

Falls Church, Virginia 22041

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File: D2011-021

Date:

In re: BRADFORD J. BARNEYS, ATTORNEY

MAY 25 2011

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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 suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for five years.

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. On February 24, 2011, after considering the respondent's opposition, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed an answer to the allegations contained in the Notice of Intent to Discipline on March 4, 2011. The Notice of Intent to Discipline was served on the respondent on February 1, 2011. The Notice plainly stated that "[t]he Rules provide that Respondent shall file **with the Board** a written answer to the Notice of Intent to Discipline within 30 days of the date stated on the Proof of Service attached to this notice." Notice of Intent to Discipline, at 2 (emphasis in original); 8 C.F.R. § 1003.105(c)(1). An answer was therefore due at the Board by March 3, 2011. Rather, the respondent did not file his answer until March 4, 2011. No reason was provided for the lateness of the answer.

In any event, the respondent does not dispute the allegations in the Notice of Intent to Discipline, does not seek a hearing, and acknowledges that he is subject to discipline by the Board. The respondent argues only that his suspension should be "for a period of two years retroactive to the date of [his] disbarment from the District of Columbia", rather than the proposed suspension of five years.

We therefore find it appropriate to issue a final order on the government's charges. Where a respondent is subject to summary disciplinary proceedings based on disbarment from the practice of law, the regulations now provide that the attorney "must make a prima facie showing to the Board in his or her answer that there is a material issue of fact in dispute with regard to the basis for summary disciplinary proceedings, or with one or more of the exceptions set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii)." *See* 8 C.F.R. § 1003.106(a)(2010); 73 Fed. Reg. 76914, 76925 (December 18, 2008). Where no such showing is made, the Board is to retain jurisdiction over the case, and issue a final order. *Id.*; EOIR Disciplinary Counsel "Motion For Summary Adjudication" (EOIR Mot.) at 2, 4.

As to the "exceptions" set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii), this regulation provides that a final order of disbarment or suspension creates a rebuttable presumption that disciplinary sanctions should follow, and such a presumption can be rebutted only upon a showing, by "clear, unequivocal, and convincing evidence" 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. *See Matter of Kronegold*, 25 I&N Dec. 157, 160-61 (BIA 2010); EOIR Mot. at 4. Thus, in considering whether reciprocal discipline is appropriate, the Board conducts a "deferential review" of the underlying proceedings. *Id.*

None of the exceptions contained in 8 C.F.R. § 1003.103(b)(2) are implicated in this case. EOIR Mot. at 5.

First, the respondent does not show that "the underlying disciplinary proceeding was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process." 8 C.F.R. § 1003.103(b)(2)(i); EOIR Mot. at 5. The respondent's disbarments, in Maryland and the District of Columbia, resulted after proceedings in which the respondent was permitted to be represented by counsel, and heard. EOIR Mot. at 6. He was provided with full due process in those disciplinary proceedings.

Next, the respondent does not show that "there was such an infirmity of proof establishing the attorney's professional misconduct as to give rise to the clear conviction that the [adjudicator] could not, consistent with his or her duty, accept as final the conclusion on that subject." 8 C.F.R. § 1003.103(b)(2)(ii). Both the Maryland and the District of Columbia courts had sufficient evidence of the respondent's misconduct. EOIR Mot. at 6-7.

Neither does the respondent show that imposing identical reciprocal discipline would result in "grave injustice", as his answer seems to argue. *See* 8 C.F.R. § 1003.103(b)(2)(iii); *Matter of Kronegold*, *supra*, at 160, 162; EOIR Mot. at 7-9.

The respondent contends that he should not be subject to identical reciprocal discipline, as he was disbarred in Maryland and the District of Columbia many years ago (Respondent's Answer at ¶ 10). Yet there is no time limitation imposed on the government in seeking discipline, particularly where the respondent fails to report his disbarment to EOIR. *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: "[I]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 Mot. at 8-9.

The proposed sanction of five years' suspension is appropriate, given the respondent's disbarment in Maryland and the District of Columbia. EOIR Mot. at 9. The Board will therefore suspend the respondent from practice before the Board, the Immigration Courts, and the DHS, for five years. As the respondent is currently under our February 24, 2011, order of suspension, we will deem the respondent's suspension to have commenced on that date.

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

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronegold, supra*.

  
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FOR THE BOARD