

Falls Church, Virginia 20530

File: D2016-0002

Date: MAY 04 2016

In re: STEPHEN C. BACA, Attorney

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

MOTION

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

ON BEHALF OF DHS: Jeannette V. Dever, Associate Legal Advisor

This case was last before us on March 1, 2016, when we suspended the respondent from practice before the Board, the Immigration Courts, and the Department of Homeland Security (DHS) for 3 months. On March 3, 2016, we received the respondent's response to the motion for summary adjudication filed by the Disciplinary Counsel for the Executive Office of Immigration Review (EOIR Disciplinary Counsel) on February 19, 2016. In this response, the respondent seeks to have his period of suspension be deemed to have run simultaneously with the period of suspension he served and completed in Colorado, and he asks for reinstatement. The EOIR Disciplinary Counsel has not responded to the respondent's filing. The respondent's request for a change to the effective date of his period of suspension and his request for reinstatement will be granted, and the respondent will be reinstated to practice before the Board, the Immigration Courts, and the Department of Homeland Security ("DHS").

On November 19, 2015, the Supreme Court of Colorado suspended the respondent from the practice of law in that state for a period of one year and one day with three months served and the remainder stayed upon the successful completion of a 3 year period of probation. Consequently, on February 8, 2016, the Disciplinary Counsel for EOIR filed a Notice of Intent to Discipline and 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 disciplined and suspended from practice before that agency.

Before we ruled on the petition for immediate suspension, the respondent filed a timely answer to the allegations contained in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(c)(1). In his answer, the respondent admitted the allegations. He asked only that a reinstatement order be issued effective February 20, 2016, the date he was to be automatically reinstated to the practice of law in Colorado.

The EOIR Disciplinary Counsel, however, moved for summary adjudication and opposed the respondent's request for what amounted to a retroactive effective date for his suspension. The EOIR Disciplinary Counsel argued that a retroactive effective date was not warranted because the respondent did not comply with 8 C.F.R. § 1003.103(c). *See* 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 his answer to the Notice of Intent to Discipline, the respondent did not offer an explanation for his failure to comply with 8 C.F.R. § 1003.103(c). He stated only that he understood that he was suspended from practice before the Board and the Immigration Courts before he received a petition for immediate suspension or Notice of Intent to Discipline.

As there was no material issue of fact in dispute, we entered a final order of discipline in the respondent's case. In addition, after consideration of the respondent's answer and submissions, as well as the EOIR Disciplinary Counsel's arguments in her motion for summary adjudication, we did not find sufficient justification for granting the respondent's request for a retroactive effective date for his period of suspension. We instead found that the respondent's suspension period should run for 3 months from the date of our final order.

In his most recent submission, his response to the EOIR Disciplinary Counsel's motion for summary adjudication, the respondent argues that not granting him a retroactive effective date for his period of suspension is unjust. The respondent states that the Colorado Supreme Court, through its Attorney Regulation Department, specifically told him that it was its job to inform every court and organization to which he belonged of his suspension. He further states that the Colorado Supreme Court's suspension order dated November 15, 2015, includes an attachment showing that the court sent a copy of the order to EOIR via email. Accordingly, the respondent argues that the EOIR Disciplinary Counsel received proper notice of his suspension and should have instituted disciplinary proceedings at an earlier date. He claims that starting his suspension with the Board, the Immigration Courts and the DHS after he has completed his suspension in Colorado and been reinstated to the practice of law is unfair and unwarranted.

The respondent is correct that the attachment to the suspension order issued by the Colorado Supreme Court does indicate that a copy of the order was emailed to the EOIR. Further, the EOIR Disciplinary Counsel has not disputed the respondent's statement that he was advised by the Attorney Regulations Department of the Colorado Supreme Court that it was the department's responsibility to notify every court and organization to which he belonged of his suspension. Accordingly, while the respondent should have notified the EOIR Disciplinary Counsel himself, *see* 8 C.F.R. § 1003.103(c), we will give the respondent the benefit of the doubt under the specific circumstances in this case and grant his request for a retroactive effective date for his period of suspension.

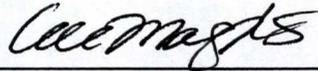
Based on the foregoing, we amend our final order of discipline dated March 1, 2016, to reflect that the respondent's period of suspension will be deemed to have run simultaneously with his period of suspension in Colorado. We further grant the respondent's request for reinstatement, and we reinstate the respondent to practice before the Board, the Immigration Courts and the DHS as of the date of this order.

ORDER: The final order of discipline in the respondent's case dated March 1, 2016, is amended to reflect that the respondent's period of suspension will be deemed to have run simultaneously with his suspension in Colorado.

FURTHER ORDER: The respondent's request for reinstatement is granted, and the respondent is reinstated to practice before the Board, the Immigration Courts and the DHS as of the date of this order.

FURTHER ORDER: Because the respondent has been reinstated, public notices regarding the respondent's suspension should reflect this reinstatement.

FURTHER ORDER: If the respondent wishes to represent a party before the DHS, the Immigration Courts or the Board, he must file a Notice of Appearance (Form G-28, Form EOIR-28 or Form EOIR-27) even in cases in which he was counsel prior to his suspension.

A handwritten signature in black ink, appearing to read "C. M. [unclear]", is written above a horizontal line.

FOR THE BOARD