

Falls Church, Virginia 22041

File: D2010-010

Date:

APR 1 - 2010

In re: ANTONIO REYES-VIDAL, ATTORNEY

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

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

On December 18, 2009, the District Court, Bexar County, Texas, 285th Judicial District disbarred the respondent. The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) thereafter 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. On January 27, 2010, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent submitted an answer to the allegations contained in the Notice of Intent to Discipline that will be deemed timely filed under 8 C.F.R. § 1003.105(c)(1). The respondent 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, 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.* The Board agrees with the EOIR Disciplinary Counsel that there are no material issues of fact at issue, where the respondent does not dispute that the disbarment order relates to him, and makes no argument that an exception to the imposition of reciprocal discipline is applicable. The respondent raises legal issues that may be addressed by the Board.

The EOIR Disciplinary Counsel contends that the respondent is subject to disciplinary sanctions because he has been disbarred in Texas. Under 8 C.F.R. § 1003.102(e)(1)(2010), a practitioner who "[i]s subject to a final order of disbarment..." is subject to disciplinary sanctions. *Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010). The respondent argues that he is not subject to a

“final order of disbarment”, because he has filed an appeal with the Fourth Court of Appeals, Texas, and may pursue an appeal to the Texas Supreme Court, concerning the disbarment order.

However, the EOIR Disciplinary Counsel presents the Texas Rules of Disciplinary Procedure, which show that a final judgment of disbarment issued by a Texas district court cannot be stayed, and becomes effective even if an appeal is filed (EOIR Disciplinary Counsel’s “Motion for Summary Adjudication” at 2, Attachment 1). The respondent has been disbarred from the practice of law in Texas, as shown by the State Bar of Texas’ on-line records (EOIR Disciplinary Counsel’s “Motion for Summary Adjudication” at 2, Attachment 2). Moreover, the December 18, 2009, disbarment order of the Texas district court states that the respondent is “permanently prohibited from practicing law in Texas”, and was required to surrender his Texas law license. As the EOIR Disciplinary Counsel also argues, if the respondent is successful concerning his appeal of the disbarment order, he may then take appropriate action, such as seeking to reopen this disciplinary order.

The respondent also argues that he should not be subject to discipline by the Board, as he is licensed to practice law in Puerto Rico. However, where the respondent is prohibited from practicing law in Texas, he is not eligible to practice before the Board, Immigration Courts, or DHS, regardless of his status before the Puerto Rico Bar. 8 C.F.R. § 1292.1(a)(referencing 8 C.F.R. § 1001.1(f), which defines as an attorney a person who is a member of good standing of a bar who is not under a disbarment order); *see Matter of Rosenberg*, 24 I&N Dec. 744, 746 (BIA 2009)(practitioner suspended by the Ninth Circuit did not meet definition of attorney under 8 C.F.R. § 1001.1(f), although he was still licensed to practice in California); EOIR Disciplinary Counsel’s “Motion for Summary Adjudication” at 3-4.

The Notice of Intent to Discipline proposes that the respondent be expelled from practice. 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 disbarment in Texas, as well as his “lengthy history of past discipline”, EOIR Disciplinary Counsel’s “Motion for Summary Adjudication” at 4, Attachments 3-4, and we will honor it.

ORDER: The EOIR Disciplinary Counsel’s “Motion for Summary Adjudication” is granted.

FURTHER ORDER: The Board hereby expels the respondent from practice before the Board, the Immigration Courts, and the DHS.

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(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