

Falls Church, Virginia 22041

File: D2011-021

Date:

FEB 24 2011

In re: BRADFORD J. BARNEYS, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

PETITION FOR IMMEDIATE SUSPENSION

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

ON BEHALF OF DHS: Eileen M. Connolly
Chief, Immigration Court Practice Section - East

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

On August 28, 2002, the respondent was disbarred by the Court of Appeals of Maryland, and on November 24, 2004, the respondent was disbarred by the District of Columbia Court of Appeals. Consequently, on January 31, 2011, the Disciplinary Counsel for the Executive Office for Immigration Review 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.

The respondent argues that the immediate suspension order should not issue. *Cf.* 8 C.F.R. § 1003.103(a)(2)(immediate suspension order may be set aside "[u]pon good cause shown... when it appears in the interest of justice to do so").

The respondent argues that, as he has been reinstated to the practice of law in Connecticut, after being reciprocally suspended in the state, it would be in the interest of justice not to immediately suspend him in these proceedings (Respondent's Opp. at ¶¶ 5-6, 10).

However, where the respondent is prohibited from practicing law in Maryland and the District of Columbia, he is not eligible to practice before the Board, Immigration Courts, or DHS, regardless of his status before the Connecticut Bar. *See* 8 C.F.R. § 1001.1(f)(attorney is a person who is a member of good standing of a bar who is not under a disbarment order); *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 "Response to Respondent's Opposition To Petition for Immediate Suspension" at ¶ 4. Therefore, the respondent's good standing before the Connecticut Bar is not a basis to decline to issue an immediate suspension order in this case.

Moreover, as the EOIR Disciplinary Counsel argues, EOIR Resp. at ¶ 5, given the heavy burden of proof on the respondent concerning the merits of the attorney discipline case, 8 C.F.R. § 1003.103(b)(2), it is not in the interest of justice to decline to issue an immediate suspension order.

The regulations provide for summary disciplinary proceedings against a practitioner who is subject to a disbarment order, like the respondent. Such an order creates a rebuttable presumption that disciplinary sanctions should follow. 8 C.F.R. § 1003.103(b)(2); *Matter of Rosenberg, supra*. Such a presumption can be rebutted only upon a showing that the underlying disciplinary proceeding resulted in a deprivation of due process, that there was an infirmity of proof establishing the misconduct, or that discipline would result in grave injustice. *Id.*

The respondent is unlikely to rebut this presumption based on an argument that he has been reinstated to practice law in Connecticut, while remaining disbarred in other jurisdictions. *Matter of Kronegold, 25 I&N Dec. 157, 162 (BIA 2010)* (“[t]here may be many valid reasons why one State would impose a disciplinary period that is different from that of another State. The fact that one State imposes a different disciplinary period does not constitute a ‘grave injustice’ under the regulation”); EOIR Resp. at ¶ 5.

The respondent also argues that it would be unjust to immediately suspend him, where he was disbarred in Maryland and the District of Columbia many years ago (Respondent’s Opp. at ¶ 9). Notwithstanding this argument, it is in the public interest to issue the immediate suspension order. *See Matter of Sparrow, 20 I&N Dec. 920, 923 (BIA 1994)* (Board rejected the argument that disciplinary proceedings initiated several years after a respondent’s criminal conviction were barred: “[l]aches or neglect of duty on the part of officers of the Government generally may not be invoked against the Government when it acts to enforce a public right or protect a public interest”); EOIR Resp. at ¶ 6.

The Board finds, therefore, that issuance of an immediate suspension order is warranted in the public interest.

ORDER: The petition is granted, and the respondent is hereby suspended from the practice of law before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. *See* 8 C.F.R. § 1003.103(a).

FURTHER ORDER: The respondent is directed to promptly notify, in writing, any clients with cases currently pending before the Board, the Immigration Courts, or the DHS that the respondent has been suspended from practicing before these bodies.

FURTHER ORDER: The respondent shall maintain records to evidence compliance with this order.

FURTHER ORDER: The Board directs that the contents of this notice be made available to the public, including at Immigration Courts and appropriate offices of the DHS.



FOR THE BOARD