File: D2008-195

Date: MAY 23 2012

In re: PATRICK JOSEPH SANDOVAL, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

APPEAL

ON BEHALF OF DHS: Rachel A. McCarthy, Disciplinary Counsel

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

ON BEHALF OF RESPONDENT: Pro se

On August 1, 2011, an Adjudicating Official issued an order in which he suspended attorney Patrick Joseph Sandoval from practice before the Immigration Courts, Board of Immigration Appeals, and Department of Homeland Security (the "DHS"), for a period of three years. The respondent Sandoval filed an appeal with the Board, and both the respondent and the DHS, who initiated these proceedings, have filed briefs. The respondent's appeal will be dismissed.

The DHS, in its September 4, 2008, Notice of Intent to Discipline, alleged that the respondent engaged in professional misconduct on February 5, 2008, at the Los Angeles, California, office of the DHS, Citizenship and Immigration Services ("USCIS").

The Notice of Intent to Discipline alleged that the respondent and a client came that date for an "Infopass" appointment, to get the status of a visa petition filed on the client's behalf. The Notice of Intent to Discipline further alleged that a USCIS information officer used a computer to get information about the respondent's client. According to the Notice of Intent to Discipline, when the USCIS information officer stepped away from the computer monitor, the respondent twice inserted his hand through a security window and recorded, or attempted to record, a photograph of the computer monitor with his cell phone.

The respondent requested a hearing, and an Immigration Judge, acting as an Adjudicating Official, was assigned to the case on November 25, 2008. After extensive pre-trial activities, and a lengthy hearing, the Adjudicating Official concluded, in a 105-page written decision, that the respondent is subject to attorney discipline under 8 C.F.R. § 1292.3(b), as set forth in 8 C.F.R. §§ 1003.102 and 1003.102(c).[1]

[1]The Executive Office for Immigration Review (EOIR) recently published an interim rule, with request for comments, that modifies its practitioner disciplinary regulations. *See* 77 Fed. Reg. 2011 (Jan. 13, 2012). The rule primarily involves the reorganization of EOIR's regulations related to the adjudication of practitioner disciplinary cases brought by the DHS. The interim rule, effective immediately, has no substantive effect on this case.

The Board reviews findings of fact under the "clearly erroneous" standard. 8 C.F.R. §§ 1003.1(d)(3)(i); 1003.106(c).[2] The Board reviews questions of law, discretion, and judgment and all other issues in appeals de novo. *Matter of Kronegold*, 25 I&N Dec. 157, 159-60 (BIA 2010); 8 C.F.R. §§ 1003.1(d)(3)(ii); 1003.106(c); DHS Br. at 4.

As for the standard of proof, the charges must be supported by "clear, unequivocal, and convincing evidence." 8 C.F.R. § 1003.106(a)(1)(iv)(2008); *Matter of Koden*, 15 I & N Dec. 739, 748 (BIA 1974; A.G., BIA 1976), *aff'd*, 564 F.2d 228 (7th Cir. 1977); DHS Br. at 5; A.O. at 67.[3] Contrary to the respondent's argument, Respondent's Br. at 23-24, the Adjudicating Official properly set out, and applied, the standard of proof applicable to this case (A.O. at 67-69).

The Board has considered the arguments raised on appeal by the respondent. Upon such review, the Board finds no reason to disturb either the factual findings or any other conclusion or ruling reached by the Adjudicating Official. As stated by the DHS,

> the Adjudicating Official's decision sets forth, with meticulous detail, the basis upon which the Adjudicating Official found that DHS had proven by clear, convincing, and unequivocal evidence, that the respondent engaged in unprofessional conduct as described in the Notice of Intent to Discipline and that it was in the public interest to impose discipline by suspending the respondent from practice before the Board, the Immigration Court and DHS for three years.

(DHS Br. at 2). We therefore will adopt and affirm the Adjudicating Official's August 1, 2011, order, with the following comments. *See e.g. Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994) (noting that adoption or affirmance of a decision of an Immigration Judge, in whole or in part, is "simply a statement that the Board's conclusions upon review of the record coincide with those which the Immigration Judge articulated in his or her decision").

The respondent contends that the Adjudicating Official was biased against him, or denied him due process (Respondent's Br. at 6-7, 28-30). The Adjudicating Official displayed no such bias. Instead, the Adjudicating Official "continually ensured that the due process rights of the respondent were provided to him..."(DHS Br. at 5).

For example, after the respondent's prior attorney did not file a timely response to the DHS' pre-trial brief, and moved for an extension the day the response was due, the Adjudicating Official invited the attorney to make an untimely submission providing an explanation establishing good cause for the lateness (A.O. at 6-7, n. 6). After the respondent and prior counsel failed to comply with the Adjudicating Official's order concerning a pre-trial conference, and the Adjudicating Official ruled that the trial would go forward, counsel was given the chance to say whether there was any ambiguity in the prior order (A.O. at 9, 62-63). Counsel stated that no ambiguity existed. *Id.*

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[2]To the extent that the respondent argues that a different standard of review should be applicable, Respondent's Br. at 8, 24, the argument is without basis. DHS Br. at 6.

[3]Revised regulations provide that the government bears the burden of establishing the discipline charges by "clear and convincing evidence." 8 C.F.R. § 1003.106(2009); A.O. at 67, n. 30; DHS Br. at 5, n.2; *see* 73 Fed. Reg. 76914 (Dec. 18, 2008).

The Adjudicating Official's fairness is also shown in his thorough consideration of the respondent's untimely motion to continue the hearing (A.O. at 10-14).

After the hearing commenced, the respondent suggested that the case should be continued due to health concerns (A.O. at 18). The Adjudicating Official showed a willingness to consider specific evidence of a health problem, perhaps submitted in camera, and then told the respondent that he would "liberally attempt to accommodate any needs he might have during the trial" (A.O. at 18).

