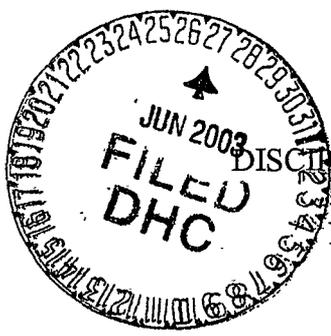


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WAKE COUNTY
NORTH CAROLINA



BEFORE THE
DISCIPLINARY HEARING COMMISSION
OF THE
NORTH CAROLINA STATE BAR
03 DHC 2

THE NORTH CAROLINA STATE BAR)
Plaintiff)
v.)
CAROLYN E. MIYASHITA, ATTORNEY)
Defendant)

FINDINGS OF FACT,
CONCLUSIONS OF LAW
& ORDER OF DISCIPLINE

THIS MATTER came on to be heard and was heard on Friday, June 13, 2003 by a duly appointed committee of the Disciplinary Hearing Commission composed of Stephen E. Culbreth, Chair; Karen Eady and H. Dale Almond. Carolin Bakewell represented the North Carolina State Bar. The Defendant, Carolyn E. Miyashita, did not appear in person or through counsel. Defendant filed a motion to continue the hearing which was received by facsimile transmission on the morning of the hearing and which was denied in the Committee's discretion, for lack of good cause. Based upon the pleadings and evidence presented herein, the Hearing Committee hereby makes the following:

FINDINGS OF FACT

1. The Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar promulgated thereunder.
2. The Defendant, Carolyn E. Miyashita (Miyashita), was admitted to the North Carolina State Bar in 1986, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the rules, regulations and Rules of Professional Conduct of the North Carolina State Bar and the laws of the State of North Carolina.
3. Miyashita's law license was suspended for a period of 5 years, effective on Jan. 16, 1999.

4. At all times relevant hereto, Ms. Miyashita was a citizen and resident of the state of California.
5. In early 1995 Enrique Blanco (Blanco) paid Miyashita \$350 to apply for an adjustment of status under the Cuban Refugee Adjustment Act.
6. Blanco was called for an interview with the Immigration & Naturalization Service (INS) on Dec. 18, 1995.
7. In 1997, INS advised Blanco and Miyashita that it needed certain additional information. Miyashita assured Blanco that she would provide the additional information to INS.
8. Miyashita neither completed Blanco's application for adjustment of status nor took other effective action on his behalf.
9. After some months, Blanco began calling Miyashita's office to determine the status of his application. Miyashita never contacted Blanco about his case nor did she or any staff member respond to his calls.
10. Miyashita did not return Blanco's client file nor did she return any portion of the \$350 fee she received from Blanco.
11. Blanco was ultimately forced to retain other counsel to complete his INS application.
12. Prior to March 2001, Jesus Ramos-Flores and Guadalupe Rodriguez Ramos retained Miyashita's services to represent them regarding immigration matters.
13. On March 7, 2001 Ramos-Flores and Ramos directed Miyashita to return their client files to them.
14. Miyashita failed and refused to return the files to her clients.
15. On March 14, 2002, the N.C. State Bar opened a grievance file against Miyashita based upon information it had received from the California State Bar concerning her handling of the Blanco, Ramos-Flores and Ramos cases.
16. On May 19, 2002, Miyashita was personally served with the State Bar's letter of notice concerning the Blanco, Ramos-Flores and Ramos cases.
17. Pursuant to the N.C. State Bar's Discipline & Disability Rules, Miyashita's response to the letter of notice was due no later than June 10, 2002.

18. Miyashita did not respond in any fashion to the letter of notice regarding the Blanco, Ramos-Flores and Ramos cases.

Based upon the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. By failing to complete the application for adjustment of status for Blanco, Miyashita neglected her client's case in violation of Rule 1.3 of the Revised Rules of Professional Conduct.
2. By failing to communicate with Blanco and by failing to respond to his inquiries about his case, Miyashita failed to keep her client reasonably informed about the status of his case, in violation of Rule 1.4 of the Revised Rules of Professional Conduct.
3. By failing to refund the unearned portion of the \$350 fee which she was paid by Blanco, Miyashita retained and/or collected an excessive fee in violation of Rule 1.5.
4. By failing to return Blanco's client file, Miyashita violated Rule 1.16(d).
5. By failing to return the client files to Ramos-Flores and Ramos after being directed to do so, Miyashita failed to surrender property to which her clients were entitled and failed to take steps to protect her clients' interests, in violation of Rule 1.16(d).
6. By failing to respond to the State Bar's letter of notice regarding the Blanco, Ramos-Flores and Ramos cases, Miyashita failed to respond to a lawful demand for information from a disciplinary authority, in violation of Revised Rule 8.1(b).

