

Falls Church, Virginia 22041

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File: D2008-086

Date:

 JAN 25 2010

In re: LI NAN CHIANG

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

ON BEHALF OF RESPONDENT: Pro se

The respondent will be indefinitely suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS").

On May 18, 2009, the Supreme Court of Illinois suspended the respondent from the practice of law. The respondent was suspended from the practice of law "for five months and until further order of the Court, with the suspension stayed after the first one hundred twenty days and respondent placed on probation for 2 years", subject to certain conditions, and effective June 8, 2009. The court accepted the January 30, 2009, report and recommendation of the Review Board of the Illinois Attorney Registration and Disciplinary Commission (ARDC). The ARDC noted that all of the charges against the respondent involved his representation of individuals from China who sought asylum. The ARDC found, at p. 14 of its report, that the respondent "... failed to provide competent representation to his clients . . . [his] briefs contain seriously underdeveloped arguments and were inadequate to constitute even basically reasonable advocacy for [his] clients."

Consequently, on June 4, 2009, the EOIR Disciplinary Counsel 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 June 25, 2009, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. On July 28, 2009, the Board entered a "Final Order of Discipline", suspending the respondent from practice for 120 days.

The EOIR Disciplinary Counsel then filed a motion to reopen, in which it explained that filings were sent to the respondent at an incorrect address, due to a computer database issue. Moreover, the EOIR Disciplinary Counsel sought to initiate new disciplinary charges against the respondent, based on his June 30, 2004, disbarment by the United States Court of Appeals for the Seventh Circuit. The Seventh Circuit's disbarment order noted "... widespread formal and substantive deficiencies in the briefs filed by Chiang on behalf of his clients." The court stated that the respondent's clients were "profoundly disserved" by the respondent's "gross incompetence in prosecuting appeals."

The EOIR Disciplinary Counsel's motion to reopen was granted by the Board on November 4, 2009, in which the Board stated that an answer to the Amended Notice of Intent to Discipline was due within 30 days.

The respondent is subject to disciplinary sanctions because he has been suspended from the practice of law by the Supreme Court of Illinois, and disbarred by the Seventh Circuit. 8 C.F.R. § 1003.102(e)(1) (2010) (setting forth the grounds for disciplinary sanctions); *Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010).

The respondent filed a timely answer concerning the charges in the Amended Notice of Intent to Discipline, and has requested a hearing before an adjudicating official. Under former 8 C.F.R. § 1003.106(a), such official was to be appointed upon the filing of an answer and the request for a hearing. However, the procedural rules concerning attorney discipline proceedings changed with new final regulations issued on December 18, 2008, which became effective on January 20, 2009, and are applicable to the respondent's case. 73 Fed. Reg. 76914 (December 18, 2008).

Where a respondent is subject to summary disciplinary proceedings based on disbarment or suspension from the practice of law, the regulations, as amended, provide that a respondent "must make a prima facie showing to the Board in his or her 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)-(iii)." See 8 C.F.R. § 1003.106(a)(2010); 73 Fed. Reg. 76914, 76925 (December 18, 2008). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*

As to the "exceptions" set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii), this regulation provides that a final order of disbarment or suspension creates a rebuttable presumption that disciplinary sanctions should follow, and such a presumption can be rebutted only upon a showing, by "clear, unequivocal, and convincing evidence" that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. See *Matter of Kronegold, supra*, at 160-61. Thus, in considering whether reciprocal discipline is appropriate, the Board conducts a "deferential review" of the underlying proceedings. *Id.*

The Board agrees with the EOIR Disciplinary Counsel that the respondent has failed to meet his burden of showing that there is a material issue of fact in dispute in this case such that an adjudicating official should be appointed. The respondent's rambling diatribe against the Illinois authorities, and the Seventh Circuit, does not make a prima facie showing that the underlying disciplinary proceedings resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice.

For example, the respondent argues that the Seventh Circuit's disbarment order violated his right to due process (Respondent's Answer, at 2-3). However, the respondent was given the opportunity to provide arguments to the court prior to its disbarment order. See *Matter of Kronegold, supra*, at 161 (finding that due process was satisfied where respondent was given notice and an opportunity to be heard). Similarly, the respondent received due process in the ARDC proceeding, where he had the opportunity for a hearing on the charges, and the right to appeal. EOIR Disciplinary Counsel "Motion for Summary Adjudication", at 8.

Neither has the respondent made a prima facie showing that the underlying proceedings violated due process, given his argument that he allegedly received disparate treatment than other attorneys (Respondent's Answer, at 11, 43). The respondent makes sweeping claims of irregularities in the underlying proceedings. As the EOIR Disciplinary Counsel argues, "Motion for Summary Adjudication", at 8-9, such arguments should have been raised in a direct appeal concerning those orders, and the respondent fails to show that he was deprived of "minimal due process", that is, notice, and an opportunity to be heard. *Matter of Kronegold, supra*, at 161-62; 8 C.F.R. § 1003.103(b)(2)(i).

The respondent also fails to make a prima facie showing that, in the underlying disciplinary proceedings, there was an "infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction" that it could not be accepted as final. 8 C.F.R. § 1003.103(b)(2)(ii); *see Matter of Kronegold, supra*, at 161-62; EOIR Disciplinary Counsel "Motion for Summary Adjudication", at 9-11. As the EOIR Disciplinary Counsel argues, the decisions of the ARDC and the Seventh Circuit were based on a review of appellate briefs filed by the respondent. Indeed, the Seventh Circuit considered that the respondent had acknowledged, in filings before the court, the "ineptness" of his representation of clients.

Neither does the respondent make a prima facie showing that imposing discipline would result in "grave injustice." 8 C.F.R. § 1003.103(b)(2)(iii); *see Matter of Kronegold, supra*, at 160, 162; EOIR Disciplinary Counsel "Motion for Summary Adjudication", at 11-12. As the EOIR Disciplinary Counsel observes, because the respondent is under an order of disbarment from the Seventh Circuit, indefinite suspension is comparable discipline, as the respondent may not be reinstated to practice before the Board, Immigration Courts, and DHS, until the Seventh Circuit reinstates him to practice. *See* 8 C.F.R. §§ 1001.1(f); 1003.107(b); *Matter of Krivonos*, 24 I&N Dec. 292, 293 (BIA 2007)(in order to be reinstated by the Board under 8 C.F.R. § 1003.107, a respondent must show that he meets the definition of attorney as set forth at 8 C.F.R. § 1001.1(f), which does not include a person under a disbarment order).

The Amended Notice of Intent to Discipline proposes that the respondent be suspended for 120 days, based on his suspension in Illinois, but considers that the respondent has already served this suspension, given the Board's original final order in this case. The Amended Notice of Intent to Discipline also proposes that the respondent be indefinitely suspended from practice before the Board and the Immigration Courts, based on the respondent's disbarment by the Seventh Circuit. The DHS asks that the Board extend that discipline to practice before it as well. The government's proposal is appropriate, based on the respondent's suspension from the practice of law by the Supreme Court of Illinois, and his disbarment by the Seventh Circuit, and we will honor it.

ORDER: The "Motion for Summary Adjudication" filed by the EOIR Disciplinary Counsel is granted.

FURTHER ORDER: The Board suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for 120 days, and finds that such suspension has already been served, based on his suspension from the practice of law in Illinois.

FURTHER ORDER: The Board indefinitely suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, based on his disbarment by the Seventh Circuit.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order of June 25, 2009. 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(b).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. *See* 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronegold, supra*, at 163.



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FOR THE BOARD