

Falls Church, Virginia 22041

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File: D2004-224

Date: JAN 27 2005

In re: JEANETTE ELIZABETH SMITH, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

ON BEHALF OF DHS: Rachel A. McCarthy, Ethics Counsel

ON BEHALF OF GENERAL COUNSEL: Jennifer J. Barnes, Bar Counsel

ORDER:

PER CURIAM. On January 22, 2004, the Supreme Court of Florida suspended the respondent from the practice of law for one year, effective February 22, 2004.

Consequently, on December 7, 2004, the Department of Homeland Security (the "DHS," formerly the Immigration and Naturalization Service), initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. On December 9, 2004, the Office of General Counsel for the Executive Office for Immigration Review (EOIR) asked that the respondent be similarly suspended from practice before EOIR, including the Board and immigration courts. Therefore, on December 20, 2004, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding.

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); 1292.3(e)(3)(ii). 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. § 1292.3(e)(3)(ii).

The Notice recommends that the respondent be suspended from practicing before the DHS for a period of 2 years. The Office of General Counsel of EOIR asks that we extend that discipline to practice before the Board and immigration courts as well. The DHS states that a 2-year suspension would be appropriate, in that 2 counts of the Florida disciplinary complaint involved misconduct related to the respondent's representation of immigration clients. Moreover, the DHS argues, the respondent did not notify it of the Florida suspension order, as required by 8 C.F.R. § 1292.3(c)(4). Because the respondent failed to file a timely answer, the regulations direct us to adopt the recommendation contained in the Notice, unless there are considerations that compel us to digress from that recommendation. 8 C.F.R. §§ 1003.105(d)(2); 1292.3(e)(3)(ii). Upon our review of the Supreme Court of Florida's January 22, 2004, decision, we reject the DHS' recommendation. We note that the referee had recommended to the Supreme Court of Florida that the respondent be suspended for 2 years; the court instead imposed a 1-year suspension. The court determined that the respondent had "diminished culpability", due to medical problems and financial struggles, and found

that a 1-year suspension was appropriate. In consideration of the court's analysis, we likewise will suspend the respondent from practice before the Board, the Immigration Courts, and the DHS for a period of 1 year. As the respondent is currently under our December 20, 2004, order of suspension, we will deem the respondent's suspension to have commenced on that date. 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.

After the suspension period expires, the respondent may petition this Board for reinstatement to practice before the Board, Immigration Courts, and DHS. *See* 8 C.F.R. § 1003.107(a). In order to be reinstated, the respondent must demonstrate that she meets the definition of an attorney or representative, as set forth in 8 C.F.R. §§ 1001.1(f) and (j). *Id.* Therefore, the respondent must show that she has been reinstated to practice law in Florida before she may be reinstated by the Board. *See* 8 C.F.R. § 1001.1(f) (stating that term "attorney" does not include any individual under order suspending him from the practice of law).



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FOR THE BOARD