

NOT FOR PUBLICATION

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

MATTER OF:

Matthew Aaron SHIRK, D2024-0065

Respondent

FILED

MAY 10 2024

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel

ON BEHALF OF DHS: Toinette M. Mitchell, Disciplinary Counsel

IN PRACTITIONER DISCIPLINARY PROCEEDINGS
Notice of Intent to Discipline Before the Board of Immigration Appeals

Before: Malphrus, Deputy Chief Appellate Immigration Judge; Clark, Appellate Immigration Judge; Creppy, Appellate Immigration Judge

Opinion by Creppy, Appellate Immigration Judge

CREPPY, Appellate Immigration Judge

The respondent will be disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS"), effective immediately.

In Disciplinary Case D2022-0162, we suspended the respondent from the practice of law before the Board, the Immigration Courts, and DHS for 1 year, effective September 24, 2022. The discipline was based on the respondent's suspension in Florida. The respondent remains suspended under that order.

On March 13, 2024, the Supreme Court of Florida issued a Contempt Order disbarring the respondent from the practice of law in Florida, effective immediately. On March 21, 2024, the Disciplinary Counsel for the Executive Office for Immigration Review and the Disciplinary Counsel for DHS filed a Joint Notice of Intent Discipline alleging that the respondent is subject to reciprocal discipline based on his disbarment in Florida.

The respondent was required to file a timely answer to the allegations contained in the Joint Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 1003.105. The respondent's failure to file a response within the time prescribed in the Joint Notice of Intent to Discipline constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1).

The Joint Notice of Intent to Discipline proposes that the respondent be disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. Because the respondent has failed to file an answer, the regulations direct us to adopt the proposed sanction

contained in the Joint Notice of Intent to Discipline, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. § 1003.105(d)(2).

The proposed sanction is appropriate considering the respondent's disbarment in Florida. We therefore will honor the proposed discipline and will order the respondent disbarred from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. Further, as the respondent is currently suspended pursuant to our November 29, 2022, order of suspension, his disbarment will be effective immediately.

ORDER: The Board hereby disbars the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS, effective immediately.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order. 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 DHS.

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

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MATTER OF:

Matthew Aaron SHIRK, D2022-0162

Respondent

FILED

NOV 29 2022

ON BEHALF OF RESPONDENT: Pro se

ON BEHALF OF DHS: Toinette M. Mitchell, Disciplinary Counsel

ON BEHALF OF EOIR: Paul A. Rodrigues, Disciplinary Counsel

IN PRACTITIONER PROCEEDINGS

On Notice of Intent to Discipline Before the Board of Immigration Appeals

Before: Noferi, Temporary Appellate Immigration Judge¹; Brown, Temporary Appellate
Immigration Judge; Liebowitz, Appellate Immigration Judge

Opinion by Temporary Appellate Immigration Judge Noferi

NOFERI, Temporary Appellate Immigration Judge

The respondent will be suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and the Department of Homeland Security ("DHS") for 1 year, effective September 24, 2022.

On August 25, 2022, the Supreme Court of Florida suspended the respondent from the practice of law in Florida for 1 year, effective 30 days from the date of that order, i.e., September 24, 2022. On September 22, 2022, the Disciplinary Counsel for the Executive Office for Immigration Review and the Disciplinary Counsel for DHS ("Disciplinary Counsels") jointly petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. We granted the petition on October 5, 2022.

On October 21, 2022, the respondent filed an answer to the Joint Notice of Intent to Discipline ("NID"), seeking to set aside the immediate suspension order and requesting a hearing. On November 3, 2022, the Disciplinary Counsels moved for summary adjudication pursuant to 8 C.F.R. § 1003.106(a)(1).

The respondent admits, inter alia, that he has been suspended from the practice of law in Florida for 1 year. In their response to the respondent's answer, the Disciplinary Counsels argue that,

¹ Temporary Appellate Immigration Judges sit pursuant to appointment by the Attorney General. See 8 C.F.R. § 1003.1(a)(4).

while the respondent contests the effective date of the suspension, he does not explain why nor specify what effective date he contends is correct.² Upon review of the parties' responses and the evidence before us, we conclude September 24, 2022, which is 30 days after the August 25, 2022, order of suspension in Florida, is the effective date of the respondent's Florida suspension (Disciplinary Counsel's Answer, at 2 n.3; Petition for Immediate Suspension, "Attachment 1").