At the conclusion of the hearing, the Adjudicating Official requested written closing arguments from the parties, and then considered the argument of the respondent despite its lateness (A.O. at 46). Similarly, the Adjudicating Official gave the respondent extra time to submit evidence concerning a proposed sanction (A.O. at 47). After the respondent's argument concerning the sanction failed to address the appropriate standard for imposing discipline, the Adjudicating Official provided the respondent with additional time to address those standards (A.O. at 48).

The Adjudicating Official's procedures and decision show that he fully considered all of the relevant evidence, as required by 8 C.F.R. §§ 1003.106(a)(2)(iv) and (b), and reached a fair result. *Id.* at 4.

The respondent argues that he was not allowed discovery, which resulted in a denial of due process (Respondent's Br. at 5, 25-27). Rather, the proceedings comported with the regulations and due process, and the respondent had an adequate opportunity to prepare a defense on his own behalf (DHS Br. at 7-10; A.O. at 60-65).

The respondent argues that there was an infirmity of proof regarding his alleged misconduct (Respondent's Br. at 5-6, 30). As the Adjudicating Official found, however, the photographic images captured by a USCIS security camera establish "clear, unequivocal and convincing evidence that the respondent recorded [or] attempted to record a photographic image of information displayed on [USCIS information] Officer Ford's computer monitor" (A.O. at 75-76; Exh. 42). Specifically, the Adjudicating Official determined, after reviewing the security camera pictures, that:

> After Officer Ford left the area, the respondent leaned to his right. This, the Court concludes, was not done for the purpose of determining whether Officer Ford was seeking out a supervisor as the respondent claims he requested. Rather, the Court concludes, it was done either for the purpose of attempting to view the information displayed on the screen, or to determine whether he could attempt to record such information with his IPhone without discovery by others. Then, not once but twice he placed his hand with the IPhone through the window; the first time further than the second. After removing his arm the first time, the respondent looked down to his IPhone and, after being confronted by Officer Ford after he placed his arm through the opening a second time, eventually left the window area for approximately fifteen seconds. The last image of the respondent leaving the window area prior to his return clearly depicts him looking down at his IPhone as well.

(A.O. at 75, Exh. 42, 8:39:11-8:40:12).

Such action, and later false and misleading statements in declarations presented to the DHS, involved interference with the administration of justice, and deceit, and discipline was thus warranted (A.O. at 91-94; 8 C.F.R. §§ 1003.102, 1292.3(b)).

The Adjudicating Official exhaustively set out the reasons for his factual finding that the respondent recorded, or attempted to record, a photographic image of information displayed on the DHS computer monitor, including the determination that the respondent's testimony was not credible (A.O. at 70-90; DHS Br. at 9-10).

The respondent argues that he did not engage in conduct that would amount to "contempt of court in a judicial proceeding", or constitute "frivolous behavior", apparently such that he would face discipline under 8 C.F.R. § 1003.102(g) or 8 C.F.R. § 1003.102(j) (Respondent's Br. at 4, 24-25). The respondent was not charged with such misconduct, DHS Br. at 7, so the respondent's argument is inapposite to the findings in this case.

The respondent argues that, in ordering a three-year suspension period, the Adjudicating Official failed to consider the testimony of witnesses, which "would have mitigated the alleged conduct and led to a minimal finding of discipline" (Respondent's Br. at 6, 31-43). The respondent did not, however, timely submit evidence concerning the sanction, and did not address the relevant standard applicable to Attorney Discipline proceedings.[4] DHS Br. at 10.

Moreover, the summary of proposed witness testimony appeared to be cumulative, and the Adjudicating Official accepted the respondent's testimony on the issue without independent corroboration (A.O. at 65-67, 94-104; DHS Br. at 10-11). In fashioning the three-year suspension period, the Adjudicating Official appropriately considered the ethical duty violated, the mental state of the respondent, the extent of the injury caused, including potential injury to the legal process, and aggravating and mitigating circumstances (A.O. at 94-104).

The respondent told the Adjudicating Official at the hearing that if any sanction should be warranted in his case, a 364-day suspension period would be appropriate (Tr. at 1416, A.O. at 51). The Adjudicating Official ordered a three-year suspension period. However, the respondent may petition for reinstatement to practice before the Board, Immigration Courts, and DHS after one-half of this suspension period has expired, under 8 C.F.R.§ 1003107(b) (2012). *See* 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).

The respondent would need to show that he meets the regulatory definition of attorney and would need to demonstrate "by clear and convincing evidence that he . . . possess[es] the moral and professional qualifications required to appear before the Board and the Immigration Courts or DHS, or before all three authorities, and that his . . . reinstatement [would] not be detrimental to the administration of justice." *Id.*; *Matter of Krivonos*, 24 I&N Dec. 292 (BIA 2007); A.O. at 104, n. 42. Thus, while the respondent essentially sought a one-year suspension period, if any, he may seek reinstatement after the slightly-longer period of a year and half has elapsed.

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[4]The Adjudicating Official appropriately consulted the American Bar Association "Standards For Imposing Lawyer Sanctions" (ABA Standards) before imposing sanctions in this "original" disciplinary case brought under 8 C.F.R. § 1003.102. A.O. at 95.

The respondent's appeal will, therefore, be dismissed.

ORDER: The respondent's appeal is dismissed, and the Adjudicating Official's August 1, 2011, decision is affirmed.

FURTHER ORDER: The respondent is suspended from practice before the Immigration Courts, Board of Immigration Appeals, and DHS, for a period of three years, effective 15 days from this date. 8 C.F.R. § 1003.106(c).

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