

Falls Church, Virginia 22041

File: D2011-199

Date:

OCT 26 2011

In re: TODD JAMES HILTS, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

ON BEHALF OF DHS: Diane H. Kier
Associate Legal Advisor

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for one year, nunc pro tunc to January 29, 2011.

On December 30, 2010, the respondent was suspended from the practice of law for two years, stayed, with an actual suspension of one year, and probation for three years, by the Supreme Court of California. Consequently, on August 17, 2011, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency.

Therefore, on August 29, 2011, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed a timely answer to the allegations contained in the Notice of Intent to Discipline on September 15, 2011. *See* 8 C.F.R. § 1003.105(c)(1). The respondent does not dispute the allegations in the Notice of Intent to Discipline, and acknowledges that he is subject to discipline by the Board. The respondent admits that he has no defense to the imposition of discipline under 8 C.F.R. § 1003.103(b).

The respondent argues only that his suspension should run concurrently with the suspension imposed in California; in other words, his suspension by the Board should be deemed to have commenced on January 29, 2011, the effective date of his discipline in California.

As there is no material issue of fact in dispute, and as the EOIR Disciplinary Counsel's proposed sanction of one year is appropriate, in light of the respondent's suspension in California, the Board will honor that proposal.

Further, after consideration of the respondent's answer, as well as the government's filing, the Board will deem the suspension to be imposed nunc pro tunc to January 29, 2011, the effective date of the respondent's suspension in California.

In attorney discipline cases where respondents are placed under an immediate suspension order by the Board, pursuant to 8 C.F.R. § 1003.103(a)(2), we typically deem the respondent's final discipline to have commenced as of the date of such immediate suspension order. However, some respondents, such as attorney Hilts, request that the final Board discipline instead run concurrently with the discipline imposed by their state bars.

The EOIR Disciplinary Counsel argues that requests for the Board's final discipline to be imposed nunc pro tunc to state discipline should only be granted where a respondent complies with 8 C.F.R. § 1003.103(c), or 8 C.F.R. § 292.3(c)(4) (in cases where the respondent only appears before the DHS) (EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 4). These regulations provide that a practitioner has a duty to notify the EOIR Disciplinary Counsel, or the DHS Disciplinary Counsel, within 30 days, when he has been convicted of a serious crime, or has been suspended or disbarred.¹

In this case, the respondent did not notify the EOIR Disciplinary Counsel of his California suspension, as required by 8 C.F.R. § 1003.103(c). The regulation does not specifically say that a failure to notify the government requires that the Board's final suspension must be deemed to have started on the date of the Board's immediate suspension order. However, the Board finds that the respondent's failure to meet the notice requirement under 8 C.F.R. § 1003.103(c) raises a non-conclusive presumption that the Board's final discipline should run from the date of the Board's immediate suspension order, rather than the (earlier) effective date of the California suspension. After considering the circumstances raised in the respondent's situation, we find that the presumption is rebutted in this case.

The respondent indicates in his answer that he has not practiced before EOIR since being suspended in California. The respondent also states that he advised all clients, including immigration clients, of his suspension in California (Respondent's Answer at 2, Exh. A). Further, the respondent states that he notified "the EOIR Courts in which he had pending cases within 30 days of the December 30, 2010, Order of Suspension" (Respondent's Answer at 2, Exh. A). The respondent also contends that he notified the DHS – apparently the DHS Chief Counsel's office in San Diego, California – of his suspension (Respondent's Answer at 2, Exh. B).

The respondent's filing expresses a belief that he complied with the reporting requirement of 8 C.F.R. § 1003.103, although, as the government argues, he in fact did not notify the EOIR Disciplinary Counsel as required by the regulation. The case does not appear to involve a willful failure to comply with 8 C.F.R. § 1003.103(c).

¹The EOIR Disciplinary Counsel also argues that the Board's final suspension should run concurrently with a state's suspension only if the attorney ceases practice before EOIR on or before the effective date of the state suspension or disbarment (EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 4).


The respondent also argues that the disciplinary violations that gave rise to the California suspension did not relate to immigration clients, and occurred years ago (Respondent's Answer at 3). After consideration of all relevant factors, therefore, the Board's final suspension will be imposed nunc pro tunc to January 29, 2011, the effective date of the respondent's suspension in California.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for one year, nunc pro tunc to January 29, 2011.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent is also instructed to notify the Board of any further disciplinary action against him.

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

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronogold*, 25 I&N Dec. 157, 163 (BIA 2010).



FOR THE BOARD