NOT FOR PUBLICATION

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

MATTER OF:

Jose A. SANDOVAL, D2009-0173

Respondent

FILED
JUN 13 2023

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

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

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
On Motion from a Decision of the Board of Immigration Appeals

Before: Malphrus, Chief Appellate Immigration Judge, Liebowitz, Appellate Immigration Judge, Noferi, Temporary Appellate Immigration Judge[1]

Opinion by Noferi, Temporary Appellate Immigration Judge

NOFERI, Temporary Appellate Immigration Judge

The respondent, who was expelled[2] from practice before the Board of Immigration Appeals ("Board"), the Immigration Courts, and the Department of Homeland Security ("DHS"), has filed a motion for reinstatement to practice. The respondent's motion is opposed by the Disciplinary Counsel for the Executive Office for Immigration Review ("EOIR") and the Disciplinary Counsel for DHS. The respondent's motion will be denied.

On May 3, 2010, in the United States District Court for the Western District of Michigan, the respondent was convicted of one count of obstructing the due administration of justice, in violation of 18 U.S.C. § 1503 and 18 U.S.C. §2. The respondent's conviction is a "serious crime" within the meaning of 8 C.F.R. § 1003.102(h). On May 13, 2010, the Disciplinary Counsel for DHS initiated disciplinary proceedings against the respondent and thereafter petitioned for the respondent's immediate suspension from practice before DHS. The Disciplinary Counsel for EOIR then asked that the respondent be similarly suspended from practice before EOIR, including the Board and the Immigration Courts. On June 16, 2010, we granted the petition for the respondent's immediate suspension pending final disposition of this proceeding.

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

[2] Expulsion from practice before the Board is now called disbarment. 8 C.F.R. § 292.3(a)(1)(i); 8 C.F.R. § 1003.101(a)(1).

The respondent did not file a timely answer to the Notice of Intent to Discipline and did not dispute the allegations contained in the Notice. *See* 8 C.F.R. § 1003.105(d)(1). Given that the respondent's conviction was a serious crime, we issued an order on July 8, 2010, expelling the respondent from practice before the Board, the Immigration Courts, and DHS.

On December 16, 2022, the respondent filed a motion seeking early reinstatement to practice before the Board, the Immigration Courts and DHS, claiming that his petition for reinstatement to practice law in Michigan was granted on January 4, 2019, that there has been no complaints filed alleging that he committed any immoral or unprofessional acts to the detriment of any client, and that his reinstatement will not be detrimental to the administration of justice.[3] On January 12, 2023, the Disciplinary Counsels for DHS and EOIR (collectively, the "Disciplinary Counsels") filed a joint response opposing the respondent's motion for reinstatement. While the Disciplinary Counsels do not dispute that the respondent is now eligible to practice law in Michigan and that he meets the definition of attorney as provided in 8 C.F.R. §1001.1(f), they oppose his reinstatement because he provided no evidence establishing that he possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, and DHS. 8 C.F.R. § 1003.107(b)(2). The Disciplinary Counsels also submitted evidence that they claim suggests that the respondent may be currently practicing immigration law despite his expulsion.

On January 19, 2023, the respondent filed a response to the Disciplinary Counsels' opposition, whereby he attempted to address the issues raised in their opposition by providing what he claims is evidentiary proof of his "moral and professional qualifications," consisting of his affidavit and documents pertaining to his criminal case.[4] The Disciplinary Counsels filed a response on January 31, 2023, again opposing the respondent's reinstatement, and arguing that the respondent's submissions did not demonstrate remorse, his moral and professional qualifications necessary to be reinstated after being disbarred, and that the evidence he submitted showed that he did not comply with the terms of the Board's expulsion order and that he may have engaged in the unauthorized practice of law since 2010. On February 10, 2023, the respondent filed a response to the Disciplinary Counsels' continued opposition to his reinstatement. In his response, the

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[3] With his motion for reinstatement, the respondent submitted documents that included a "Certificate of Good Standing" from the State Bar of Michigan, dated December 14, 2022; a "Certificate of Recertification," dated December 21, 2018; and the "Order of Reinstatement with Conditions," dated January 4, 2019.

