UNITED STATES IMMIGRATION COURT
Office of the Chief Immigration Judge
Falls Church, Virginia

In the Matter of Irving Edleman	Attorney Discipline Proceedings 8 CFR §292.3

Attorney for Respondent	Attorney for Immigration and Naturalization Service
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Charge I - 8 C.F.R. §292.3 (a)(7) - Temporary suspension from practice in the State of New York.

Charge II - 8 C.F.R. §292.3 (a)(7) - Temporary suspension from practice in the United States District Court for the Southern District of New York.

On December 5, 1995 the General Counsel of the Immigration and Naturalization Service issued a Petition for Attorney Discipline pursuant to the provisions for suspension or disbarment under 8 C.F.R. §292.3 (a)(7). The Petition for Attorney Discipline contains two charges against the respondent. The first charge arises from the July 13, 1995 order of the Appellate Division of the Supreme Court for the First Judicial Department in the County of New York, State of New York suspending Irving Edleman from the practice of law for a period of two years. The second charge arises from the September 6, 1995 order of the United States District Court for the Southern District of New York suspending Mr. Edleman from the practice of law in that Court until he is reinstated to practice in the State of New York.

Mr. Edleman moved for reargument of the order entered by the New York Supreme Court, or in the alternative, for leave to appeal to the Court of Appeals, and for an extension of the effective date of the order of suspension. That motion was denied by the Appellate Division of the Supreme Court for the First Judicial Department in the County of New York, New York on October 3, 1995. There is neither evidence or allegation; that Mr. Edleman sought permission from the New York Court of Appeals to appeal the order of the Appellate Division. Nor, is there evidence or allegation; that Mr. Edleman filed a motion, or appeal, challenging the order of suspension entered by the U.S. District Court on September 6, 1995. Mr. Edleman remains a member in good standing of the bar of the United States District Court for the Eastern District of New York (See Exhibit 4).

On October 11, 1995 these proceedings arose from the respondent's filing of a Notice of Entry of Appearance As Attorney or Representative, Form, G-28 with the New York District of the Immigration and Naturalization Service. The Service determined that because of the order suspending Mr. Edleman from the practice of law in the state of New York, and because of the fact that he had not been admitted to practice in any other State, possession, territory, Commonwealth, or the District of Columbia, that he did not satisfy the definition of attorney in 8 C.F.R. §1.1 (f). Therefore the Service concluded that he was ineligible to appear in the proceedings for which he had filed the G-28.

In response to that determination the respondent on November 20, 1995, filed an action in the nature of mandamus in the United States District Court - Eastern District of New York to compel the Service to file the Petition for Discipline which commenced these proceedings. As part of those proceedings the U.S. District Court issued a Temporary Restraining Order on December 1, 1995, refraining the Service from prohibiting Mr. Edleman's representation of clients on pending cases for whom he had already appeared. On December 5, 1995 the Service filed the petition which commenced these proceedings, and on December 8, 1995 Mr. Edleman withdraw his mandamus action.

On December 21, 1995 the respondent answered the Petition for Attorney Discipline contending that the Findings of Fact and Conclusions of Law upon which the Appellate Division of the Supreme Court for the First Judicial Department based their decision to suspend were flawed, and based on erroneous conclusions of law. He further contended that in the New York disciplinary proceedings he was denied due process, because of the failure of the prosecutor to produce what he believes to be exculpatory evidence. Lastly, Mr. Edleman contends that the U.S. District Court likewise denied him due process, in that the order to show cause in the disciplinary proceedings before that court were inadvertently sent to a prior addressees, resulting his failure to timely reply to the court, and the subsequent in absentia order of suspension.

The initial hearing in this matter was held on March 7, 1996. Prior to that hearing, the respondent requested that this court issue subpoenas for both the complete file covering his suspension proceedings in the Appellate Division of the Supreme Court for the First Judicial Department in the Court of New York, New York, and also for the testimony of Jeremy S. Garber, Barbara Nelson and Hal R. Lieberman. Mr. Garber and Mr. Lieberman are counsels for the

Disciplinary Committee which conducted the inquiry for the First Judicial Department, and Barbara Nelson was one of his attorney in the state disciplinary proceedings. Mr. Edleman renewed his request for the issuance of the subpoenas at the March 7, 1996 hearing; both parties were advised that a ruling on that request would be postponed until after a ruling had been entered on the motion of the Service for a Summary Decision.

