

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
FALLS CHURCH, VIRGINIA**

File: D2000-10

Date: 10/02/01

IN THE MATTER OF)

KRAMER, Milton)

Respondent)

**In Attorney Discipline
Proceedings**

ACTION: Petitioner's Motion for Reconsideration of August 31, 2001, Decision and Order

On Behalf of Respondent

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On Behalf of the Government

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DECISION AND ORDER OF THE IMMIGRATION JUDGE

On August 31, 2001, the Court entered an order suspending Respondent from practice before the Immigration Court, the Board of Immigration Appeals (Board), and the Immigration and Naturalization Service (Service). Pursuant to the order, the time of suspension was *nunc pro tunc* from October, 27, 2000, until such time as the Board finds that Respondent is properly reinstated by the Supreme Court of the State of New York. On September 7, 2001, the Government filed a motion for reconsideration, maintaining that the Court erred in three respects.

First, the Government asserts that the Court based the decision upon the misapplication of the jurisdictional regulation. Second, it alleges that the Court did not consider the full record when rendering the decision. Specifically, the Government contends that the Court failed to account for Respondent's continuing practice before the Executive Office for Immigration Review (EOIR) during the effective dates of his Ninth Circuit and New York state suspensions.

Third, the Government notes that the Court issued discrepant dates with regard to the *nunc pro tunc* suspension - August 8, 1997, and October 27, 2000. The Court will address the issues, *seriatim*.

With regard to the jurisdictional issue, the Court notes that failure to file an answer within the time prescribed, except where the Board extends such time, constitutes the practitioner's admission to the allegations in the Notice of Intent to Discipline (NID). See 8 C.F.R. 3.105(d)(1). Upon the practitioner's default, the Office of the General Counsel (OGC) *shall* submit to the Board proof of personal service of the NID and the Board *shall* issue a final order adopting the recommended disciplinary sanctions, with exception not applicable here. See 8 C.F.R. 3.105(d)(2) (emphasis added).

Regardless, the Court assumed jurisdiction of the matter, holding a pre-trial telephonic conference on March 7, 2001, and ordering the parties to file a joint pre-hearing statement. As of that date and subsequent, all briefs and other evidence submitted by the parties were entered into the Record of Proceeding for consideration. Insofar as the decision states that "the Court finds that respondent has failed to file an answer and as such has admitted the allegations in the Notice of Intent to Discipline," that sentence is in error, is deleted, and shall be replaced with the following:

"While the Court notes that the respondent failed to file a timely answer, it will nevertheless consider the entire record, and not just the allegations as contained in the NID, in rendering its decision in this proceeding."

The Government next charges that the Court did not consider the entire record when deciding that Respondent's suspension from the Immigration Court, the Board, and the Service would relate back to the date that the Ninth Circuit Court of Appeals ordered his suspension, rather than the last time he appeared in Immigration Court during the effective period of his Ninth Circuit and New York state suspensions.

Respondent was suspended from the Ninth Circuit, effective September 1, 1997, and the Supreme Court of New York, Appellate Division, commencing June 11, 1998, for three years, respectively. However, according to the Government, Respondent continued practicing immigration law and making appearances until at least June 1999 or February 2000.¹ The Government maintains that the appropriate sanction, in light of Respondent's continuing practice, even after the federal and state bar suspensions, is reciprocal discipline, effective to the date that he last appeared in Immigration Court. After full consideration of the record, the Court

¹In the same brief, dated March 28, 2001, the Government indicates these two different dates. There is nothing in the record, other than the Government's allegations, to indicate whether or not Respondent did, in fact, continue practicing immigration law and appearing in court.

will modify the August 31, 2001, decision and order that Respondent be suspended from practice before the Immigration Court, the Board, and the Service as of March 1, 2000, and until such time that the Board finds that he is properly reinstated by the Supreme Court of New York, Appellate Division.

Finally, having reconsidered the effective date of Respondent's suspension from the Immigration Court, the Board, and the Service as explained above, the Court need not address the last issue regarding discrepancy between the two dates enunciated in the August 31, 2001, decision.

ORDER

Petitioner's motion for reconsideration is **GRANTED**.

The Court finds that the Board's referral of the matter, upon these narrow facts, confers jurisdiction on the Immigration Court for consideration on the merits. Government's motion for reconsideration on this issue is **GRANTED**.

The Court finds that Respondent's suspension from the Immigration Court, the Board, and the Service should be effective from March 1, 2000, until such time as the Board finds that he has been properly reinstated by the Supreme Court of New York, Appellate Division. Government's motion for reconsideration on this issue is **GRANTED**.

Date:

October 2, 2001



H. Jere Armstrong
Deputy Chief Immigration Judge