

Falls Church, Virginia 22041

File: D2011-029

Date: APR 19 2013

In re: FRANK M. FERNANDEZ, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary 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 five years.

On April 18, 2011, the Supreme Court of Hawaii ordered that the respondent be suspended on an interim basis from the practice of law during the pendency of disciplinary proceedings. Consequently, on May 4, 2011, 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 11, 2011, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

On February 14, 2013, the Supreme Court of Hawaii disbarred the respondent from the practice of law in Hawaii, and the Disciplinary Counsel for the Executive Office for Immigration Review thereafter filed a Notice of Intent to Discipline.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 1003.105 (2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012). The respondent's failure to file a response within the time period prescribed in the Notice 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(2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

The Notice proposes that the respondent be suspended from practicing before the Board and the Immigration Courts for five years, observing that the respondent may not apply for reinstatement in Hawaii for five years. The DHS asks that the Board extend that discipline to practice before it as well. Because the respondent has failed to file an answer, the regulations direct the Board to adopt the proposed sanction contained in the Notice, unless there are considerations that compel us to digress from that proposal. 8 C.F.R. § 1003.105(2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

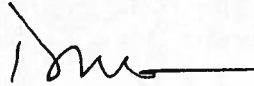
Since the proposed sanction is appropriate, in light of the respondent being disbarred in Hawaii, the Board will honor that proposal. As the respondent is currently under our May 11, 2011, order of suspension, we will deem the respondent's suspension to have commenced on that date.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for five 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(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