The motion for a Summary Decision was presented by the Service at the March 7, 1996 hearing. The Service argues that as a result of the Order of Suspension entered by the New York Court, the only type of court listed in 8 C.F.R §1.1 (f) of which Mr. Edleman is a member, that he must also be suspended from practice before the Immigration and Naturalization Service, and the Executive Office for Immigration Review, until such time that he is readmitted to practice in good standing in the state of New York. Mr. Edleman responded to the Motion for Summary Decision to citing Res Judicata, abstention, and again raising denial of due process and intentional withholding of exculpatory evidence.

The respondent relies on the decision in the U.S. District Court Eastern District of New York Irving Edleman vs. Lloyd A Sherman et el. CV-95-476 7 (E.D. N.Y.) as the basis of his Res Judicata argument. That proceeding was the mandamus action brought by the respondent to compel the Service to institute these proceedings. Mr. Edleman's reliance on the doctrine of abstention is based on his understanding of the limited rights attorneys have in appealing disciplinary proceedings in the state of New York. The respondent's denial of due process argument and intentional withholding of exculpatory evidence argument is based on his opinion that evidence favorable to him, and evidence showing the state disciplinary proceedings were meritless and frivolous, were withheld from the New York court. The Service replied to the response of the respondent, stating that Res Judicata was not applicable in this matter since the decision in Edleman V. Sherman was a temporary restraining order, which remained in full force and effect only through December 8, 1996; and that issue litigated in the mandamus action was not the same issue as in these proceedings; also no adverse finding was entered against the Service.

An attorney in proceedings based on suspension from a state court is entitled to the opportunity to present contentions and evidence regarding any alleged fundamental procedural inadequacy of the state court suspension, and any alleged insubstantiality of evidence supporting it. Matter of Sparrow 20 I&N Decision 290 (BIA 1994). Matter of Bogart 15 I&N Dec 552 (A.G. 1976) The role of this court is limited to a determination of whether or not the state proceedings were conducted in accordance with due process, and did not conclude with a result that was patently erroneous. See Matter of Bogart, supra. Before discipline may be imposed in disciplinary proceedings under 8 C.F.R § 292(3)(b)(1), any allegations of misconduct must be established by evidence which is "clear, convincing, and unequivocal," 8 C.F.R §292.3 (b)(1)(iv) See Matter of Sparrow, supra; see also Matter of Solomon, 16 I&N Dec. 388 (BIA, A.G. 1977) Matter of Koden, 15 I&N Dec. 739 (BIA 1974; A.G. BIA 1976), aff'd, 564 F.2d 228 (7th Cir. 1977)

Under the provisions of 8 C.F.R. §292.1, only certain designated individuals are authorized to represent persons before the Service and the Executive Office for Immigration Review. Included in this category are attorneys, as defined in 8 C.F.R. §1.1 (f), which provides as follows:

> The term attorney means any person who is a member in good standing of the bar of the highest court of any state, possession, Territory, Commonwealth, or the District of Columbia, and is not under any order of any court, suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law.

The plain language of the regulation indicates that a person would not satisfy the definition of an attorney if he were subject to any order of any court which suspended, enjoined, restrained, disbarred, or otherwise restricted him in the practice of law, even if he were still a member in good standing in a court of another jurisdiction. Matter of Sparrow, supra.

No evidence or affirmation has been offered that Mr. Edleman is a member of the bar of any state other than New York; nor has there been any evidence or affirmation offered that he is a member of the bar of any possession, territory, Commonwealth, or the District of Columbia. As stated before, he is a member of the bar of the United States District Court for both the Eastern and Southern Districts of New York; however he is currently under an order of suspension from the latter.

The respondent maintains that the procedures employed by the Appellate Division of the Supreme Court for the First Judicial Department in the County of New York, State of New York, were flawed, and the resulting order of suspension should not be honored by this court. On June 15, 1993 the Departmental Disciplinary Committee of the Appellate Division of the Supreme Court of the State of New York, First Judicial Department issued to Mr. Edleman a Notice of the Charges against him, advising him that a hearing would be held on August 10, 1993, and that he had twenty days to file a response to the changes of professional misconduct. He was also advised that at the hearing he had the right to cross examine witnesses and to present evidence on his behalf. (See Exhibit 3) Mr. Edleman filed an interim answer to those charges on July 15, 1993. A panel of the Disciplinary Committee held three hearings on the issue of the alleged professional misconduct and recommended that Mr. Edleman be suspended for a period of two years. Subsequently the respondent obtained new counsel, Barbara A. Nelson, who moved to reopen the proceeding to offer the testimony of Mr. William Ramos, and to present a deed, allegedly concealed by the staff of the Disciplinary Committee. After reviewing the arguments of both respondent and Disciplinary the committee, the Hearing Panel reopened the proceedings for the limited purpose of Mr. Ramos testimony, a sworn statement was submitted in lieu of testimony because of the illness of the witness. On July 26, 1994 the Hearing Panel issued its recommendation that Mr. Edleman be suspended for a period of two years.

