

Falls Church, Virginia 20530

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File: D2013-248

Date:

**JAN 23 2014**

In re: LESLIE PAYTON, 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 indefinitely suspended from practice before the Board, the Immigration Courts, and the Department of Homeland Security (DHS).

On July 19, 2013, the Supreme Court of the Virgin Islands granted a petition to transfer the respondent to disability inactive status and immediately transferred the respondent to disability inactive status. Consequently, on October 21, 2013, 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 Department of Homeland Security (DHS) then asked that the respondent be similarly suspended from practice before that agency. Accordingly, on November 26, 2013, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The respondent has filed an opposition to the DHS' motion for reciprocal discipline. In his opposition, the respondent states that he was never disciplined by the Supreme Court of the Virgin Islands. He claims that he was diagnosed with cancer in January 2013 and notified the immigration court in Puerto Rico and the Supreme Court of the Virgin Islands of his medical condition. He then met with disciplinary counsel and agreed that his membership status in the Virgin Islands Bar Association would be transferred to disability inactive status. The respondent has submitted a copy of the July 19, 2013, order of the Supreme Court of the Virgin Islands transferring him to disability inactive status and has requested a hearing before the DHS and the Board.

We are certainly sympathetic to the respondent's situation. In addition, we emphasize, as we did in our order immediately suspending the respondent from practice before the Board, the Immigration Courts and the DHS, that our decisions in no way imply that the respondent has committed unethical acts. The respondent is correct that he has not been disciplined by the Supreme Court of the Virgin Islands. The Notice of Intent to Discipline reflects this fact and states only that the respondent has been transferred voluntarily to disability inactive status. The Notice of Intent to Discipline therefore is not the result of a completed or pending disciplinary action against the respondent due to unethical acts.

Nevertheless, the respondent's transfer to disability inactive status in the Virgin Islands means that he no longer meets the regulatory definition of "attorney" and that he may not represent individuals before the Board, the Immigration Courts or the DHS. See 8 C.F.R. §§ 292.1(a) and 1292.1(a); see also 8 C.F.R. §§ 1.2 and 1001.1(f) (defining attorney). Accordingly, while we are sympathetic to the respondent's illness, we find that suspension from practice before the Board, the Immigration Courts and the DHS is appropriate until the respondent can return to active status.

In addition, because the respondent does not dispute the allegations in the Notice of Intent to Discipline, we find it appropriate to issue a final order on the charges made by the EOIR Disciplinary Counsel. See 8 C.F.R. § 1003.106(a) (2013) (indicating that, if the respondent's answer to a Notice of Intent to Discipline does not make a prima facie showing that there are any material issues of fact in dispute, the Board shall issue a final order); *Matter of Salomon*, 25 I&N Dec. 559, 560 (BIA 2011). Further, the respondent does not claim any due process violation or infirmity of proof in his proceedings in the Virgin Islands, and he has not shown that imposing identical reciprocal discipline would result in "grave injustice." 8 C.F.R. § 1003.103(b)(iii). Accordingly, we find that the indefinite suspension requested by the EOIR Disciplinary Counsel and the DHS is appropriate.

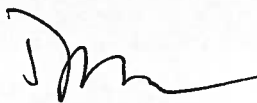
Based on the foregoing, we indefinitely suspend the respondent from practice before the Board, the Immigration Courts, and the DHS.

ORDER: The Board hereby indefinitely suspends the respondent from practice before the Board, the Immigration Courts, and the DHS.

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, the Immigration Courts, and the DHS under 8 C.F.R. § 1003.107(2013).

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) (2013).



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FOR THE BOARD