[4] The respondent submitted the following documents from the United States District Court, Western District of Michigan: an "Amended Sentencing Memorandum," dated October 22, 2010, sentencing the respondent to a term of imprisonment of six months, to be followed by two years of supervised release; "Judgment in a Criminal Case," dated October 14, 2010; and an "Order of the Court," dated October 18, 2013, ordering the respondent discharge from supervised release. The respondent also submitted the Opinion from the United States Court of Appeals for the Sixth Circuit, dated February 28, 2012, affirming the judgment of the district court. The respondent also provided evidence showing his score on the Multistate Professional Responsibility Examination ("MPRE") administered on April 6, 2013.

respondent took issue with the Disciplinary Counsels' allegations, and submitted documents and records pertaining to his disciplinary proceedings before the State of Michigan Attorney Discipline Board.[5]

Expulsion or disbarment is presumptively permanent. 8 C.F.R. § 1003.101(a)(1); *Matter of Gupta*, 28 I&N Dec. 653, 654, 657 nn. 1, 5 (BIA 2022). If an expelled or disbarred attorney seeks to be reinstated to practice before the Board, the Immigration Courts, and DHS, the attorney must satisfy the more stringent requirements for "early reinstatement" than those imposed on attorneys who have completed their period of suspension. *Matter of Gupta*, 28 I&N Dec. at 657 n.5. The regulations provide that as an attorney who has been expelled or disbarred from practice, the respondent bears the burden of demonstrating "by clear and convincing evidence that [he] possesses the moral and professional qualifications required to appear before the Board and the Immigration Courts or DHS, and that [his] reinstatement will not be detrimental to the administration of justice." 8 C.F.R. § 1003.107(b)(2) (providing requirements for early reinstatement for a disbarred practitioner); *see Matter of Krivonos*, 24 I&N Dec. 292, 293 (BIA 2007) (denying reinstatement to practitioner who had been convicted of immigration-related fraud even though practitioner was reinstated by the state bar).

The regulations also require that the Board deny reinstatement if the attorney does not meet the definition of attorney as set forth in 8 C.F.R. § 1001.1(f), and if the attorney failed to comply with the terms of the suspension or, as here, the terms of the expulsion. 8 C.F.R. § 1003.107(a)(3), (b)(1)-(3) ; *see Matter of Jean-Joseph*, 24 I&N Dec. 294, 295 (BIA 2007) (denying reinstatement when there is evidence that attorney appeared as counsel in proceedings before the Immigration Court while suspended from practice before the Immigration Courts). The regulations also provide that reinstatement shall be denied if the petition for reinstatement is found to be otherwise inappropriate or unwarranted. 8 C.F.R. § 1003.107(b)(3). The Board, in its discretion, may hold a hearing to determine if the practitioner meets all the requirements for reinstatement. *Id.*

We agree with the Disciplinary Counsels that the respondent did not satisfy his burden of establishing that his motion for reinstatement should be granted. The absence of additional complaints, the documents from his criminal proceedings from 2010 to 2013, and the documents from his disciplinary proceedings from 2011 to 2017, do not suffice to constitute as "clear and convincing evidence" that he currently has the "moral and professional qualifications" for purposes of establishing that he, although previously ordered expelled from practice, is now entitled to be reinstated to again practice before the Board, the Immigration Courts, and DHS. 8 C.F.R. § 1003.107(b)(2). The respondent's proffered evidence was not only outdated, but none of the documents specifically addressed the respondent's "moral and professional qualifications"

[5] The respondent submitted the following: the "Report of Kent Count Hearing Panel #2," and "Order of Suspension with Condition," dated March 24, 2011; "Report of Kent County Hearing Panel #1," and "Order of Eligibility for Reinstatement with Conditions," dated October 5, 2015; "Supplemental Report of Kent Count Hearing Panel #1," and "Order of Remand," dated March 16, 2016; "Order Reaffirming Order of Eligibility for Reinstatement with Conditions," dated October 11, 2016; the respondent's "Brief in Response to the Grievance Administrator's Petition for Review," dated November 30, 2015; and the "Order Affirming Hearing Panel Order of Eligibility for Reinstatement with Conditions," dated June 2, 2017.

currently, such that would inform and persuade our decision to grant the respondent's motion for reinstatement at this time.

Rather than providing the requisite "clear and convincing evidence" of his moral and professional qualifications, the respondent instead made admissions in his motion that raised reasonable doubts as to whether the respondent complied with our June 16, 2010, order immediately suspending him from practice, and July 8, 2010, order expelling him from practice, before the Board, the Immigration Courts, and DHS. For instance, in his January 19, 2023, response, the respondent claimed:

> As an attorney with ample Immigration Law Experience, I speak with prospective firm's clients, review their cases with another attorney from the firm and, together, we decide what is best for each client's case. The other attorney[s] [in the firm] both appear and practice before the [BIA, DHS, and USCIS].

(Respondent's Motion, ¶ 7 (Jan. 18, 2023)). Likewise, in his February 10, 2023, response, the respondent re-asserted that:

> As an attorney, [he] should be able to discuss facts and applicable law with other attorneys in the law firm where [he] works . . . Especially when [his] experience in immigration law may assist other attorneys in the firm to better handle the cases before these agencies for the benefit of their clients. The final decision on how to proceed is for the attorneys handling the cases before these agencies and their clients, not [his].

