

VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAN C. SMITH

VS B Docket Nos. 10-060-080411
11-060-086108
11-060-085701

MEMORANDUM ORDER
(PUBLIC REPRIMAND WITHOUT TERMS)

This matter came on to be heard on March 20, 2012 by the Disciplinary Board of the Virginia State Bar (the Board) by teleconference upon an Agreed Disposition between the parties, which was presented to a panel of the Board consisting of Timothy A. Coyle, Whitney G. Saunders, Samuel R. Walker, Jody D. Katz, Lay Member, and Richard J. Colten, Panel Member Chair presiding (the Panel).

Kathryn R. Montgomery, Deputy Bar Counsel, appeared as counsel for the Virginia State Bar, and Respondent appeared in person *pro se*.

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Bar and Respondent entered into a written proposed Agreed Disposition and presented it to the Panel for consideration.

The Chair swore the Court Reporter and polled the members of the Panel to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chair verified no such interests.

The Panel heard argument from counsel and reviewed Respondent's prior disciplinary record with the Bar and thereafter retired to deliberate on the Agreed Disposition. Having

considered all the evidence before it, a majority of the Panel accepted the Agreed Disposition.

I. FINDINGS OF FACT

The Disciplinary Board finds the following facts by clear and convincing evidence:

1. At all times relevant to this certification, Respondent was licensed to practice law in the Commonwealth of Virginia
2. In 2009, Respondent began a law partnership with another lawyer. In 2009, Respondent's partner left the firm and did not continue in active practice. Respondent took over his former partner's caseload.
3. Soon thereafter, Respondent hired an associate to assist him with the increased caseload. In April 2010, Respondent's associate was injured in an accident and thereafter was unable to return to practice.

VSB 10-060-080411
(The McBride Complaint)

4. In 2009, Respondent was court-appointed to represent James McBride on a charge of violation of a protective order.
5. On or about July 13, 2009, Mr. McBride was found guilty following a trial in the Northumberland General District Court.
6. Following trial, Respondent and Mr. McBride had a conversation about appealing his conviction to the circuit court.
7. On or about July 14, 2009, Mr. McBride sent a letter to the circuit court clerk advising of his wish to appeal.
8. On or about July 22, 2009, Respondent received a letter from the clerk of the circuit court advising him of Mr. McBride's letter. Respondent then called the clerk of the circuit court and discussed Ms. McBride's letter.
9. Respondent took no action to perfect Mr. McBride's appeal from the general district court to the circuit court.
10. Respondent told the bar's investigator that Mr. McBride should have known that he had to file his appeal with the clerk of the general district court.
11. Mr. McBride's appeal to circuit court was not perfected and therefore did not proceed.

12. In August 2009, Respondent learned that the appeal had not been perfected. Respondent filed motions to extend the time to file an appeal and to reopen the case on the basis that Mr. McBride was incompetent. Respondent did not pursue these motions because Mr. McBride did not want to be declared incompetent.
13. Respondent's conduct in this matter violated Rule 1.3(a) of the Rules of Professional Conduct.

VSB 11-060-086108
(The Morgan Complaint)

14. Charles Morgan retained Respondent to represent him on numerous claims arising from an injury he suffered while on the job on or about January 4, 2007.
15. On or about January 4, 2007, Mr. Morgan was injured after he delivered a load of concrete to a job site owned by a third party contractor. Mr. Morgan was required by his employer to wash his truck following delivery. According to Mr. Morgan, the contractor was required to provide a gravel area for washing vehicles, but on the day of his accident, required him to wash his truck in a muddy area. Mr. Morgan slipped in the mud while washing his truck and injured his arm.
16. Respondent and Mr. Morgan discussed his injury and possible means of recovery. They discussed a worker's compensation claim, a claim against Mr. Morgan's supplemental disability insurance policy, and a suit against the contractor that failed to provide the gravel area for Mr. Morgan to wash his truck. According to Mr. Morgan, early in the representation, he provided Respondent with the contractor's name.
17. Respondent subsequently obtained a workers' compensation settlement for Mr. Morgan.
18. Respondent also obtained another settlement for Mr. Morgan related to his disability claim against his supplemental insurance.
19. Respondent filed a discrimination claim on behalf of Mr. Morgan related to his termination from employment following his injury. The case was ultimately dismissed.
20. Respondent failed to file Mr. Morgan's personal injury suit against the contractor in a timely manner. Instead, Respondent filed suit against the contractor two days after the limitations period had expired.
21. Mr. Morgan's suit against the contractor was dismissed for failure to file within the statute of limitations.

