

NOT FOR PUBLICATION

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

MATTER OF:

Michael Lake MATTSON, D2022-0219

Respondent

FILED

MAY 04 2023

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Toinette M. Mitchell, Disciplinary Counsel

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

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
Notice of Intent to Discipline Before the Board of Immigration Appeals

Before: Malphrus, Chief Appellate Immigration Judge, Brown, Temporary Appellate
Immigration Judge, Noferi, Temporary Appellate Immigration Judge¹

Opinion by Noferi, Temporary Appellate Immigration Judge

NOFERI, Temporary Appellate Immigration Judge

The respondent will be indefinitely suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS"), effective 15 days from the issuance of this order.

On April 17, 2023, the Disciplinary Counsel for the Executive Office of Immigration Review ("EOIR") and the Disciplinary Counsel for DHS filed a Joint Notice of Intent to Discipline. This Joint Notice of Intent to Discipline charged the respondent with engaging in the unauthorized practice of law by failing to withdraw representation, repeated failure to appear for scheduled hearings in violation of 8 C.F.R. § 1003.102(l), failing to provide competent representation in violation of 8 C.F.R. § 1003.102(o), and failing to act with reasonable diligence in violation of 8 C.F.R. § 1003.102(q).

In support of these charges, the Disciplinary Counsels allege that on May 8, 2020, the respondent changed his status to practice law in Texas from an active membership to an inactive membership; on June 1, 2020, he became an inactive member of the State Bar of Texas; and on November 1, 2021, the State Bar of Texas administratively suspended him for non-payment of his inactive membership fees (Notice of Intent to Discipline, para. 1-4, Exhs. 2-3). The Disciplinary Counsels accordingly contend that the respondent has not met the definition of attorney set forth

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

in 8 C.F.R. § 1001.1(f) since June 1, 2020, and therefore is not authorized to practice before the Board of Immigration Appeals, the Immigration Courts, or DHS (Notice of Intent to Discipline, para. 18). The respondent, nevertheless, remains the attorney of record in 30 cases pending before the Immigration Courts (Notice of Intent to Discipline, Exh. 4).

The Disciplinary Counsels additionally charge that the respondent has repeatedly failed to appear for scheduled hearings for a client without good cause (Notice of Intent to Discipline, para. 7-12, 19), and that he failed to provide competent representation to two clients (Notice of Intent to Discipline, para. 7-17, 20, 22). Finally, the Disciplinary Counsels contend that the respondent failed to act with reasonable diligence and promptness in representing 2 clients (Notice of Intent to Discipline, 7-17, 21, 23).

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *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 no further evidence need be adduced. 8 C.F.R. § 1003.105(d)(1). Also, given this failure to respond, the respondent is precluded from requesting a hearing in the matter. 8 C.F.R. § 1003.105(d)(2).

The Disciplinary Counsels have moved for the entry of a final order of discipline. In their motion, the Disciplinary Counsels state that they served the respondent with the Notice of Intent to Discipline by certified mail at his address of record with EOIR and the State Bar of Texas, and by email using the email address of record with EOIR (Motion for Entry of Final Order at 1). The Disciplinary Counsels have attached proof of a certified mailing to their motion (Motion for Entry of a Final Order, Attachments 1 and 2).

If the respondent has been properly served with the Notice of Intent to Discipline and fails to respond, the regulations state that this Board "shall issue a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline unless to do so would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice." 8 C.F.R. § 1003.105(d)(2). The Disciplinary Counsels argue that the proposed sanction of indefinite suspension is appropriate because the respondent has engaged in conduct that violates a duty owed as a professional and causes injury or potential injury to a client, the public or the legal system.

In particular, the Disciplinary Counsels contend that, by failing to withdraw as the attorney of record in numerous cases pending before the Immigration Courts, the respondent has harmed his clients and the Immigration Courts. The Disciplinary Counsels maintain that, when this misconduct is weighed with the aggravating factors of multiple offenses, vulnerable victims, and substantial experience in the practice of law, and the mitigating factors, which we presume are no prior disciplinary record, the absence of a selfish or dishonest motive, and physical disability, the proper sanction is indefinite suspension (Motion for Entry of Final Order at 3).

We agree that indefinite suspension is appropriate in this case. Standard 7.2 of the American Bar Association's Standards for Imposing Lawyer Sanctions, 2d Ed. (ABA Standards) states that

suspension is generally appropriate when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury or potential injury to a client, the public, or the legal system. ABA Standards at 375. There is nothing in the record to indicate that the respondent's actions were not knowing. Further, while the respondent has not set forth sufficient mitigating factors to overcome the aggravating factors, including the large number of clients potentially affected by his conduct and the vulnerability of these clients.

Based on the foregoing, we will honor the proposed discipline and will order the respondent indefinitely suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. Because the respondent currently is not subject to an order of suspension before EOIR or DHS, the order of suspension will become effective 15 days from the issuance of this order. 8 C.F.R. § 1003.105(d)(2).

ORDER: The Board hereby indefinitely suspends the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS, effective 15 days from the issuance of this order.

FURTHER ORDER: The respondent shall promptly notify, in writing, any clients with cases currently pending before the Board of Immigration Appeals, the Immigration Courts, or DHS that the respondent has been suspended from practicing before these bodies.

FURTHER ORDER: The respondent shall maintain records to evidence compliance with this order.

FURTHER 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.