

Falls Church, Virginia 22041

File: D2005-045

Date: JUN 2 2005

In re: GERALD M. COBB, 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 February 23, 2005, the Office of General Counsel for the Executive Office for Immigration Review ("OGC") instituted disciplinary proceedings against the respondent.¹ The disciplinary proceedings were based on a February 17, 2005, Board order concerning Eloy Campos-Herrera, A77 309 984.

In the Board's order concerning Mr. Campos-Herrera, we found that Cobb provided ineffective assistance of counsel, which resulted in Campos-Herrera failing to appear for his removal hearing, and thereby incurring an in absentia order. We found that Mr. Campos-Herrera had complied adequately 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 February 28, 2005, 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 Notice of Intent to Discipline was served on the respondent on April 4, 2005, as evidenced by the certified mail receipt presented by the Office of General Counsel. Therefore, the respondent had 30 days, or until May 4, 2005, in which to file an answer to the allegations in the Notice of Intent to Discipline. See 8 C.F.R. § 1003.105(c)(1); Notice of Intent to Discipline, at 3-4. However, the respondent did not file an answer until May 6, 2005, two days late. The respondent did not seek an extension of time for filing the answer. *Id.*

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).

¹The 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).

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.

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 Eloy Campos-Herrera, A77 309 984, as described in this order and in the Board's decision of February 17, 2005.



FOR THE BOARD