

Falls Church, Virginia 22041

---

---

File: D2012-116

Date:

JUL 12 2012

In re: DAVID K. WENGER, II, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Paul A. Rodrigues  
Associate General Counsel

ON BEHALF OF DHS: Diane H. Kier  
Associate Legal Advisor

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

On May 4, 2012, the Michigan Attorney Discipline Board issued an "Order Granting Stipulation", which suspended the respondent from the practice of law for 90 days, effective May 24, 2012. Consequently, on May 17, 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. Therefore, on May 30, 2012, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent filed a timely answer to the allegations contained in the Notice of Intent to Discipline on June 18, 2012. 8 C.F.R. § 1003.105(c)(1). The respondent acknowledges that he is subject to discipline by the Board. He argues only that his suspension should run concurrently with the suspension imposed in Michigan; in other words, his suspension by the Board should be deemed to have commenced on May 24, 2012, the effective date of his suspension in Michigan.

As there is no material issue of fact in dispute, and as the EOIR Disciplinary Counsel's proposed sanction of ninety days is appropriate, in light of the respondent's suspension in Michigan, Notice of Intent to Discipline at p.3, the Board will honor that proposal. Further, after consideration of the respondent's answer, as well as the government's filing, the Board will deem the suspension to have commenced on May 30, 2012, the date of the Board's immediate suspension order.

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, such as attorney Wenger, request that the final Board discipline instead run concurrently with the discipline imposed by their state bars.

The EOIR Disciplinary Counsel argues that the respondent's request for the Board's final discipline to be imposed nunc pro tunc to the Michigan discipline is not warranted, where the respondent did not comply 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.

In this case, the respondent did not promptly notify the EOIR Disciplinary Counsel of his Michigan suspension, as required by 8 C.F.R. § 1003.103(c). Rather, the respondent says that he thought he was relieved of this responsibility, when he received the immediate suspension petition in this matter. The respondent submitted a belated notification concerning the Michigan discipline to the EOIR Disciplinary Counsel with his answer (Respondent's Answer, Exh. A).

The regulation does not specifically say that a failure to 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. 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 run from the date of the Board's immediate suspension order, rather than the (earlier) effective date of the Michigan suspension. After considering the circumstances raised in the respondent's situation, we find that the presumption is not rebutted in this case.

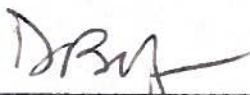
The respondent did not promptly notify the EOIR Disciplinary Counsel concerning his suspension under 8 C.F.R. § 1003.103(c), and therefore did not comply with his duty under that regulation (EOIR Disciplinary Counsel's "Motion For Summary Adjudication", at 2). Moreover, the disciplinary violations that gave rise to the Michigan discipline related to immigration clients. After consideration of all relevant factors, therefore, the Board will deem the suspension to have commenced on May 30, 2012, the date of the Board's immediate suspension order.

**ORDER:** The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for ninety days, effective May 30, 2012.

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

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



---

FOR THE BOARD