

APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, THIRD DEPARTMENT

Matter of Smith

183 N.Y.S.3d 330 (N.Y. App. Div. 2023) · No. PM-43-23 · Decided March 2, 2023

SUMMARY

The Appellate Division, Third Department granted Gary John Smith's application to resign from the New York bar for nondisciplinary reasons. The court accepted his resignation, struck his name from the roll of attorneys, prohibited him from practicing law in New York, and ordered him to surrender his Attorney Secure Pass.

CASE DETAILS

COURT	Appellate Division of the Supreme Court of the State of New York, Third Department
WRITING FOR THE COURT	Garry, P.J.; Clark, J.; Aarons, J.; Fisher, J.; McShan, J.
JURISDICTION	New York
DECIDED	March 2, 2023
DOCKET	PM-43-23
DISPOSITION	other
PROCEDURAL POSTURE	An attorney admitted to practice in New York applied for permission to resign from the New York bar for nondisciplinary reasons. The Appellate Division granted the application and accepted the resignation.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Gary John Smith v. Attorney Grievance Committee for the Third Judicial Department

TOPICS

appellate procedure

PRACTICE AREAS

legal ethics attorney discipline bar admission and resignation

QUESTIONS PRESENTED

- 1. Whether Gary John Smith was eligible to resign from the New York bar for nondisciplinary reasons.
- 2. Whether the court should grant Smith's application, accept his resignation, strike his name from the roll of attorneys, and impose the related restrictions prescribed by the governing rules.

HOLDINGS

- 1. Smith was eligible to resign for nondisciplinary reasons under 22 NYCRR 1240.22(a).
- 2. The application for permission to resign was granted, the nondisciplinary resignation was accepted, Smith's name was stricken from the roll of New York attorneys effective immediately until further order, and he was prohibited from practicing law or holding himself out as an attorney in New York.

FACTUAL BACKGROUND

Gary John Smith was admitted to practice by the Appellate Division, Third Department, in 1999 and maintained a business address in San Francisco, California with the Office of Court Administration. He sought permission to resign from the New York bar for nondisciplinary reasons. The Attorney Grievance Committee did not oppose the application, and the court determined that Smith was eligible to resign.

PROCEDURAL HISTORY

Smith filed an affidavit seeking nondisciplinary resignation. The Attorney Grievance Committee advised that it did not oppose the application, and the Appellate Division determined that Smith was eligible to resign and entered an order accepting his resignation.

DISPOSITION

other

OPINION

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PER CURIAM.

<div> Matter of Smith (2023 NY Slip Op 01131) <table width="80%" border="1" cellpadding="5" cellspacing="2" align="center"> <tr> <td align="center">Matter of Smith</td> </tr> <tr> <td align="center">2023 NY Slip Op 01131</td> </tr> <tr> <td align="center">Decided on March 2, 2023</td> </tr> <tr> <td align="center">Appellate Division, Third Department</td> </tr> <tr> <td align="center">Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431.</td> </tr> <tr> <td align="center">This opinion is uncorrected and subject to revision before publication in the Official Reports.</td> </tr> </table>

 Decided and Entered:March 2, 2023 <div align="center"></div>
PM-43-23

<div align="center">[*1]In the Matter of Gary John Smith, an Attorney. (Attorney <span

Registration No. 2995314.)

Calendar Date: February 27, 2023

Before: Garry, P.J., Clark, Aarons, Fisher and McShan, JJ.

Gary John Smith, San Francisco, California, pro se.

Monica A. Duffy, Attorney Grievance Committee for the Third Judicial Department, Albany, for Attorney Grievance Committee for the Third Judicial Department.

Per Curiam.

Gary John Smith was admitted to practice by this Court in 1999 and lists a business address in San Francisco, California with the Office of Court Administration. Smith now seeks leave to resign from the New York bar for nondisciplinary reasons (*see* Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.22 [a]). The Attorney Grievance Committee for the Third Judicial Department (hereinafter AGC) advises that it does not oppose Smith's application.

Upon reading Smith's affidavit sworn to February 7, 2023 and filed February 17, 2023 and upon reading the February 23, 2023 correspondence in response by the Chief Attorney for AGC, and having determined that Smith is eligible to resign for nondisciplinary reasons, we grant his application and accept his resignation.

Garry, P.J., Clark, Aarons, Fisher and McShan, JJ., concur.

ORDERED that Gary John Smith's application for permission to resign is granted and his nondisciplinary resignation is accepted; and it is further

ORDERED that Gary John Smith's name is hereby stricken from the roll of attorneys and counselors-at-law of the State of New York, effective immediately, and until further order of this Court (*see generally* Rules for Attorney Disciplinary Matters [22 NYCRR] § 1240.22 [b]); and it is further

ORDERED that Gary John Smith is commanded to desist and refrain from the practice of law in any form in the State of New York, either as principal or as agent, clerk or employee of another; and Smith is hereby forbidden to appear as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority, or to give to another an opinion as to the law or its application, or any advice in relation thereto, or to hold himself out in any way as an attorney and counselor-at-law in this State; and it is further

ORDERED that Gary John Smith shall, within 30 days of the date of this decision, surrender to the Office of Court Administration any Attorney Secure Pass issued to him.