

Falls Church, Virginia 22041

File: D2000-006

Date: JAN 10 2001

In re: CAROLYN ELAINE MIYASHITA

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF GENERAL COUNSEL: Jennifer Barnes, Esquire

ON BEHALF OF SERVICE: Barry O'Melinn, Appellate Counsel

ORDER:

PER CURIAM. On December 7, 1998, the Disciplinary Hearing Commission of the North Carolina State Bar suspended the respondent from the practice of law in that state for a period of 5 years. On August 8, 1997, the respondent was disbarred from practicing before the United States Court of Appeals for the Ninth Circuit.

Based on these events, on July 27, 2000, the Office of General Counsel for the Executive Office for Immigration Review initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. On August 1, 2000, the Immigration and Naturalization Service moved to join that petition and asked that the respondent be similarly suspended from practice before that agency. Consequently, on August 10, 2000, we suspended the respondent from practice before the Board, the Immigration Courts, and the Service pending a final administrative decision in these disciplinary proceedings.

The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but failed to do so. By regulation, the respondent had 30 days in which to respond to the Notice. *See* 65 Fed. Reg. 39,513, 39,528 (June 27, 2000) (to be codified at 8 C.F.R. § 3.105(c)(1)). The respondent requested and received *two* extensions of time in which to file her answer, thus providing her with 91 days to respond. Her answer, however, was not filed until the 92nd day. Her answer is therefore untimely. *See id.* Furthermore, we note that the respondent's timeliness and her responsiveness were both factors in her discipline before the North Carolina State Bar and the Ninth Circuit Court of Appeals.

The respondent's failure to file a timely answer constitutes an admission of the allegations in the Notice of Intent to Discipline, and the respondent is now precluded from requesting a hearing on the matter. *See* 65 Fed. Reg. 39,513, 39,529 (June 27, 2000) (to be codified at 8 C.F.R. § 3.105(d)(1), (2)).

The Notice of Intent to Discipline recommends that we impose discipline reciprocal to that of the state of North Carolina. The Service asks that we extend that discipline to practice before it as well. Because the respondent has failed to file a timely answer to the Notice of Intent to Discipline, the regulations direct us to adopt the recommendation therein, absent considerations that compel us to digress from that recommendation. *Id.* at 35,529 (to be codified at 8 C.F.R. § 3.105(d)(2)). Since the recommendation of the Notice of Intent to Discipline is appropriate in light of the state bar action, we will honor the request to impose discipline reciprocal to that imposed by the state bar.

Accordingly, we hereby suspend the respondent from practice before the Board, the Immigration Courts, and the Service for a period of 5 years. As the respondent is currently under our August 10, 2000, order of suspension, we will deem the period of suspension to have commenced on that date. 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 if any further disciplinary action is taken against her.

At the end of her period of suspension, the respondent may seek reinstatement to practice before the Board, the Immigration Courts, and the Service, provided that she meets the definition of an attorney or representative set forth in 8 C.F.R. § 1.1(f) and (j). *See id.* at 39,530 (to be codified at 8 C.F.R. § 3.107(a)). The respondent is therefore instructed to notify the Board of her standing before the North Carolina State Bar and her ability to practice in that state. We will consider the respondent for reinstatement once she demonstrates by clear, unequivocal, and convincing evidence that she possesses the moral and professional qualifications required to appear before the Board, the Immigration Courts, or the Service, or all three, and that her reinstatement will not be detrimental to the administration of justice. *Id.* (to be codified at 8 C.F.R. § 3.107(b)(1)).

Finally, given the reciprocal nature of the discipline we impose, we advise the respondent that, should she be reinstated to practice in the state of North Carolina during her period of suspension, we will entertain a request for reinstatement before EOIR and the Service. Such a request must comply with the instructions set forth above and may not be filed in the first 2½ years of her suspension. *See id.* (to be codified at 8 C.F.R. § 3.107(b)).



FOR THE BOARD