22. Respondent claims Mr. Morgan failed to provide the name of the contractor until shortly before the limitations period expired.
23. Respondent did not exercise due diligence in determining the identity of the contractor in time to file suit.
24. Respondent's conduct in this case violated Rule 1.3(a) of the Rules of Professional Conduct.

VSB 11-060-085701
(The Wilson Complaint)

25. On or about October 31, 2009, Yvonne Wilson received a second denial of her application for Social Security disability benefits.
26. In early November, 2009, Ms. Wilson retained Respondent to file an appeal.
27. On Ms. Wilson's behalf, Respondent filed a request for reconsideration with the Social Security Administration. He did not file an appeal.
28. During the course of the representation, Ms. Wilson and her husband called Respondent's office many times with no response.
29. On or about March 9, 2010, Respondent sent a letter to one of Ms. Wilson's health care providers enclosing an authorization to disclose medical records and seeking updated medical records for Ms. Wilson.
30. In or about March 2010, Ms. Wilson called the Social Security Administration and learned that her appeal had never been filed.
31. Soon thereafter, Ms. Wilson terminated Respondent's representation and hired another attorney to pursue her appeal.
32. Respondent failed to notify the Social Security administration that he was no longer Ms. Wilson's counsel, which caused further delay of Ms. Wilson's case.
33. Respondent's conduct in this case violated Rules 1.3(a) and 1.4(a) of the Rules of Professional Conduct.

II. NATURE OF MISCONDUCT

The Disciplinary Board finds that such conduct by Jan C. Smith constitutes misconduct in violation of the following Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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.

III. IMPOSITION OF SANCTION

Having considered all the evidence before it and determined to accept the Agreed Disposition, the Disciplinary Board **ORDERS** that Respondent receive a Public Reprimand without Terms, effective March 20, 2012.

It is further **ORDERED** that costs shall be assessed by the Clerk of the Disciplinary System pursuant to the Rules of the Supreme Court of Virginia, Part Six, Section IV, Paragraph 13-9.E.

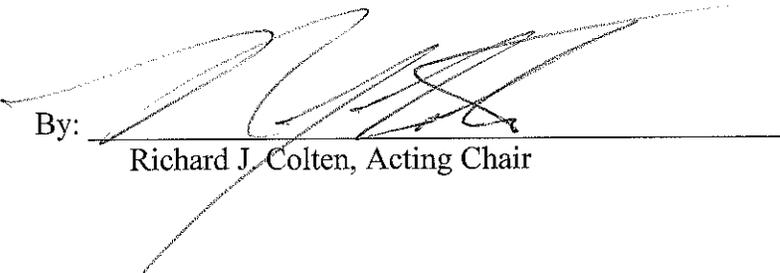
It is further **ORDERED** that the Clerk of the Disciplinary System shall send a certified copy of this Order shall be mailed by Certified Mail to the Respondent, Jan C. Smith, at his last address of record with the Virginia State Bar, Law Office of Jan C. Smith, 1751 Windmill Point Road, White Stone, VA; and a copy to Kathryn R. Montgomery, Deputy Bar Counsel, Virginia

State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

Beverly Lukowsky of Chandler & Halasz, telephone number (804)730-1222, was the court reporter for the hearing and transcribed the proceedings.

ENTERED: 21 March 2012

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: 

Richard J. Colten, Acting Chair