UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA Complainant,	)	
v.	)	8 U.S.C. §1324c Proceeding
	)	Case No. 94C00032
ESTHER FLORES-MARTINEZ, Respondent.	)	

ORDER DENYING MOTION OF COUNSEL TO WITHDRAW
(August 26, 1994)

My Order, 4 OCAHO 647 (6/15/94), summarized the procedural history of this case prior to that date. That Order rejected the plea of counsel to withdraw Respondent's representation. The Order provided directions to counsel for both parties, and queried Complainant (INS), "whether it intends to pursue this action in the event Respondent has left the country." INS responded to the inquiry by letter-pleading filed July 12, 1994, to the effect that INS intends to pursue the case to provide Respondent the hearing she requested in response to the Notice of Intent to Fine, notwithstanding that she is outside the United States. INS proposes the hearing be held at a location "ordered by the judge." By a second response filed July 29, 1994, INS confirms that Respondent is in Mexico at an address provided to it by Respondent's counsel.

On August 15, 1994, Respondent's counsel filed a motion to withdraw, with a seven-page affidavit of counsel in support. On August 18, 1994, INS filed a memorandum in opposition, accompanied, inter alia, by Respondent's Answers to First Request for Admissions. INS recites that the Answers "appeared in the Office of District Counsel sometime in late May or early June 1994." On August 24, 1994, Respondent's counsel filed a motion for leave to reply to Complainant's opposition, accompanied by such a reply. The motion is granted. Except to the extent Complainant's memorandum advises of, and transmits, the Answers to the Request for Admissions, neither the memorandum nor the reply are edifying.

As discussed below, counsel's motion to withdraw is denied. Counsel's rationale for withdrawal is two-fold.[1] Respondent's counsel asserts that its charter as a legal services provider limits its authority to represent only those clients resident in Minnesota. Counsel argues also that Minnesota Rules of Professional Conduct (MRPC) contemplate withdrawal when "the representation has been rendered unreasonably difficult by the client." Counsel specifies the difficulty to be the client's failure on two occasions to return prepared answers to Complainant's Request for Admissions.

As to the first ground for withdrawal, counsel for Respondent takes issue with the comment in the June 15, 1994 Order that the entry of appearance contained no limitation, geographic or otherwise. Counsel argues that OCAHO rules do not command an attorney "to disclose the limits of one's representation of a client," adding that the limitation is "not controlled by the jurisdiction of the forum but rather by the residence of the client."

That OCAHO rules of practice and procedure do not anticipate or reflect counsel's insular view of an attorney's undertaking begs the question. As a federal jurist, I respect the sovereignty of the State of Minnesota, including specifically, the MRPC. However, counsel's arguments ignore the explicit reference in the June 15 Order to nationwide jurisdiction under 8 U.S.C. §1324c. That Order can only be understood to mean what it says about federal supremacy:

> Amenability to OCAHO jurisdiction is nationwide. In that context, it is deeply troubling that legal services counsel offer their assistance in a matter of national venue and then seek to limit their representation to individuals resident in a specific location. Americans, whatever their national heritage or immigration status, are too ambulatory and mobile to have their representation before OCAHO ALJs frustrated by limiting the obligations of counsel to state lines.

4 OCAHO 647 at 5.

Moreover, particularly in light of the Answers having "appeared" at INS, following efforts by Respondent's counsel to have the client prepare them, I am unable to conclude that "the representation has

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[1] Counsel also suggests that an INS attorney having stated that INS would not abandon a case under 8 U.S.C. §1324c on the basis that the respondent departs the country, Complainant's successor counsel indicated otherwise, only to reverse himself. INS counsel disagrees that he ever varied from the initial INS posture. It is unnecessary to resolve that contretemps; there is no reason to suppose that Respondent acted in reliance on such indication, or that if she did, INS is estopped from going forward with the case.

been rendered unreasonably difficult by the client," although I do not rest this order on that inability.

The posture of counsel's request to withdraw differs from the situation at the time of the prior Order because counsel has now tendered a formal request for permission to withdraw, consistent with 28 C.F.R. §68.33(c) (1993). In response, as noted in the prior Order, "it is settled OCAHO caselaw that counsel are required to remain in proceedings, at least where service of process on the principals is ineffective or otherwise frustrated." 4 OCAHO 647 at 3. See e.g., U.S. v. Midtown Fashion Inc., 4 OCAHO 657 (6/30/94); U.S. v. Primera Enterprises, Inc., OCAHO Case No. 93A00024 (5/17/94) (Order Denying Respondent's Counsel's Motion to Withdraw); U.S. v. K & M Fashions, 3 OCAHO 411 (3/16/92); U.S. v. NuLook Cleaners of Pembroke Pines, 1 OCAHO 284 (1/4/91). Compare United States v. I.K.K. Associates, 1 OCAHO 131 (2/21/90) (withdrawal authorized where respondent as well as counsel was served with pleading).

INS appears to be satisfied that Respondent is in Mexico at an address it has verified, even though there is no indication that INS Form G-146 was turned in by Respondent to U.S. officials in Mexico following her voluntary departure. I have not been given any reason to be sanguine that process issued to a party at a Mexican address by an administrative law judge will be effective. To the contrary, on the present record I have no confidence that Respondent is amenable to service of that process. Accordingly, although I empathize with the posture of counsel, the motion to withdraw is overruled.

INS indicates an intention to pursue this case to judgment and assertedly has received Respondent's Answers to its First Request for Admissions. It is for INS to take the next step to advance this case on the docket, whether by dispositive motion or otherwise. In context of the suggestion in its letter-pleading filed July 12, 1994, that Respondent may have her hearing notwithstanding she is in Mexico, it will be instructive to obtain Complainant's thoughts as to the time and location of such hearing. I will expect INS to file an appropriate initiative pleading by September 19, 1994.

SO ORDERED. Dated and entered this 26th day of August, 1994.

MARVIN H. MORSE
Administrative Law Judge