

Falls Church, Virginia 22041

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File: D2003-239

Date: JUL - 9 2004

In re: VICENTA E. MONTOYA, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Esquire

ON BEHALF OF DHS: Eileen M. Connolly, Appellate Counsel

On May 19, 2004, the Office of General Counsel for the Executive Office for Immigration Review ("OGC") instituted disciplinary proceedings against the respondent.<sup>1</sup> The disciplinary proceedings were based on an April 2, 2004, Board order concerning Santiago Magallanes-De Leo, A92 829 951.

In the Board's order concerning Mr. Magallanes, we found that Montoya provided ineffective assistance of counsel, which resulted in Magallanes being unable to successfully reopen his removal case before the Immigration Judge, which was held in absentia. We found that Mr. Magallanes had complied with the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) for making a claim of ineffective assistance of counsel, and reopened the proceedings.

On May 24, 2004, the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service) asked that any punishment applied to the respondent also apply to practice before the DHS.

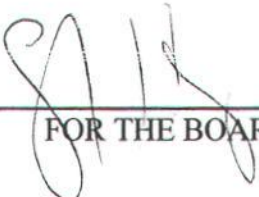
The respondent was required to file a timely answer to the allegations contained in the Notice of Intent to Discipline but has failed to do so. *See* 8 C.F.R. § 1003.105(c)(1). The respondent's failure to file a response within the time period prescribed in the Notice constitutes an admission of the allegations therein, and the respondent is now precluded from requesting a hearing on the matter. 8 C.F.R. § 1003.105(d)(1), (2).

The Notice recommends that the Board issue a public censure against the respondent. *See* 8 C.F.R. § 1003.101(a)(3). We find that there are grounds for a public censure of the respondent. *See* 8 C.F.R. § 1003.102(k)(finding by Board that respondent has engaged in conduct that constitutes ineffective assistance of counsel is grounds for discipline). Therefore the following order will issue.

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<sup>1</sup>The OGC did not petition for the respondent's immediate suspension from practice pending final disposition of this proceeding, under 8 C.F.R. § 1003.103(a).

ORDER: Pursuant to 8 C.F.R. §§ 1003.102(k) and 1003.101(a)(3), the respondent is censured for actions taken with respect to the removal case of Santiago Magallanes-De Leo, A92 829 951, as described in this order and in the Board's decision of April 2, 2004.

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FOR THE BOARD