The respondent seeks to set aside the Board's October 5, 2022, immediate suspension order in the "interest of justice" under 8 C.F.R. § 1003.103(a)(4). An immediate suspension order may be set aside "[u]pon good cause shown . . . when it appears in the interest of justice to do so." 8 C.F.R. § 1003.103(a)(4); *Matter of Rosenberg*, 24 I&N Dec. 744, 745 (BIA 2009). Given that there is no dispute the respondent is currently suspended from the practice of law in Florida, and the respondent does not argue the suspension is currently subject to any direct appeal, the respondent has not established good cause exists to set aside the immediate suspension order.

Next, the respondent asserts that imposing discipline upon him would result in "an injustice," and he requests a hearing. We discern no basis to refer these proceedings for a hearing. Specifically, the respondent has not made a prima facie showing that there is a material issue of fact in dispute regarding the basis for the instant disciplinary proceedings. See 8 C.F.R. § 1003.106(a)(1). The respondent does not dispute the alleged fact that he has been suspended from the practice of law in Florida (Respondent's Answer) (unpaginated). Thus, the respondent's Florida suspension provides the basis for summary disciplinary proceedings. See 8 C.F.R. § 1003.103(b)(2).

The respondent also has not made a prima facie showing that there is a material issue of fact in dispute regarding whether imposing discipline would result in "grave injustice." 8 C.F.R. §§ 1003.103(b)(2)(iii) and 1003.106(a)(1). The respondent contends that imposition of discipline based on his Florida suspension would result in "an injustice," by which we presume he means a 'grave injustice' (Respondent's Answer) (unpaginated). For support, he argues the primary reason for his Florida suspension was his disclosure of confidential client communication to a film crew, which he characterizes as "exculpatory," and that an individual's letter and testimony were not considered by the Florida adjudicator (*Id.*).

The respondent's arguments are unavailing. The respondent has not demonstrated that a hearing is warranted to determine whether imposition of reciprocal discipline in these proceedings would rise to the level of "grave injustice." See 8 C.F.R. § 1003.103(b)(2)(iii). In light of the "uncontested report of the referee," underlying the Supreme Court of Florida's suspension order, we fail to see how imposition of reciprocal discipline in these proceedings establishes a prima facie case of "grave injustice" (Petition for Immediate Suspension, "Attachment 1"). As the respondent has not contested the disciplinary order of the Supreme Court of Florida, he cannot now raise what is, essentially, a collateral attack on the disciplinary proceedings in Florida. Based on the

² The Disciplinary Counsels do not contest that the respondent provided timely notice of his suspension, and that any final order of suspension should run concurrent with the effective date of his Florida suspension, i.e., September 24, 2022.

foregoing, as summary disciplinary proceedings are appropriate, we will retain jurisdiction over the case and issue a final order. 8 C.F.R. § 1003.106(a)(1).

The Disciplinary Counsels have presented sufficient evidence to establish the respondent is subject to reciprocal discipline due to his suspension in Florida. *See* 8 C.F.R § 1003.102(e).

The NID proposes the respondent be suspended from practicing before the Board of Immigration Appeals, the Immigration Courts, and DHS for 1 year, effective on or after September 24, 2022. The proposed sanction is appropriate in light of the respondent's suspension in Florida. We therefore will honor the proposed discipline and will order the respondent suspended from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS. Further, as the parties essentially agree the respondent timely reported his Florida suspension in compliance with 8 C.F.R. § 1003.103(c), we will deem his suspension to have commenced on September 24, 2022, the date his suspension commenced in Florida.

ORDER: The Board hereby suspends the respondent from practice before the Board of Immigration Appeals, the Immigration Courts, and DHS for 1 year, effective September 24, 2022.

FURTHER ORDER: The respondent must maintain compliance with the directives set forth in our prior order. 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 DHS.

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.