

Falls Church, Virginia 22041

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File: D2002-117

Date:

MAY 5 2009

In re: DAVID KEITH BURGESS, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF DHS: Appellate Counsel's Office

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for 5 years.

On May 31, 2002, the respondent was disbarred from the practice of law in California. Consequently, on September 11, 2002, the Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) initiated disciplinary proceedings against the respondent 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 suspended from practice before that agency. Therefore, on November 7, 2002, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. On April 29, 2004, we granted the EOIR Disciplinary Counsel's request that proceedings be administratively closed until that office was able to personally serve documents on the respondent.

The EOIR Disciplinary Counsel filed a "Motion to Recalendar" on February 24, 2009. The EOIR Disciplinary Counsel states that it has re-served the respondent with the Notice of Intent to Discipline, in accordance with recently-amended regulations, which amended the method of service for the Notice of Intent to Discipline. That is, under the new regulations, service of the Notice of Intent to Discipline may be made by either certified mail to the practitioner's last known address, as defined under the regulations, or by personal delivery. *See* 73 Fed. Reg. 76914, 76925 (December 18, 2008)(to be codified at 8 C.F.R. § § 1003.105(a)(1)-(2)). The "Motion to Recalendar" will be granted.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 1003.105(c)(1). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1), (2).

The EOIR Disciplinary Counsel presents evidence that the respondent has not been reinstated to the practice of law in California. The Notice proposes that the respondent be suspended from practicing before the Board and the Immigration Courts for 5 years. The DHS asks that the Board extend that discipline to practice before it as well. Because the respondent has failed to file an answer, the regulations direct the Board to adopt the proposed sanction contained in the Notice, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. § 1003.105(d)(2).

Since the proposed sanction is appropriate, in light of the respondent's disbarment in California, the Board will honor that proposal. As the respondent is currently under our November 7, 2002, order of suspension, we will deem the respondent's suspension to have commenced on that date.

ORDER: The "Motion to Recalendar" is granted.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for 5 years.

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* 73 Fed. Reg. 76914, 76925 (December 18, 2008)(to be codified at 8 C.F.R. § 1003.105(d)(2)).



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FOR THE BOARD