(Respondent's Motion, ¶2 (Feb. 8, 2023)).[6]

During the period of the respondent's suspension and expulsion, from June 16, 2010, to the present, the regulations defined the term "practice" in two ways. As noted by Disciplinary Counsels' response to the respondent's motion and subsequent filings, the current regulations define "practice" of law before EOIR as:

> exercising professional judgment to provide legal advice or legal services related to any matter before EOIR. Practice includes, but is not limited to, determining available forms of relief from removal or protection; providing advice regarding legal strategies; drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law; or appearing on behalf of another person in any matter before EOIR.

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[6] In his initial motion, the respondent also claimed that:

> After January 2019, I have . . .with Daniel Watkins and Teresa Hendricks, met with prospective firm's clients, discuss facts and law with either of the two other attorneys, and research the relevant laws to arrive to a better representation plan for the prospective firms' client.

(Respondent's Motion at 3, ¶7).

8 C.F.R. § 1001.1(i) (Nov. 14, 2022-current).

Prior to November 14, 2022, and after January 19, 2009, the term "practice" was more broadly defined to include "act or acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with DHS, or any immigration judge, or the Board." 8 C.F.R. § 1001.1(i) (Jan. 20, 2009-Nov. 14, 2022). The regulations during that period of time, in turn, defined "preparation, constituting practice" to include, among other things, "the study of the facts of a case and the applicable laws, coupled with the giving of advice and auxiliary services," but excluding "service consisting solely of assistance in the completion of blank spaces on printed Services forms by one whose remuneration, if any, is nominal," and who does not hold himself out as qualified in legal matters or immigration and naturalization procedure. *Id.*

In terms of practice before DHS, the regulations define "practice" as "acts of any person appearing in any case, either in person or through the preparation or filing of any brief or other document, paper, application, or petition on behalf of another person or client before or with" DHS (or previously, the Service, or the Board). 8 C.F.R. § 1.2 (Nov. 28, 2009-present).[7] The regulations further provide a definition of "[p]reparation, constituting practice" before DHS that substantially tracks the language of 8 C.F.R. § 1001.1(i) (Jan. 20, 2009-Nov. 14, 2022), discussed above. *Id.*

Notably, the respondent in his final response does not address the current or prior regulatory definitions of "practice" before EOIR or DHS in any manner. The respondent has not explained whether and how the work and activities he admitted he engaged in while expelled from practice before the Board, the Immigration Courts, and DHS, did not constitute "practice" of law before these bodies as this term has been defined by the federal regulations during the period of his suspension and expulsion.[8] The activities the respondent himself has claimed to have engaged in fell within the definitions of "practice" before EOIR or DHS set forth in the current and prior regulations.

Rather than addressing the relevant federal regulatory definitions of "practice" discussed above, the respondent primarily relies on the Michigan attorney discipline board's findings that he did not engage in the unauthorized practice of law, as defined by the state's case law. For the following reasons, the state attorney discipline board's findings are not dispositive to the issue before us, whether the respondent, who was presumptively permanently expelled from practice before the Board, the Immigration Courts, and DHS, should now be reinstated to practice before these bodies.

The documents the respondent provided reveal that in determining whether the respondent was engaged in the unauthorized practice of law during the period of his state suspension, the state attorney discipline board's inquiry focused on the respondent's activities between the years 2010 to 2015, from the time of his state suspension to the time he filed his motion for reinstatement to

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[7] Prior to November 28, 2011, this regulation was numbered §1.1.

[8] The respondent has not otherwise claimed that a hearing is needed to determine if he meets all the requirements for reinstatement. 8 C.F.R. § 1003.107(b)(3).

practice in Michigan (*see, e.g.*, Respondent's Reply, Tabs J-N).[9] The state attorney discipline board's findings did not reach any conduct, activities or services rendered by the respondent after 2015 (*see id.*). The state attorney discipline board also did not contemplate the activities and services that the respondent himself, in his submissions with the Board, claimed to have engaged in that, on their face, implicate the practice of law before EOIR or DHS as defined by the federal regulations (*see* Respondent's Motion, ¶ 7 (Jan. 18, 2023); Respondent's Motion, ¶2 (Feb. 8, 2023)).

In light of the absence of current evidence showing the respondent's "moral and professional qualifications," his admissions that he engaged in activities that may constitute "practice" -- as this term is defined by the federal regulations -- before EOIR or DHS while expelled from practice, and his apparent disinclination to address this issue raised by Disciplinary Counsels in their opposition to his motion, we cannot conclude that the respondent has satisfied his burden of establishing that he should be reinstated to practice before the Board, the Immigration Courts and DHS, at this time. *See* 8 C.F.R. § 1003.107(a)(2), (b)(2)-(3). The following order will be entered.

ORDER: The respondent's motion for reinstatement is denied.

[9] In a June 2017, decision, the state attorney discipline board ultimately upheld its hearing panel's determination that the respondent's work with clients was "principally clerical in nature" (Respondent's Reply, Tab N).