

Falls Church, Virginia 22041

File: D2016-0154

Date: DEC 15 2016

In re: MARK HOWARD ALLENBAUGH, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF DHS: Jeannette V. Dever, Associate Legal Advisor

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

On September 11, 2014, the United States Court of Appeals for the Fourth Circuit issued an order suspending the respondent from practice before that court for 2 years, subject to conditions. The Court found that the respondent failed to represent his client with reasonable diligence and failed to respond to directives of the court.

On May 7, 2015, the District of Columbia Court of Appeals also ordered the respondent suspended from the practice of law in the District of Columbia for 2 years, after consideration of the Fourth Circuit’s order. Reinstatement to that court was subject to the conditions imposed by the Fourth Circuit, and a showing of fitness.

On July 20, 2016, the Disciplinary Counsel for the Executive Office for Immigration Review (“Disciplinary Counsel for EOIR”) petitioned for the respondent’s immediate suspension from practice before the Board and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency. We granted the petition on August 24, 2016.¹

¹ The Disciplinary Counsel for EOIR presents evidence that on October 7, 2016, the Court of Appeals of Maryland disbarred the respondent. Disciplinary Counsel for EOIR Supp. Br., Exh. 2. This resulted in part from the respondent’s failure to obtain visas for a client and family in an immigration case. The respondent has not notified the Disciplinary Counsel for EOIR concerning his disbarment. *Id.* at p. 2, n.4.

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. § 1003.105.² 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.

The Notice of Intent to Discipline proposes that the respondent be suspended from practicing before the Board and the Immigration Courts for 2 years.³ The DHS asks the Board to extend that discipline to practice before that agency 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. The proposed sanction is appropriate, in light of the respondent's suspension by the Fourth Circuit, and by the District of Columbia Court of Appeals. Further, as the respondent is currently under our August 24, 2016, 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 2 years. The suspension is deemed to have commenced on August 24, 2016.

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.



FOR THE BOARD

² The Disciplinary Counsel for EOIR states that its Petition for Immediate Suspension, and Notice of Intent to Discipline, were mailed to the respondent at his last known address on file with the District of Columbia and Maryland regulatory authorities. They were returned to the Disciplinary Counsel for EOIR as "Return to Sender – Unable To Forward" with a handwritten note stating "Refused." Disciplinary Counsel for EOIR Supp. Br. p. 3, n. 5; Exh. 3.

³ Although the respondent has been disbarred in Maryland, the Disciplinary Counsel for EOIR observes that the Notice of Intent to Discipline only charged him with being subject to reciprocal discipline based on his suspension by the Fourth Circuit and District of Columbia Court of Appeals. Disciplinary Counsel for EOIR Supp. Br., p. 4 n. 9. Therefore, the Disciplinary Counsel for EOIR states, "identical reciprocal discipline calls for a two-year suspension."