

NO. 13969

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,

vs.

JAMES DAVID KIMO SMITH, Respondent.

(ODC 02-033-7231)

ORDER OF SUSPENSION

(By: Moon, C.J., Levinson, Nakayama,
Ramil, and Acoba, JJ.)

Upon consideration of Petitioner Office of Disciplinary Counsel's ex parte petition for issuance of reciprocal discipline notice to Respondent James David Kimo Smith pursuant to Rule 2.15 of the Rules of the Supreme Court of the State of Hawai'i (RSCH), the memorandum, affidavits, and exhibits attached thereto, it appears that (1) the Supreme Court of Colorado suspended Respondent Smith from the practice of law for one year and one day for committing a criminal act in that jurisdiction that reflected adversely on his honesty, trustworthiness, or fitness as a lawyer, and (2) RSCH Rule 2.15(c) requires this court to impose the identical discipline upon the Respondent Smith unless he demonstrates, or this court finds, that (a) the Colorado procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process, (b) there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that the court could not, consistent with its duty, accept as final the conclusion on that subject, or (c) the misconduct established warrants substantially different discipline in this state.

On August 12, 2002, we issued a notice and order requiring, among other things, that Respondent Smith inform this court within thirty (30) days from service of the notice of his claim(s) and the reasons therefor as to why a similar discipline in the State of Hawai'i would be unwarranted. Respondent Smith did not respond to the August 12, 2002 notice and order.

Rule 8.4(b) of the Hawai'i Rules of Professional Conduct is identical to Rule 8.4(b) of the Colorado Rules of Professional Conduct, and we cannot conclude that Respondent Smith's misconduct warrants different discipline in this jurisdiction. Finally, it appears that Respondent Smith was suspended from the practice of law in this jurisdiction in 1989 and has not sought reinstatement. Therefore,

IT IS HEREBY ORDERED, pursuant to RSCH Rule 2.15(c), that Respondent Smith is suspended from the practice of law in this jurisdiction for a period of one year and one day, effective thirty (30) days after entry of this order, as provided by RSCH Rule 2.16(c).

IT IS FURTHER HEREBY ORDERED that, in addition to the requirements for reinstatement set out in RSCH Rule 2.17, Respondent Smith shall pay all costs of this proceeding and comply with all conditions imposed by the Supreme Court of Colorado.

DATED: Honolulu, Hawai'i, October 10, 2002.