent was accorded the opportunity to respond to these allegations, but instead of responding, elected to resign from the WSBA. Significantly, the respondent in his answer to the NID, has not addressed any of the WSBA's specific allegations of misconduct in a meaningful, direct, or responsive manner. On the respondent's limited showing, we cannot conclude that the respondent has satisfied his burden of establishing a prima facie case that there is a material issue of fact in dispute regarding the infirmity of proof of his professional misconduct that would warrant further hearing before an adjudicating officer. *See id.*

Finally, the respondent in his answer contends that imposition of discipline based on his resignation from the WSBA would result in grave injustice (*id.* at 4). Specifically, the respondent notes that he remains licensed in the state of Hawaii, and that imposition of discipline would be proper only and until the disciplinary body for the Hawaii State Bar finds that he engaged in misconduct so egregious so as to warrant disbarment (*id.* at 1, 4). The respondent's arguments are unavailing. The respondent has not demonstrated that a hearing is warranted to determine whether imposition of discipline rose to the level of "grave injustice" simply because he remains licensed in another state. *See* 8 C.F.R. § 1003.103(b)(2)(iii). Under penalty of perjury, the respondent agreed to notify all other states and jurisdictions in which he is admitted of his November 2021 resignation in lieu of discipline in Washington, and likewise agreed to resign permanently from the practice of law in all the states and jurisdictions in which he is admitted (Respondent's Resignation Form, ¶9). [2] The respondent also certified under penalty of perjury his acknowledgement that his resignation could be treated as a disbarment by all other jurisdictions, and subject to all restrictions and duties as a disbarred lawyer (Respondent's Resignation Form, §¶9, 13, 14). In light of the respondent's undisputed attestations in his affidavit, including his assurance that his resignation from the Hawaii State Bar is forthcoming, we fail to see how imposition of discipline based on the respondent's resignation in lieu of discipline from

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[2] The respondent in his answer to the NID has not indicated whether he has provided the disciplinary authority for Hawaii notice of his resignation in lieu of discipline in Washington, which for purposes of reinstatement in Washington is "treated as an application by one who has been disbarred for ethical misconduct," and whether he has sought resignation from the Hawaii State Bar (*see* Respondent's Answer at 1-4; Respondent's Resignation Form, ¶ 8). *See* Washington Supreme Court's Rules for Enforcement of Lawyer Conduct 9.3(b)(3); *cf. generally Off. of Disc. Counsel v. Hurley*, 787 P.2d 688, 689-90 (Haw. 1990) (finding that "[w]hen acceptance of resignation in lieu of discipline is "tantamount of disbarment for purposes of reinstatement" in Texas, it is tantamount to disbarment for purposes of reciprocal discipline in Hawaii").

Washington, as is permitted in the regulations, established a prima facie case of grave injustice (*see* Respondent's Answer at 4). *See* 8 C.F.R. § 1003.102(e).

Because the respondent did not satisfy his burden of establishing a prima facie case of a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i) through (iii), his request for a hearing is denied. We therefore proceed with summary disciplinary proceedings.

In the NID, Disciplinary Counsels propose that the respondent be disbarred from practice before the Board, the Immigration Courts, and DHS, based on his resignation in lieu of discipline in Washington. The respondent argues that imposition of discipline is "premature" where he remains licensed and there has been no finding of misconduct in Hawaii (Respondent's Answer at 4).

In the case of a summary proceeding based upon an attorney's resignation while a disciplinary proceeding is pending, a presumption of professional misconduct arises, and disciplinary sanctions shall follow, unless the attorney rebuts the presumption with "clear and convincing evidence" that one or more of the exceptions in 8 C.F.R. § 1003.103(b)(2)(i) through (iii), the same exceptions previously discussed in the context of the respondent's request for a hearing, apply. 8 C.F.R. § 1003.103(b)(2). The respondent has not provided clear and convincing evidence that he was deprived of notice or an opportunity to be heard in his disciplinary proceedings in Washington; or clear and convincing evidence that there was an infirmity of proof establishing his professional misconduct; or clear and convincing evidence that imposition of discipline would result in grave injustice. The respondent has not rebutted the presumption of professional misconduct arising from his resignation during the pendency of disciplinary proceedings, and thus, imposition of disciplinary sanction is appropriate at this time.

We conclude that disbarment from practice before the Board, the Immigration Courts and DHS is appropriate in light of the uncontested facts and allegations in the WSBA's formal complaint and the respondent's voluntary resignation with disciplinary proceedings pending with the WSBA. The respondent will be ordered disbarred from practice before the Board, the Immigration Courts and DHS. Because the respondent is currently under our March 28, 2022, order of suspension, we will deem his disbarment to have commenced on that date.

ORDER: The Board hereby denies the respondent's request for a hearing, and disbars the respondent from practice before the Board, Immigration Courts and DHS. The disbarment is deemed to have commenced on March 28, 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 DHS.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and DHS under 8 C.F.R. § 1003.107.