

Matter of Viney K. GUPTA, Attorney

Decided November 29, 2022

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

- (1) Disbarment may be appropriate where an attorney knowingly disregards a prior order of suspension from the Board of Immigration Appeals and claims on notices of entry of appearance that he is not subject to any order restricting his right to practice law when he is, in fact, suspended from practice before the Board, the Immigration Courts, and the Department of Homeland Security.
- (2) While the Board will adopt the sanction proposed by the Disciplinary Councils in this case, the Board may deviate from a proposed sanction if the particular facts and circumstances warrant a different result.

FOR THE RESPONDENT: Pro se

FOR EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, OFFICE OF GENERAL COUNSEL: Paul A. Rodrigues, Disciplinary Counsel

FOR THE DEPARTMENT OF HOMELAND SECURITY: Catherine M. O’Connell, Disciplinary Counsel

BEFORE: Board Panel: MALPHRUS, Deputy Chief Appellate Immigration Judge; CREPPY and LIEBOWITZ, Appellate Immigration Judges.

MALPHRUS, Deputy Chief Appellate Immigration Judge:

The Disciplinary Councils for the Executive Office for Immigration Review (“EOIR”) and the Department of Homeland Security (“DHS”) have filed a Joint Notice of Intent to Discipline requesting that the respondent be disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for continuing to practice law before the Board, the Immigration Courts, and DHS while suspended. For the reasons stated below, we will enter an order of disbarment.

I. FACTUAL AND PROCEDURAL HISTORY

On October 10, 2019, the United States Court of Appeals for the Ninth Circuit issued an order suspending the respondent from practice before that court for 6 months, effective immediately. On November 6, 2019, the Disciplinary Councils for EOIR and DHS jointly petitioned for the

respondent's immediate suspension from practice before the Board, the Immigration Courts, and DHS. 8 C.F.R. § 1003.103(a)(1), (2) (2021). We granted the petition on November 18, 2019. 8 C.F.R. § 1003.103(a)(4).

The Disciplinary Counsels for EOIR and DHS subsequently filed a Joint Notice of Intent to Discipline, charging the respondent with being subject to discipline under 8 C.F.R. § 1003.102(e) (2021) based on a final order of suspension in the Ninth Circuit. The respondent did not respond, and we issued a final order of discipline, suspending him from practice before the Board, the Immigration Courts, and DHS, for 6 months, effective November 18, 2019. *See* 8 C.F.R. § 1003.105(d) (2021) (discussing imposition of discipline in proceedings in which a practitioner does not respond to the Notice of Intent to Discipline). The respondent did not file a motion for reinstatement when his suspension ended. He therefore remains suspended pursuant to the Board's order. *See* 8 C.F.R. § 1003.107(a), (b) (2021) (explaining the procedures an attorney must follow to file for reinstatement after suspension or disbarment).¹

The Disciplinary Counsels for EOIR and DHS have filed a second Joint Notice of Intent to Discipline, charging the respondent with engaging in the unauthorized practice of law and with knowingly, or with reckless disregard, making false or misleading communications about his qualifications. *See* 8 C.F.R. § 1003.102(f)(1). They allege that despite being notified of his suspension, the respondent continued to practice before the Board, the Immigration Courts, and DHS.

Specifically, the Disciplinary Counsels allege that the respondent filed an application for a benefit on behalf of a client, represented a client in Immigration Court and then submitted what he presented as a pro se brief on