Then on October 12, 1994 the Disciplinary Committee sent notice of their petition recommending suspension before the Supreme Court of the State of New York, Appellate Division - First Judicial Department. This notice advised the respondent that a motion would be made on November 14, 1994 for an order pursuant to 22 N.Y.C.R.R.§604.4(d), confirming the Panel's recommendation of a two year suspension. Mr. Edleman filed a Cross-Motion to the Hearing Panel's Petition. On July 13, 1995 the Court issued the Order suspending Mr. Edleman from the practice of law in the State of New York for a period of two years. As stated above the respondents' motion for reargument and for leave to appeal to the New York Court of Appeals was denied. There is no evidence that the respondent filed a motion with the New York Court of Appeals seeking permission to appeal.

The respondent also alleges that he was denied due process in the proceedings which resulted in his suspension of practice before the United States District Court for the Southern District of New York. Those proceedings were conducted in absentia due to the respondent's failure to reply to the court's directive to show cause on or before September 5, 1995 as to why he should not be disciplined. The respondent contends that he was unable to respond to the show cause directive because it was mailed to an incorrect address. The request was mailed to: 130 Williams Street, New York, New York 10038. Mr. Edleman stated that his address at the time was 55 John Street, 11th Floor, New York, New York 10038. The respondent also alleges that the U.S. District Court should have been aware of this change of address because two months earlier, in an other matter before the judge who entered the order suspending him, he had provided the court with the address of John Street. As proof the respondent offered a copy of a summons he filed with he court on July 12, 1995 listing his address on John Street, (See Exhibit 2-C) and a copy of the stipulated order disposing of that matter (See Exhibit 2-D), again signed by the same judge who entered the order of his suspension.

On May 15, 1996 this court requested a copy of the U.S. District Court file relating to the disciplinary proceedings (See Exhibit 6). That request was responded to on June 10, 1996 by a memorandum from U.S. District Court Judge Robert P. Patterson Jr. (See Exhibit 6). Judge Patterson's memorandum, a copy of which was provided to both parties states:

> "Pursuant to Rule 2(d) of the General Rules of Court, an attorney is required to advise the Court of any change of address. The order to suspend Irving Edleman from practice in this Court is valid as Respondent did not notify the court of any change of address. There have been no motions or appeals challenging t he order of suspension Dated September 6, 1995"

There are no regulatory provisions for the issuance of a Summary Decision in proceedings under 8 C.F.R. §292.3(b), and the decision of the Attorney General in the Matter of Bogart ; supra, seems to causation against such procedure. However, Matter of Bogart, supra does not mandate a hearing de novo in which the issue in the state suspension procedure is relitigated. The respondent

has been provided the opportunity to present his contentions and evidence as to the procedural inadequacy of the state court suspension and the lack of evidence supporting that decision. He likewise has offered his contention and evidence as to the procedural inadequacy of the suspension proceedings in the United States District Court for the Southern District of New York. Although the respondent take issue with the final decision in both the state and federal proceedings, a review of the proceedings before the Appellate Division of the Supreme Court for the First Judicial Department in the County of New York, State of New York, and the proceedings before the United States District Court for the Southern District of New York fail to indicate any lack of due process.

In the state proceedings the respondent was issued a notice advising him of the charges, t he right to respond to those changes, the right to cross examine witnesses, the right to present evidence on his own behalf and the date of the hearing. Three hearing were held before the disciplinary committee, and the proceedings before the committee were reopened after the respondent acquired new counsel. The recommendation of the committee was presented to the trial court and the respondent had to opportunity to file a cross-motion to the committee's recommendation. The respondent also had the right to file a motion with the New York Court of Appeals seeking permission to appeal; a right which he did not exercise. Although the suspension before the federal court was entered in absentia, the respondent became aware of that decision within a timely period, and failed to exercise his right to file either a motion to reopen or an appeal.

I find that by clear, convincing, and unequivocal evidence that the Service has established that on July 13, 1995 Irving Edleman was suspended from the practice of law in the State of New York for a period of two years. I further find that by clear convincing and unequivocal evidence it has been established that on September 6, 1995 the respondent was also suspended from practice before the United States District Court for the Southern District of New York. Thus both charges I and II in the Petition for Attorney Discipline have been established. Accordingly, the following order is entered:

IT IS HEREBY ORDERED that the respondent is suspended from the practice of law before the Immigration and Naturalization Service, and the Executive Office for Immigration Review until the suspensions of his right to practice before the bar of the state of New York and the bar of the United States District Court for the Southern District of New York are removed.

Thomas L. Pullen
Assistant Chief Immigration Judge