

In the Supreme Court of Georgia

Decided: November 1, 2010

S10Y1401. IN THE MATTER OF DAVID HARRISON SMITH II.

PER CURIAM.

This disciplinary matter is before the Court on a Notice of Discipline filed by the Office of General Counsel of the State Bar of Georgia, at the direction of the Investigative Panel of the State Disciplinary Board. The State Bar seeks the disbarment of David Harrison Smith II (State Bar No. 142534), who currently is suspended from the practice of law in Georgia following his failure to respond to two Notices of Investigation served on him by the State Bar. The State Bar seeks Smith's disbarment for his purported violations of Rules 1.3, 1.4, 1.5, 1.16, 3.2 and 5.5 of the Georgia Rules of Professional Conduct, see Bar Rule 4-102 (d). The maximum sanction for a violation of Rules 1.3 and 5.5 is disbarment, and the maximum sanction for a violation of the other rules charged is a public reprimand. The Investigative Panel issued the Notice of Discipline, which the State Bar attempted to serve on Smith personally at the address listed with the State Bar. When the sheriff filed a return of service non

est inventus, the State Bar properly served Smith by publication pursuant to Bar Rule 4-203.1 (b) (3) (ii). Having failed to file a Notice of Rejection of the Notice of Discipline, Smith is in default, has waived his rights to an evidentiary hearing, and is subject to such discipline and further proceedings as may be determined by this Court, see Bar Rule 4-208.1 (b). The facts, as deemed admitted by Smith's default, show that a client retained him in early 2009 to represent her in an uncontested divorce and paid Smith \$580. Smith cashed the fee check on or about March 19, 2009 and led the client to believe that her divorce would be concluded shortly after the 30-day waiting period. When she did not hear further from Smith about the status of her case, the client made repeated unsuccessful efforts to contact Smith by telephone. In August 2009 the client contacted the clerk of court and learned that no divorce had been filed on her behalf. On or about August 17, 2009 the client sent by certified mail a letter to Smith requesting an explanation, the return of her file and a refund of the fee. The letter was not signed for by Smith, and the client had no further communication from Smith. Smith became ineligible to practice law on September 1, 2009, as he failed to pay his State Bar dues. He failed to respond to the Office of General Counsel or Investigative Panel and has not provided

a current address to the State Bar. In aggravation of discipline the Investigative Panel found that Smith acted wilfully and dishonestly and failed to respond in any manner in these proceedings.

We have reviewed the record and agree with the State Bar that disbarment is the appropriate sanction in this case. Therefore, we hereby order that the name of David Harrison Smith II be removed from the rolls of persons authorized to practice law in the State of Georgia. Smith is reminded of his duties under Bar Rule 4-219 (c).

Disbarred. All the Justices concur.