

Falls Church, Virginia 22041

---

---

File: D2005-128

Date:

MAY 29 2009

In re: KENNETH L. ROTHEY, ATTORNEY

IN PRACTITIONER DISCIPLINARY PROCEEDINGS

FINAL ORDER OF DISCIPLINE

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

ON BEHALF OF EOIR: Jennifer J. Barnes, Disciplinary Counsel

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

On December 30, 2005, the Supreme Court of Texas issued an order suspending the respondent from the practice of law. Consequently, on March 16, 2006, the DHS initiated disciplinary proceedings against the respondent and petitioned for the respondent's immediate suspension from practice before the DHS. The Disciplinary Counsel for the Executive Office for Immigration Review (EOIR) then asked that the respondent be similarly suspended from practice before EOIR, including the Board and Immigration Courts. Therefore, on April 11, 2006, we suspended the respondent from practicing before the Board, the Immigration Courts, and the DHS pending final disposition of this proceeding. On August 3, 2007, we granted the DHS' request that proceedings be administratively closed until that office was able to personally serve documents on the respondent.

On April 2, 2009, we granted the DHS' motion to recalendar proceedings, after it personally served the respondent with documents. The Board in that order granted the respondent 30 days to file an answer to the Notice of Intent to Discipline.<sup>1</sup>

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 timely response 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 indefinitely suspended from practice before the DHS. The Disciplinary Counsel for the Executive Office for Immigration Review asks that we extend that discipline to practice before the Board and Immigration Courts as well. As 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).

---

<sup>1</sup>The DHS' motion to reconsider the Board's order granting the respondent 30 days to file an answer to the Notice of Intent to Discipline is denied.

Since the recommendation is appropriate in light of the respondent's suspension in Texas, we will honor it. As the respondent is currently under our April 11, 2006, order of suspension, we will deem the respondent's indefinite suspension to have commenced on that date.

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

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 him.

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(b).

FURTHER ORDER: As the Board earlier imposed an immediate suspension order in this case, today's order of the Board becomes effective immediately. *See* 73 Fed. Reg. 76914, 76925 (December 18, 2008)(to be codified at 8 C.F.R. § 1003.105(d)(2)).

  
\_\_\_\_\_  
FOR THE BOARD