File: D2011-001 Date: DEC 6 - 2011

In re: JAMES OKORO OKORAFOR, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

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

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

On October 21, 2010, the District 4 Grievance Committee, Evidentiary Panel 4F for the State Bar of Texas, actively suspended the respondent from the practice of law for a period of two years beginning December 1, 2010, and ending November 30, 2012. Consequently, on August 31, 2011, the DHS initiated disciplinary proceedings against the respondent and petitioned for his immediate suspension from practice before the DHS.

The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts.

Therefore, on September 15, 2011, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

On September 23, 2011, the respondent submitted a letter to the Board that will be construed as a timely answer to the Notice of Intent to Discipline. The DHS on October 11, 2011, submitted a Response, and then on November 3, 2011, submitted a "Motion for Summary Adjudication".

Where a respondent is subject to summary disciplinary proceedings based on suspension 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), 1292.3(c)(3). Where no such showing is made, the Boarid is to retain jurisdiction over the case, and issue a final order. *Id.*; DHS "Motion for Summary Adjudication", at ¶ 13.

The Board agrees with the DHS Disciplinary Counsel that there are no material issues of fact at issue. DHS "Motion for Summary Adjudication", at ¶ 13. The respondent raises legal issues that may be addressed by the Board. We find it appropriate to issue a final order on the government's charges.

The DHS contends that the respondent is subject to disciplinary sanctions because he has been suspended from the practice of law in Texas. Under 8 C.F.R. § 1003.102(e)(1), a practitioner who "[i]s subject to a final order of . . . suspension" is subject to disciplinary sanctions by the Board. *Matter of Kronegold*, 25 I&N Dec. 157, 160 (BIA 2010). *See also* 8 C.F.R. § 1292.3(b). The respondent argues that he is not subject to a Texas "final order of . . . suspension", because he has filed litigation in that state, including an appeal that is pending with the Texas Board of Disciplinary Appeals (Respondent's Filing, DHS Resp. at ¶¶10, 11).

However, the DHS explains, and the respondent does not dispute, that the respondent could have sought a stay of the suspension order pending appeal to the Texas Board of Disciplinary Appeals, but he did not do so, and the respondent therefore remains under suspension in Texas (DHS Resp. at ¶¶ 10-13; DHS "Motion for Summary Adjudication" at ¶¶ 7-11, 15). As the DHS argues, if the respondent is successful concerning his appeal of the Texas suspension order, he may then take appropriate action, such as seeking to reopen this disciplinary order. DHS "Motion for Summary Adjudication" at ¶ 16.

As to the "exceptions" set forth in 8 C.F.R. § 1003.103(b)(2)(i)-(iii) and 8 C.F.R. § 1292.3(c)(3)(ii)(A)-(C), these provisions provide that a final order of 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, supra*, at 160-61. 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) and 8 C.F.R. § 1292.3(c)(3) are implicated in this case.

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); 1292.3(c)(3)(ii)(A). The respondent's suspension in Texas resulted after proceedings in which the respondent was permitted to be represented by counsel, and heard. The respondent claims that his rights were denied, in that he was not present and his attorney said that he was not ready to proceed. Respondent's Filing at 2. As the DHS argues, however, the respondent "does not provide any factual information in support of his claim, such as that he did not have notice of the October 13, 2010, hearing, did not appear in person because he was in the hospital, incarcerated, or serving in the armed forces overseas." DHS "Motion for Summary Adjudication", at ¶ 6.

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); 1292.3(c)(3)(ii)(B). The fact that a previous suspension relating to the respondent may have been reversed on appeal, Respondent's Filing at 1-2, does not mean that there was an "infirmity of proof" concerning the present discipline in Texas. Neither does the respondent show that imposing identical reciprocal discipline would result in "grave injustice." *See* 8 C.F.R. §§ 1003.103(b)(2)(iii); 1292.3(c)(3)(ii)(C).

The Notice of Intent to Discipline proposes that the respondent be suspended from practice for two years. The EOIR Disciplinary Counsel asks that the Board extend that discipline to practice before it as well. The government's proposal is appropriate, based on the respondent's suspension in Texas, and we will honor it.

ORDER: The DHS' "Motion for Summary Adjudication" is granted.

FURTHER ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for two 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. *See* 8 C.F.R. § 1003.105(d)(2)(2010); *Matter of Kronegold, supra*, at 163.

FOR THE BOARD