¹ The regulations provide two separate paths for reinstatement: one for attorneys whose period of suspension has ended and a second for attorneys seeking early reinstatement or reinstatement after disbarment. 8 C.F.R. § 1003.107(a), (b). The requirements for obtaining reinstatement after completion of a period of suspension are less stringent than those imposed on attorneys seeking early reinstatement. *Compare* 8 C.F.R. § 1003.107(a), *with* 8 C.F.R. § 1003.107(b). The regulations state that an attorney who has completed his or her period of suspension and who has filed a motion for reinstatement "shall" be reinstated once the period of suspension has expired if the attorney meets the definition of "attorney" set forth in 8 C.F.R. § 1001.1(f) (2021) and the attorney has complied with the terms of his or her suspension. 8 C.F.R. § 1003.107(a)(3). By contrast, an attorney seeking reinstatement after disbarment or before his or her period of suspension has expired must meet the definition of "attorney" in 8 C.F.R. § 1001.1(f) but for the suspension or disbarment, comply with the terms of his or suspension or disbarment, and "demonstrate by clear and convincing evidence that the practitioner possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, or DHS, and that the practitioner's reinstatement will not be detrimental to the administration of justice." 8 C.F.R. § 1003.107(b)(1), (2).

appeal for the same client, and filed a Notice of Entry of Appearance as Attorney or Accredited Representative (Form G-28) in at least eight cases before the United States Citizenship and Immigration Services. On two of the notices of entry of appearance, the respondent checked the box indicating that he was not subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting him in the practice of law. On the remaining forms, he did not check any box. The respondent signed each form declaring that the information he provided was true and correct under penalty of perjury.

The respondent has not filed a timely answer to the allegations contained in the Notice of Intent to Discipline, as required by 8 C.F.R. § 1003.105(c).² His failure to do so constitutes an admission of the allegations. 8 C.F.R. § 1003.105(c)(1), (d)(1) (stating that a practitioner shall file a written answer to the Notice of Intent to Discipline within 30 days of service and that no further evidence with respect to the allegations need be adduced if the practitioner fails to respond). He is also precluded from requesting a hearing in the matter. 8 C.F.R. § 1003.105(d)(2). The facts of this case are therefore not in dispute. 8 C.F.R. § 1003.105(d)(1). The Disciplinary Councils have moved for the entry of a final order of discipline, presenting proof of proper service on the respondent. *See* 8 C.F.R. § 1003.105(d)(2) (requiring the Government to submit proof of service of Notice of Intent to Discipline when practitioner does not respond).

II. ANALYSIS

The Disciplinary Councils argue that the respondent's disbarment from practice before the Board, the Immigration Courts, and DHS is appropriate given his ongoing unauthorized practice of law, his knowing misrepresentation of his qualification to practice law, and his deliberate violation of the Board's suspension order.

When a practitioner has been properly served with a Notice of Intent to Discipline and fails to respond, the Board generally issues a final order adopting the proposed disciplinary sanctions in the Notice of Intent to Discipline. *Id.* However, the regulations provide that the Board is not

² Although the respondent emailed a "motion for reinstatement" to the Disciplinary Councils, the motion did not respond to any of the allegations or charges in the Notice of Intent to Discipline or request a hearing in this matter. Because the respondent never filed the motion with this Board, it does not constitute an answer to the Notice of Intent to Discipline. In addition, the motion asks for a 3-month continuance. Even if we construed the motion as a request for an extension of time to respond to the allegations, the respondent has not presented information or evidence to establish that an extension is warranted, and he has not filed the extension request with this Board. 8 C.F.R. § 1003.105(c)(1).

required to adopt the proposed sanction if doing so “would foster a tendency toward inconsistent dispositions for comparable conduct or would otherwise be unwarranted or not in the interests of justice.” *Id.* Accordingly, we are not required to impose the sanction proposed by the Disciplinary Counsels in this case and may deviate from it if the particular facts and circumstances warrant a different result. *See id.*; *see also* 8 C.F.R. § 1003.101(a) (2021) (granting the Board the authority to impose disciplinary sanctions, including suspension or disbarment, “if it finds it to be in the public interest to do so”); *cf. Matter of S. Salomon*, 25 I&N Dec. 559, 561–62 (BIA 2011) (considering the specific facts of the case in determining whether the proposed disciplinary sanction would constitute a “grave injustice” under 8 C.F.R. § 1003.103(b)(2)(iii) (2011)). We believe it is in the interest of justice to independently evaluate the propriety of any recommended sanction, including disbarment.

