

Falls Church, Virginia 22041

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File: D2010-311

Date:

In re: YAN WANG, ATTORNEY

 JAN 4 - 2011

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

PETITION FOR IMMEDIATE SUSPENSION

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

ON BEHALF OF DHS: Eileen M. Connolly  
Chief, Immigration Court Practice Section - East

ON BEHALF OF RESPONDENT: Richard M. Maltz, Esquire

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

On April 2, 2008, the United States Court of Appeals for the Second Circuit referred the respondent for a disciplinary investigation.

The Second Circuit's Committee on Admissions and Grievances in July, 2009, issued a report and recommendation, recommending that the respondent be suspended for six months, after finding clear and convincing evidence that the respondent had engaged in conduct warranting discipline. The report noted that the brunt of the allegations against the respondent stemmed from the court's dismissal of 37 petitions for review that she had filed (Report, at 2). The Committee found that the respondent did not provide an adequate explanation for this action, and did not acknowledge that clients had been harmed. *Id.* at 3-5. The Committee also considered that the respondent's excuse concerning separate submissions that contained similar or identical facts was "unavailing", and provided misrepresentations. *Id.* at 6-7.

The Committee found that the misconduct was repeated on "multiple occasions and over an extensive period of time." *Id.* at 9. The Committee further noted that the respondent had a history of misconduct before other tribunals, including being sanctioned twice by the First Circuit, and receiving a letter of admonition from the EOIR Disciplinary Counsel for failing to appear at scheduled hearings. *Id.* at 9-10; Notice of Intent to Discipline at 2. The Committee also considered that the respondent was born in China, had personal obstacles, and had challenging clients. *Id.* at 10. The Committee also took into account that the respondent had accepted responsibility for her misconduct and had instituted corrective measures. *Id.* However, the Committee noted, despite those changes, the respondent had continued to miss deadlines. *Id.*

The Committee recommended that the respondent be required to participate in legal education as part of any sanction, and that she be suspended for a period of six months, saying that:

... this Committee concludes that although Ms. Wang has taken certain corrective measures and has expressed remorse that this Committee finds to be genuine, discipline is warranted in light of her misconduct and her insufficient and sometimes inconsistent representations to this Committee.

*Id.* at 11.

On July 19, 2010, the Second Circuit found that the respondent's "resignation is in the interests of justice," and accepted the respondent's resignation from the bar of that court while its disciplinary proceedings were pending.

Consequently, on November 30, 2010, 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. 8 C.F.R. §§ 1003.103(a)(1), (2) (Board shall immediately suspend from practice individual who has resigned from a federal court while a disciplinary proceeding is pending). The DHS then asked that the respondent be similarly suspended from practice before that agency.

The respondent filed a letter and affidavit on December 7, 2010, arguing that the immediate suspension order should not issue. *Cf.* 8 C.F.R. § 1003.103(a)(2) (immediate suspension order may be set aside "[u]pon good cause shown... when it appears in the interest of justice to do so"). She also made a filing in reply to the EOIR Disciplinary Counsel's Response.

According to the respondent, she "withdrew" from the Second Circuit bar because she knew that she was not suited to federal practice. The respondent contends that the Second Circuit allowed her to "withdraw" from that court, which suggests that her conduct was not believed to be as serious as other cases where the attorney was disbarred. The respondent notes that she was allowed to withdraw from the bar of the United States District Court for the Southern District of New York, on September 29, 2010 (Respondent's Filing, at Exh. C). The respondent argues that her livelihood will be destroyed if the immediate suspension order is granted.

As the EOIR Disciplinary Counsel argues, at 2, the Board's published decision in *Matter of Rosenberg*, 24 I&N Dec. 744 (BIA 2009), provides support for imposition of an immediate suspension order. In that case, the respondent was suspended by the Ninth Circuit for one year based on actions taken in immigration cases, despite the respondent remaining licensed to practice law in California, and despite claims of hardship. With the exception of the fact that the respondent resigned from the Second Circuit rather than receiving a suspension, her case is similar to that in *Matter of Rosenberg, supra*, where an immediate suspension order was imposed. EOIR Disciplinary Counsel Response, at 2.

Additionally, as the EOIR Disciplinary Counsel also argues, at 3, given the heavy burden of proof on the respondent concerning the merits of the attorney discipline case, 8 C.F.R. § 1003.103(b)(2), it is not in the interest of justice to decline to issue a immediate suspension order. *Matter of Rosenberg, supra*.

Moreover, the respondent's argument that her suspension will harm her law practice is also not a basis for the Board to refrain from issuing an immediate suspension order. "The usual hardships that accompany a suspension from practice (e.g., loss of income, duty to complete pending cases) are generally not sufficient to set aside an immediate suspension order." Board of Immigration Appeals Practice Manual, Chapter 11.7(a)(ii); EOIR Disciplinary Counsel Response, at 2-3.

Although the respondent argues that she "withdrew" from the Second Circuit bar, rather than resigning, as the EOIR Disciplinary Counsel argues, at 3-4, the Second Circuit specifically allowed the respondent to "resign from the bar of this court." Second Circuit's July 19, 2010, order, at 9. As the EOIR Disciplinary Counsel argues, at 3-4, the court order shows on its face that the respondent resigned from a federal bar while disciplinary proceedings were ongoing, 8 C.F.R. §§ 1003.103(a)(1), (2), and further argument on the issue would be for the merits stage of the proceeding.

Finally, the September 29, 2010, order of the United States District Court for the Southern District of New York, Respondent's Filing, at Exh. C, does not assist the respondent but shows that she "voluntarily resigned" from the Second Circuit, and also shows that she has been allowed to resign from another federal bar while disciplinary proceedings were pending. EOIR Disciplinary Counsel Response, at 4; 8 C.F.R. §§ 1003.103(a)(1), (2).

**ORDER:** The petition is granted, and the respondent is hereby suspended from the practice of law before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. *See* 8 C.F.R. § 1003.103(a).

**FURTHER ORDER:** The respondent is directed to promptly notify, in writing, any clients with cases currently pending before the Board, the Immigration Courts, or the 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 Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.



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FOR THE BOARD