

Falls Church, Virginia 20530

File: D2014-203

Date:

SEP 18 2014

In re: DAVID LEONARD ROSS, 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 the practice of law before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security (DHS) for a period of 3 years.

On May 29, 2014, the Supreme Court of Florida issued an order suspending the respondent from the practice of law in the state for 3 years. Consequently, on July 30, 2014, the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) petitioned for the respondent's immediate suspension from practice before the Board and the Immigration Courts. The Department of Homeland Security (DHS) then asked that the respondent be similarly suspended from practice before that agency. The respondent filed an opposition to the petition, but we granted the petition on August 18, 2014, in spite of the respondent's arguments.

On August 29, 2014, the respondent filed an answer to the Notice of Intent to Discipline (NID). In the answer, the respondent denies allegations two and three in the NID, denies there is a basis for discipline and denies that he is subject to reciprocal discipline. More specifically, the respondent argues that the ruling of the Florida Supreme Court suspending him from practice for 3 years is not final and that the ruling did not approve the report of the referee as stated in allegation two of the NID. Second, the respondent claims that the violations listed in the report of the referee do not correspond to the violations listed in the NID. Third, the respondent asserts that the regulation cited in the NID does not contain a provision creating a procedure for reciprocal discipline. The respondent therefore argues that there is no basis for reciprocal discipline in his case. Fourth, the respondent contends that the proposed discipline is not appropriate due to the mitigating facts in his case and due to the fact that the report of the referee, rather than the court order, should be dispositive. Finally, the respondent requests a hearing because he maintains there are material issues of fact in his case and because any sanction imposed should be less than the proposed sanction.

In response to the respondent's answer, the Disciplinary Counsel for EOIR has filed a motion for summary adjudication. In the motion, EOIR's Disciplinary Counsel maintains that the order of the Florida Supreme Court has not been set aside. Accordingly, EOIR's Disciplinary Counsel explains that the respondent is still suspended from the practice of law in Florida and unable to meet the definition of attorney contained in 8 C.F.R. § 1001.1(f). *See* 8 C.F.R. § 1001.1(f) (defining "attorney" as "any person who is eligible to practice law in and is a member in good

standing of the bar of the highest court of any State” and “is not under any order suspending, enjoining, restraining, disbaring or otherwise restricting him in the practice of law”); *see also* 8 C.F.R. §§ 1003.102 and 1003.102(e) (stating that a practitioner who falls within one of the listed categories “shall be subject to disciplinary sanctions” and listing attorneys “subject to a final order of disbarment or suspension” as one category).

In addition, EOIR’s Disciplinary Counsel points out that the Florida Supreme Court approved the report of the referee except for the recommended sanction and that the ethics violations referred to in the NID correspond to the violations listed in the referee’s report. EOIR’s Disciplinary Counsel goes on to explain that the concept of reciprocal discipline is firmly rooted in 8 C.F.R. § 1001.103(a) and (b) and the Board’s precedent decisions involving attorney discipline. Accordingly, EOIR’s Disciplinary Counsel maintains that there is a firm legal basis for applying reciprocal discipline to the respondent, an attorney who has been suspended in Florida.

EOIR’s Disciplinary Counsel further rebuts the respondent’s claim that the report of the referee, rather than the order of the Florida Supreme Court, should be dispositive in his case because the referee was the actual trier of fact in his disciplinary proceeding. EOIR’s Disciplinary Counsel explains that, under the Florida Constitution, the Florida Supreme Court has exclusive jurisdiction to regulate the discipline of persons admitted to practice law in the state. Accordingly, EOIR’s Disciplinary Counsel argues that the Florida Supreme Court is the final arbiter of all disciplinary proceedings in the state and that imposing a sanction on the respondent that corresponds to the sanction imposed by the Florida Supreme Court is appropriate.

Finally, EOIR’s Disciplinary Counsel notes that the respondent has not articulated what material issues of fact exist in his case. Accordingly, EOIR’s Disciplinary Counsel argues that the Board should maintain jurisdiction over the respondent’s proceedings and issue a final order suspending him from the practice of law before the Board and the Immigration Courts for 3 years.

We agree with the arguments presented by EOIR’s Disciplinary Counsel. The respondent has not identified material errors in the allegations contained in the NID, and his arguments challenging the NID’s reliance on the May 29, 2014, order of the Florida Supreme Court are without merit. As we noted in our decision granting the Petition for Immediate Suspension in his case, the respondent has not presented evidence to establish that his 3 year suspension in Florida has been set aside or that he has been readmitted to the practice of law in that state. The respondent therefore does not meet the definition of attorney set forth in 8 C.F.R. § 1001.1(f) and is subject to discipline. *See* 8 C.F.R. §§ 1001.1(f), 1003.102 and 1003.102(e); *see also* 8 C.F.R. § 1003.103(b)(2) (stating that “in the case of a summary proceeding based upon a final order of disbarment or suspension . . . a certified copy of a judgment or order of discipline shall establish a rebuttable presumption of the professional misconduct”).

Further, the respondent has not established that there is a material issue of fact in his case. In particular, the respondent has not made a prima facie showing that there is a material issue of fact regarding the basis of the proceeding (the order of the Florida Supreme Court), and the respondent has not asserted that any of the exceptions to the imposition of disciplinary sanctions exist in his case. *See* 8 C.F.R. § 1003.103(b)(2)(i) – (iii). Specifically, he has not established, through clear and convincing evidence, that he was deprived of due process during the

disciplinary proceeding in Florida, that there was an infirmity of proof in the Florida proceeding, or that the imposition of discipline by the adjudicating official would result in grave injustice. Accordingly, summary disciplinary proceedings are appropriate, and we deny the respondent's request for a hearing. *See* 8 C.F.R. § 1003.106(a)(1).

We also agree that suspension for 3 years is an appropriate sanction in light of the respondent's suspension in Florida. The respondent claims that the mitigating factors in his case support a lesser sanction and that the 6 month suspension proposed by the referee should be followed as dispositive, but we disagree. As EOIR's Disciplinary Counsel explained, the order of Florida's Supreme Court is the final ruling in the respondent's disciplinary proceeding. Further, the respondent has not presented evidence to establish that the sanction imposed by the Florida Supreme Court came out of proceedings that were procedurally unfair or that the sanction would result in grave injustice. Accordingly, we adopt the sanction proposed by EOIR's Disciplinary Counsel in the NID.

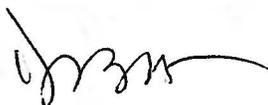
Based on the foregoing, the respondent is suspended from practice before the Board, the Immigration Courts, and the DHS. As the respondent is currently under our August 18, 2014, order of suspension, we will deem his suspension to have commenced on that date.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS for 3 years.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent also is 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, the Immigration Courts, and the 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).



FOR THE BOARD