In addition the foregoing Findings of Fact, based upon the evidence introduced at hearing, the Hearing Committee enters the following

ADDITIONAL FINDINGS OF FACT RELEVANT TO DISCIPLINE

1. On March 4, 2003, the N.C. State Bar served Miyashita with its First Interrogatories and First Request to Produce Documents.
2. Miyashita did not respond or object to the State Bar's discovery requests, nor did she seek more time in which to answer.

3. On April 11, 2003, the State Bar filed a motion asking the Chair of the Disciplinary Hearing Committee to order Miyashita to respond to its discovery requests.

4. On April 17, 2003, the Chair entered an order compelling Miyashita to answer the State Bar's first request for production of documents and first interrogatories by May 9, 2003.

5. On April 22, 2003, the clerk of the Disciplinary Hearing Commission sent a copy of the order to Miyashita at her last known address on file with the State Bar.

6. Miyashita did not comply with the order and did not respond in any fashion to the State Bar's discovery requests.

7. Miyashita continued to maintain a law office and to engage in the practice of immigration law after her law license was suspended by the N.C. State Bar on Jan. 16, 1999.

8. Miyashita's violations of the Revised Rules of Professional Conduct are aggravated by the following factors:

a. Miyashita violated multiple provisions of the Revised Rules of Professional Conduct.

b. Miyashita engaged in a pattern of misconduct.

c. Miyashita has failed to make any restitution to her client, Enrique Blanco.

d. Miyashita has substantial experience in the practice of law.

e. Miyashita failed to cooperate with the N.C. State Bar in any way.

f. Miyashita willfully violated the Chair's order of April 17, 2003, directing her to file full and complete responses to the State Bar's discovery requests by May 9, 2003.

g. Miyashita has been disciplined twice before the by the Disciplinary Hearing Commission for misconduct similar to that for which she has been disciplined in this order.

h. Miyashita's clients were non-citizens who were not familiar with the law or the American system of justice and were thus vulnerable.

i. Miyashita has failed to acknowledge true remorse or responsibility for her misconduct and in fact, the exhibits, including pleadings she has filed in the various disciplinary proceedings against her, are rife with excuses. At various times she has blamed her shortcomings on her law partner, her staff, equipment failures, health problems (undocumented) and even her clients.

8. There are no mitigating factors.

9. The aggravating factors substantially outweigh the mitigating factors.

Based on the foregoing Findings of Fact, the hearing committee hereby enters the following:

CONCLUSIONS OF LAW

1. By failing to refund the unearned portion of the fee which she was paid by Blanco, Miyashita retained and/or collected an excessive fee in violation of Rule 1.5.

2. By failing to respond to the letter of notice regarding the grievances of Blanco, Ramos-Flores and Ramos, Miyashita failed to respond to a lawful demand for information from a disciplinary authority, in violation of Revised Rule 8.1(b).

3. Miyashita's misconduct caused significant harm to Blanco, in that his immigration matter was delayed owing to her neglect and he has yet to recover the \$350 fee which he paid to her in 1995.

4. Miyashita's misconduct caused significant harm to Ramos-Flores and Ramos in that she failed to return their client files, thus hampering their ability to retain other counsel and proceed in a timely fashion with their immigration cases.

5. Miyashita's misconduct has also caused actual harm to the standing of the legal profession by undermining her clients' trust and confidence in lawyers and the legal system.

6. Miyashita's failure to respond to the State Bar's letter of notice undermines the State Bar's ability to regulate attorneys and the privilege of lawyers in this state to remain self-regulating.

7. An order calling for discipline short of a suspension of Miyashita's law license with appropriate conditions precedent for reinstatement would not sufficiently protect the public for the following reasons:

a. Miyashita engaged in multiple violations of the Revised Rules of Professional Conduct over a lengthy period of time, as opposed to an isolated act or mistake, and it therefore appears that her misconduct is the result of some problem or personality defect that is not readily changeable.

b. Miyashita failed to provide any assurances that she has addressed whatever problem or character flaw caused her misconduct and therefore there is a substantial risk that her misconduct would be repeated if she is permitted to continue to practice law.

c. Entry of an order imposing lesser discipline would fail to acknowledge the seriousness of the offenses which Miyashita committed, would be inconsistent with orders of discipline entered by this body in similar cases and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

d. The protection of the public requires that Miyashita not be permitted to resume the practice of law until she demonstrates that she understands her ethical obligations to her clients, and demonstrates that she is not suffering from any addiction or mental illness or condition that prevents her from practicing law competently.

Based upon the foregoing Findings of Fact, Conclusions of Law and Findings of Fact Relevant to Discipline, the Hearing Committee hereby enters the following:

ORDER OF DISCIPLINE

1. The Defendant, Carolyn E. Miyashita, is hereby disbarred
2. The Defendant shall pay the costs in this matter within 30 days of service upon her of a statement of the costs.

Signed by the Chair of the Hearing Committee with the knowledge and consent of the other Committee members.

This the ^{26th}~~26~~ day of June, 2003.


Stephen E. Culbreth, Chair
Disciplinary Hearing Committee