

Falls Church, Virginia 22041

File: D2011-434

Date:

FEB 27 2012

In re: RITA MAHDESSIAN, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF EOIR: Scott Anderson, Deputy Disciplinary Counsel

ON BEHALF OF DHS: Diane H. Kier
Associate Legal Advisor

ON BEHALF OF RESPONDENT: Pro se

The respondent will be suspended from practice before the Board, Immigration Courts, and Department of Homeland Security (the "DHS"), for eight months.

On November 2, 2011, the respondent was suspended from the practice of law for one year, stayed, with an actual suspension of five months, and probation for two years, by the Supreme Court of California. Consequently, on December 22, 2011, the Disciplinary Counsel for the Executive Office for Immigration Review petitioned for the respondent's immediate suspension from practice before the Board of Immigration Appeals and the Immigration Courts. The DHS then asked that the respondent be similarly suspended from practice before that agency.

Therefore, on January 9, 2012, the Board suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

The Notice of Intent to Discipline was served on the respondent on December 22, 2011. The Notice plainly stated that "[t]he Rules provide that Respondent shall file **with the Board** a written answer to the Notice of Intent to Discipline within 30 days of the date stated on the Proof of Service attached to this notice." Notice of Intent to Discipline, at 3 (emphasis in original); 8 C.F.R. § 1003.105(c)(1). An answer was therefore due at the Board by January 21, 2012. Rather, the respondent signed her answer on January 25, 2012, the answer was mailed to the Board on January 27, 2012, and was filed on January 30, 2012.

The answer was therefore untimely filed. 8 C.F.R. § 1003.105(c)(1). No reason was provided for the lateness of the answer. Therefore, the untimely answer will not be considered by the Board. The respondent's failure to file a response within the time period prescribed in the Notice of Intent to Discipline 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(2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).¹

The Notice of Intent to Discipline proposes that the respondent be suspended for eight months from practicing before the Board and the Immigration Courts. The DHS asked that the Board extend any discipline imposed to practice before it as well. As the respondent failed to submit a timely answer, this recommended sanction should be adopted unless "to do so would foster a tendency toward inconsistent dispositions for comparable conduct, or would otherwise be unwarranted or not in the interest of justice." 8 C.F.R. § 1003.105(2012); 77 Fed. Reg. 2011, 2014-15 (Jan. 13, 2012).

The Board agrees that the EOIR Disciplinary Counsel's proposed non-identical reciprocal discipline of eight months' suspension is justified under the totality of the circumstances, given the respondent's "pattern of misconduct in immigration matters." See Notice of Intent to Discipline, at 2; *Matter of Salomon*, 25 I&N Dec. 559 (BIA 2011)(proposed nonidentical reciprocal discipline justified under the totality of the circumstances); *Matter of Jean-Joseph*, 24 I&N Dec. 294 (BIA 2007)(increasing reciprocal discipline, based on misconduct before EOIR).

The proposed sanction is appropriate, given the respondent's suspension from the practice of law by the Supreme Court of California, which resulted after the respondent failed to perform legal services with competence, regarding a case before the Board. The respondent also was the subject of prior disciplinary action. That is, on April 1, 2009, the respondent was informally admonished pursuant to 8 C.F.R. § 1003.104(c), for providing ineffective assistance of counsel, as determined by the Board, in two separate immigration cases, in violation of 8 C.F.R. § 1003.102(k). See Notice of Intent to Discipline, at 2; Exh. A. The informal admonition became a matter of public record, as the pending Notice of Intent to Discipline was served and based on unrelated misconduct. 8 C.F.R. § 1003.108(b).

The respondent was also suspended from the practice of law by the Supreme Court of California on October 13, 2005, but did not report such suspension to the EOIR Disciplinary Counsel. See Notice of Intent to Discipline, at 2; Exh. B; 8 C.F.R. § 1003.102(c).

Additionally, the Board on November 28, 2011, found again that the respondent had provided ineffective assistance of counsel with respect to an immigration client. See Notice of Intent to Discipline, at 2; Exh. C.

Accordingly, the Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for eight months. As the respondent is currently under our January 9, 2012, order of suspension, we will deem the respondent's suspension to have commenced on that date.

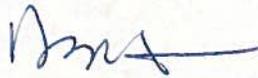
¹The Board notes that the respondent admits that she is subject to discipline as charged in the Notice of Intent to Discipline, and her untimely answer only argues that she should be subject to five months, rather than eight months, suspension.

ORDER: The Board hereby suspends the respondent from practice before the Board, the Immigration Courts, and the DHS, for eight months.

FURTHER ORDER: 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 of any further disciplinary action against her.

FURTHER ORDER: The respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS under 8 C.F.R. § 1003.107(2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. 8 C.F.R. § 1003.105(d)(2)(2012); 77 Fed. Reg. 2011, 2015 (Jan. 13, 2012).



FOR THE BOARD