

Falls Church, Virginia 20530

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File: D2014-075

Date:

**MAY 27 2014**

In re: BRIAN G. DIPIETRO, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Catherine M. O'Connell  
Disciplinary Counsel

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

The respondent will be suspended from practice before the Department of Homeland Security (DHS), the Board, and the Immigration Courts for 2 years.

On May 24, 2006, the Attorney Discipline Board of the State of Michigan suspended the respondent from the practice of law in Michigan for 2 years and until certain conditions were satisfied. A letter dated February 24, 2014, from the Attorney Discipline Board of Michigan indicates that the respondent remains unable to practice law in Michigan. Consequently, on March 13, 2014, the Disciplinary Counsel for the DHS petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for the Executive Office of Immigration Review then asked that the respondent be similarly suspended from practice before the Board of Immigration Appeals and the Immigration Courts. The Board granted the petition for immediate suspension on March 21, 2014.

On April 25, 2014, the respondent filed what he titled "Opposition to Petition for Immediate Suspension and Request for a Hearing." As the Disciplinary Counsel for the DHS notes, this document also responds to the Notice of Intent to Discipline. Accordingly, we construe this document to be a request to set aside the March 21, 2014, suspension order, a hearing request, and a timely answer to the allegations contained in the Notice of Intent to Discipline.<sup>1</sup> 8 C.F.R. § 1003.105(c)(1).

In the answer, the respondent admits allegations three and four of the Notice of Intent to Discipline. He denies that portion of allegation one which pertains to his date of admission to practice law in Arizona. The respondent also denies allegation number two, which states that he was not admitted to the practice of law in any other jurisdiction. In denying this allegation, the respondent states that he is a licensed attorney in good standing in Arizona. The respondent explains that he was reinstated to the practice of law in Arizona, and he further states that he did not seek reinstatement in Michigan because he no longer practices law in that state. In light of

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<sup>1</sup> The respondent originally filed his response on April 4, 2014, but the document was rejected because the certificate of service did not include service on the DHS. The respondent was given until April 28, 2014, to resubmit the document, and he complied with this deadline. The respondent's opposition and response to the Notice of Intent to Discipline therefore was timely filed.

this information, the respondent asks that his immediate suspension be set aside and that he be afforded a hearing before any form of discipline is imposed.

The DHS, on the other hand, has filed a motion for summary adjudication. In the motion, the DHS maintains that the respondent's answer does not show that any material issues of fact are in dispute regarding the basis for discipline. The DHS therefore argues that the Board has the authority to retain jurisdiction over the respondent's case and to issue a final order of discipline. The DHS further contends that the Board should impose the recommended discipline of suspension for 2 years.

We agree with the DHS that the statements and evidence the respondent has submitted with his answer to the Notice of Intent to Discipline (NID) and his request for a hearing are not sufficient to establish that there is a material issue of fact in the respondent's case. The respondent claims that he is now an attorney in good standing in Arizona, but the DHS agreed to this fact in allegation four of the Notice of Intent to Discipline. Further, the respondent agrees that he remains suspended from the practice of law in Michigan, and this fact both prevents him from meeting the definition of attorney set forth in 8 C.F.R. § 1001.1(f) and makes him subject to discipline. *See* 8 C.F.R. § 1001.1(f) (defining "attorney" as "any person who is eligible to practice law in and is a member in good standing of the bar of the highest court of any State" and "is not under any order suspending, enjoining, restraining, disbaring or otherwise restricting him in the practice of law"); *see also* 8 C.F.R. §§ 1003.102 and 1003.102(e) (stating that a practitioner who falls within one of the listed categories "shall be subject to disciplinary sanctions" and listing attorneys "subject to a final order of disbarment or suspension" as one category). Based on these facts, we find that there is not a meaningful dispute over a material issue of fact in the respondent's case. Accordingly, summary disciplinary proceedings are appropriate, and we deny the respondent's request for a hearing. *See* 8 C.F.R. § 1003.106(a)(1).

Further, we agree that suspension for 2 years is an appropriate sanction in light of the respondent's suspension in Michigan. The respondent has not asserted that any of the exceptions to the imposition of disciplinary sanctions exist in his case. *See* 8 C.F.R. § 1003.103(b)(2)(i) – (iii). In particular, he has not established, through clear and convincing evidence, that he was deprived of due process during the disciplinary proceeding in Michigan, that there was an infirmity of proof in the Michigan proceeding, or that the imposition of discipline by the adjudicating official would result in grave injustice. Accordingly, we adopt the sanction proposed by the DHS in the Notice of Intent to Discipline.

Finally, the respondent has not established that setting aside the immediate suspension order in his case is appropriate. *See* 8 C.F.R. § 1003.103(a)(4). We therefore leave our immediate suspension order dated March 21, 2014, in place.

Based on the foregoing, the respondent is suspended from practice before the DHS, the Board and the Immigration Courts. As the respondent is currently under our March 21, 2014, order of suspension, we will deem his 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 2 years.

FURTHER ORDER: The respondent is instructed to maintain compliance with the directives set forth in our prior order. The respondent also is 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, the Immigration Courts, and the 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).

  
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FOR THE BOARD