

Falls Church, Virginia 22041

File: D2012-177

Date: SEP 4 2012

In re: PAUL SAMUEL FRANCO, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF DHS: Jenny C. Lee
Associate Legal Advisor

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for six months, effective fifteen days from the date of this order.

On February 14, 2012, the United States Court of Appeals for the Tenth Circuit issued an order suspending the respondent from the practice of law before that court for six months. The court's January 12, 2012, "Order to Show Cause" contended that in one case, the respondent "demonstrated a substantial failure to abide by the rules and orders of this court", including a failure to file a compliant opening brief, despite court staff spending large amounts of time providing information to the respondent concerning procedural information. In another case, the "Order to Show Cause" alleged, the respondent also failed to comply with rules and directives of the court.

Consequently, on July 30, 2012, 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 filed an "Answer to the Board's Petition for Immediate Suspension" on August 7, 2012. Given the contents of the filing, we will consider the document to be a timely answer to the allegations contained in the Notice of Intent to Discipline. 8 C.F.R. § 1003.105(c)(1)¹.

The respondent acknowledges that he is subject to discipline by the Board. Respondent's "Answer to the Board's Petition for Immediate Suspension" at 1. His sole argument appears to be that his suspension should run concurrently with the suspension imposed by the Tenth Circuit; in other words, his suspension by the Board should be deemed to have commenced on February 14, 2012, the date of his suspension by the Tenth Circuit.

¹As this is the final order in this case, it is not necessary for the Board to rule on the EOIR Disciplinary Counsel's request that the respondent be immediately suspended pending a final decision concerning the respondent.

As there is no material issue of fact in dispute, and as the EOIR Disciplinary Counsel's proposed discipline of six months is appropriate, in light of the respondent's suspension by the Tenth Circuit, Notice of Intent to Discipline at 2, the Board will honor that proposal. Further, after consideration of the respondent's answer, as well as the government's filings, the Board will deem the suspension to commence fifteen days from the date of this order. *See* 8 C.F.R. § 1003.106(c)(final order imposing discipline shall not become effective sooner than fifteen days from the date of the order, unless the Board has issued an immediate suspension order); EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 2.

In attorney discipline cases where respondents are placed under an immediate suspension order by the Board, pursuant to 8 C.F.R. § 1003.103(a)(2), *see* 77 Fed. Reg. 2011, 2014 (Jan. 13, 2012), we typically deem the respondent's final discipline to have commenced as of the date of such immediate suspension order. However, some respondents request that the final Board discipline instead run concurrently with the discipline imposed by their state bars, or other authorities.

The EOIR Disciplinary Counsel argues that the respondent's request for the Board's final discipline to be imposed *nunc pro tunc* to the Tenth Circuit's discipline is not warranted, where the respondent did not comply with 8 C.F.R. § 1003.103(c) (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 by a federal court.

In this case, the respondent did not timely notify the EOIR Disciplinary Counsel of his suspension by the Tenth Circuit, as required by 8 C.F.R. § 1003.103(c).

The regulation does not specifically say that a failure to timely notify the government requires that the Board's final suspension must be deemed to have started on the date of the Board's immediate suspension order, or as in the this case, fifteen days from the date of the Board's final order. However, the Board finds that the respondent's failure to meet the notice requirement under 8 C.F.R. § 1003.103(c) raises a non-conclusive presumption that the Board's final discipline should be effective fifteen days from the date of the Board's final order, rather than the (earlier) date of the Tenth Circuit suspension. After considering the circumstances raised in the respondent's situation, we find that the presumption is not rebutted in this case.

The respondent does not claim that he notified the EOIR Disciplinary Counsel concerning his suspension under 8 C.F.R. § 1003.103(c), and he therefore did not comply with his duty under that regulation (EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 2).²

²The EOIR Disciplinary Counsel explains that the respondent reported his suspension to the Kansas City Immigration Court on July 3, 2012. Even if this could be construed as notice to the EOIR Disciplinary Counsel as set out in 8 C.F.R. § 1003.103(c), such notice was more than three months late. EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 2, fn. 1.

The fact that Kansas and Missouri district courts may have ordered discipline to run concurrent with the Tenth Circuit discipline, Respondent's "Answer to the Board's Petition for Immediate Suspension" at 2, is not determinative here, given the respondent's failure to comply with the notification requirement of 8 C.F.R. § 1003.103(c). Neither are the respondent's excuses concerning his failure to abide by the Tenth Circuit's rules and orders, including his wife's illness, "Answer to the Board's Petition for Immediate Suspension" at 3-4, a basis for deeming the Board's suspension to run concurrently with the Tenth Circuit discipline. After consideration of all relevant factors, therefore, the Board will deem the suspension to have commenced 15 days from this date. 8 C.F.R. § 1003.106(c).

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for six months, effective 15 days from this date. 8 C.F.R. § 1003.106(c).

FURTHER ORDER: The respondent is instructed to notify the Board of any further disciplinary action against him.

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.

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(2012). *See* 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).



FOR THE BOARD