

Relations District Court, as well as a Petition for Appeal to the Virginia Court of Appeals from a probation violation conviction in the Culpepper County Circuit Court.

3. Respondent was paid a separate flat fee for each of these matters. The total amount was paid in one lump sum, which Respondent properly deposited into his trust account.

4. Respondent completed the criminal case in the Fairfax Juvenile & Domestic Relations District Court. Respondent thereafter properly transferred his flat fee from his trust account to his operating account, leaving the flat fee for the Petition for Appeal in his trust account.

5. Respondent properly and timely filed a Notice of Appeal in the remaining matter. Respondent asserts that he performed significant research on behalf of his client in connection with the Petition for Appeal, but was unable to find any case-law supporting the client's position. Respondent asserts that he did not want to cause his client to incur the additional costs associated with filing a motion to withdraw the appeal, and he did not want to risk sanctions from the Virginia Court of Appeals for filing a frivolous appeal. Therefore, Respondent allowed the deadline for filing the initial Petition to pass without filing anything further. As a result, the appeal was dismissed by the Virginia Court of Appeals in November 2009.

6. Respondent did not inform his client of the issues with the appeal, and did not obtain the client's permission to allow dismissal of the appeal. Respondent did not complete the Petition for Appeal process for which he had been retained.

7. Respondent asserts that he was unable to locate his client, who had been transferred to another Department of Corrections facility. Respondent failed to utilize available resources that would have enabled him to locate his client.

8. Respondent did not communicate with his client again until April or May 2010, at which point he had a telephone conversation with his client.

9. Respondent did not refund any portion of the fee for the appeal until June 2010. An additional portion of the fee was refunded by Respondent in August 2010.

10. In May 2011, when required by the Virginia State Bar to provide an accounting of the funds received from his client as an advance fee, along with supporting documentation, Respondent was unable to provide bank statements or other supporting records verifying the entries in his accounting software. Respondent was subsequently able to obtain those documents from his bank.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes Misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.2 Scope of Representation

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation... and shall consult with the client as to the means by which they are to be pursued....
- (b) A lawyer may limit the objectives of the representation if the client consents after consultation.

RULE 1.3 Diligence

- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.15 Safekeeping Property

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

III. PUBLIC ADMONITION WITHOUT TERMS

Accordingly, it is the decision of the Subcommittee to impose a Public Admonition Without Terms, and Kevin Eugene Smith is hereby so admonished. Pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

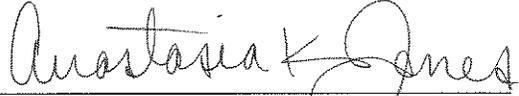
FIFTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By: _____


Benton Samuel Duffett, III
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on Jan. 25, 2013, a true and complete copy of the Subcommittee Determination Public Admonition Without Terms was sent by certified mail to Kevin Eugene Smith, Respondent, at P.O. Box 938, Culpeper, VA 22701, Respondent's last address of record with the Virginia State Bar.

A handwritten signature in cursive script that reads "Anastasia K. Jones". The signature is written in black ink and is positioned above a horizontal line.

Anastasia K. Jones
Assistant Bar Counsel