The allegations in the Notice of Intent to Discipline, which are deemed admitted here, establish that the respondent has represented at least 10 individuals before DHS or the Board in spite of his suspension from practice before these bodies.³ In some cases, the respondent stated on the notices of entry of appearance that he was not subject to any order of any court or administrative agency disbaring, suspending, enjoining, restraining, or otherwise restricting him in the practice of law even though he remained suspended from practice before the Board, the Immigration Courts, and DHS.⁴ In other instances, the respondent did not answer the question pertaining to suspensions and therefore omitted a material fact. *See, e.g., Matter of H. Kronegold*, 25 I&N Dec 157, 162 (BIA 2010) (recognizing that an attorney’s failure to notify Immigration Courts of disbarment on appearance forms intentionally misled the courts and constituted a false declaration under penalty of perjury).

Under these circumstances, we agree with the Disciplinary Counsels for EOIR and DHS that disbarment is the appropriate sanction. *See* 8 C.F.R. § 1003.105(d)(2); *see also* 8 C.F.R. § 1003.101(a). Standard 8.1 of the American Bar Association’s Standards for Imposing Lawyer Sanctions states that disbarment “is generally appropriate when a lawyer . . . intentionally or knowingly violates the terms of a prior disciplinary order and such violation

³ One notice of entry of appearance was filed the day we issued an immediate suspension order. The respondent therefore could have filed this appearance before he received our immediate suspension order. However, the respondent was on notice that disciplinary proceedings were in progress when the Petition for Immediate Suspension was filed. Additionally, he has not argued or established that he attempted to withdraw this entry of appearance after it was filed. He is therefore presumed to have continued as the representative in this case in violation of his suspension.

⁴ The respondent was also suspended from practice before the Ninth Circuit at this time.

causes injury or potential injury to a client, the public, the legal system, or the profession.” American Bar Association, Center for Professional Responsibility, Annotated Standards for Imposing Lawyer Sanctions 379 (2015). The explanatory notes accompanying Standard 8.1 further state that disbarment “for flaunting a previous court order serves the fundamental goals of maintaining the integrity of the court as well as protecting the public, the primary purpose of disciplinary sanctions.” *Id.* at 381. These notes also point out that generally “courts uniformly impose disbarment” on attorneys who continue to practice while suspended because “lawyers who have violated prior disciplinary orders exhibit a basic disrespect for the court and its authority.” *Id.* at 382.

While we are not bound by the ABA Standards, we find them persuasive on this issue. The respondent’s knowing and repeated disregard for our prior order of suspension and his claim on notices of entry of appearance that he was not subject to any order restricting his right to practice law when he was, in fact, suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS are serious violations that undermine the integrity of the legal system. Accordingly, disbarment, rather than a lesser sanction, is most appropriate.⁵ *See* 8 C.F.R. § 1003.101(a) (listing sanctions the Board may impose).

We will therefore accept the Disciplinary Counsels’ proposed discipline and will order the respondent disbarred from practice before the Board, the Immigration Courts, and DHS. Because the respondent is currently suspended under our January 21, 2020, order of suspension, we will deem his disbarment to commence immediately.

ORDER: The respondent is disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security, effective immediately.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order, and the respondent must notify the Board of any further disciplinary action against him.

FURTHER ORDER: The contents of the order shall be made available to the public, including at the Immigration Courts and appropriate offices of the Department of Homeland Security.

⁵ Disbarment is presumptively permanent. 8 C.F.R. § 1003.101(a)(1); *see also* DISBARMENT, *Black’s Law Dictionary* (11th ed. 2019) (stating that “disbarment is typically permanent”). Further, as noted, a disbarred attorney must satisfy more stringent requirements than an attorney who has completed his or her period of suspension if the disbarred attorney wants to establish that he or she is entitled to reinstatement to practice before the Board, the Immigration Courts, and DHS. *Compare* 8 C.F.R. § 1003.107(a), *with* 8 C.F.R. § 1003.107(b).

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, the Immigration Courts, and the Department of Homeland Security under 8 C.F.R. § 1003.107.