

Falls Church, Virginia 20530

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File: D2014-214

Date:

SEP 09 2014

In re: OLEH R. TUSTANIWSKY, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, 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, effective August 14, 2014.

On July 9, 2014, the United States Court of Appeals for the Second Circuit suspended the respondent from the practice of law before that court for 1 year. Consequently, on July 17, 2014, 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 14, 2014, we 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 August 15, 2014. 8 C.F.R. § 1003.105(c)(1). The respondent appears to acknowledge that he is subject to discipline by the Board. He apparently argues only that his suspension should run concurrently with the suspension imposed by the Second Circuit; in other words, his suspension by the Board should be deemed to have commenced on August 6, 2014, the effective date of his suspension by the Second Circuit.

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 by the Second Circuit, Notice of Intent to Discipline at p.2, 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 have commenced on August 14, 2014, the date of the Board's immediate suspension order.

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 Tustaniwsky, request that the final Board discipline instead run concurrently with the discipline imposed by their state bars or other authority.

The EOIR Disciplinary Counsel argues that the respondent's request for the Board's final discipline to be imposed nunc pro tunc to the Second Circuit discipline is not warranted, where the respondent did not comply with 8 C.F.R. § 1003.103(c) (EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 2). This regulation provides that a practitioner has a duty to notify the EOIR Disciplinary Counsel, within 30 days, when he has been suspended from the practice of law.

In this case, the respondent did not promptly notify the EOIR Disciplinary Counsel of his Second Circuit 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 Second Circuit suspension. After considering the circumstances raised in the respondent's situation, we find that the presumption is not rebutted in this case.

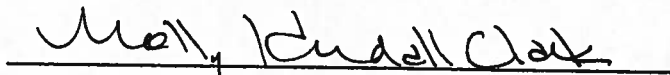
The respondent did not promptly notify the EOIR Disciplinary Counsel concerning his suspension under 8 C.F.R. § 1003.103(c), and therefore did not comply with his duty under that regulation (EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 2). Moreover, the disciplinary violations that gave rise to the Second Circuit discipline related to immigration clients. After consideration of all relevant factors, therefore, the Board will deem the suspension to have commenced on August 14, 2014, the date of the Board's immediate suspension order.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for one year, effective August 14, 2014.

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 (2013).

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)(2013).

  
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FOR THE BOARD