

VIRGINIA:

BEFORE THE FIFTH DISTRICT SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
CYNTHIA GAYLE SMITH, ESQUIRE

VSB Docket No. 10-051-080603

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On August 16, 2011, a hearing in this matter was held before a duly convened Fifth District Section I Committee Panel consisting of Beth A. Bittel, Esquire, Maureen E. Danker, Esquire, Brendan D. Harold, Esquire, Evelyn H. Sandground, Lay Member, and John E. Coffey, Esquire, presiding.

Respondent appeared in person, *pro se*. Kathleen Maureen Uston, Assistant Bar Counsel, appeared as counsel for the Virginia State Bar.

In addition, on August 26, 2011, the Respondent filed a Motion for Reconsideration, which Motion was presented to the District Committee pursuant to Part 6, Section IV, Paragraph 13-16.DD of the Rules of the Virginia Supreme Court. On September 14, 2011, the Chair of the District Committee issued a letter ruling to both Respondent and to the Virginia State Bar advising that, following review of the Motion for Reconsideration by the Panel that heard this matter, the Panel did not believe that reconsideration was warranted.

Accordingly, pursuant to Part 6, Section IV, Paragraph 13-16.Z.2 of the Rules of the Virginia Supreme Court, the Fifth District Section I Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Cynthia Gayle Smith, (hereinafter the "Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or around December, 2008, the Respondent agreed to prepare and file a petition seeking *habeas corpus* relief (hereinafter the "Petition") on behalf of her client, SH (hereinafter referred to as the "Complainant"). Respondent was paid \$5,000.00 by the Complainant's mother, and Respondent prepared an Engagement Agreement which she presented to both her client and her client's mother for signature.

3. Respondent did not deposit these funds into an approved attorney IOLTA trust account.

4. In fact, Respondent admitted during testimony provided to the District Committee, to the Virginia State Bar Investigator assigned to this matter, and the evidence presented at the trial of this case established by clear and convincing evidence that, at no time during her conduct of her private law practice prior to July, 2009, did Respondent maintain an approved IOLTA attorney trust account as required by applicable rules.

5. Because Respondent never maintained an approved IOLTA attorney trust account during the relevant time period, at no time during this period did she maintain a complete record of all client funds coming into her possession as required, at no time did she maintain the books and records as required, and at no time did Respondent perform the required escrow and accounting procedures required under the rules.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the Virginia State Bar proved by clear and convincing evidence a violation of the following Rules of Professional Conduct:

RULE 1.15 Safekeeping Property

- (a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
 - (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) A lawyer shall:
- (1) promptly notify a client of the receipt of the client's funds, securities, or other properties;
 - (2) identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
 - (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and
- (e) **Record-Keeping Requirements, Required Books and Records.** As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.
- (1) In the case of funds held in an escrow account subject to this Rule, the required books and records include:
 - (i) a cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts

journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

- (ii) a cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;
 - (ii) subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;
 - (iv) reconciliations and supporting records required under this Rule;
 - (v) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.
- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
 - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
 - (ii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

- (f) Required Escrow Accounting Procedures. The following minimum escrow accounting procedures are applicable to all escrow accounts subject to Rule 1.15(a) and (c) by lawyers practicing in Virginia.
- (1) Insufficient fund check reporting.
 - (i) Clearly identified escrow accounts required. A lawyer or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identify of such account. Lawyer escrow accounts shall be maintained only in financial institutions approved by the Virginia State Bar, except as otherwise expressly directed in writing by the client for whom the funds are being deposited;
 - (2) Deposits. All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item;
 - (3) Deposit of mixed escrow and non-escrow funds other than fees and retainers. Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument;
 - (4) Periodic trial balance. A regular periodic trial balance of the subsidiary ledger shall be made at least quarter annually, within 30 days after the close of the period and shall show the escrow account balance of the client or other person at the end of each period.
 - (i) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in escrow for the period and deducting the total of escrow monies disbursed for the period; and
 - (ii) The trial balance shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
 - (2) Reconciliations.
 - (i) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank statement balance;
 - (ii) A periodic reconciliation shall be made at least quarter annually, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

- (ii) Reconciliations shall identify the preparer and be approved by the lawyer or one of the lawyers in the law firm.
- (6) Receipts and disbursements explained. The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be fully explained and supported by adequate records.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the District Committee to impose a PUBLIC REPRIMAND upon the Respondent subject to the following terms and conditions:

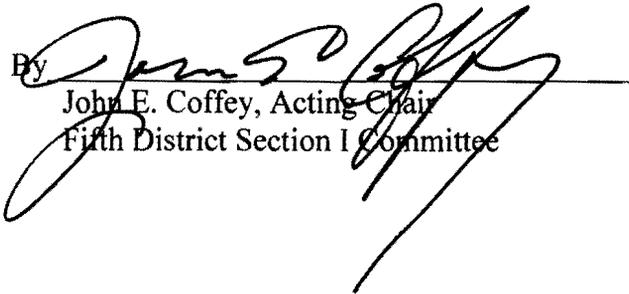
1. The Respondent shall commit no further violations of Rule of Professional Conduct 1.15(a), (c), (e) and/or (f) between August 16, 2011, and August 1, 2016. If, during that time period, a finding is made by any disciplinary tribunal that Respondent has committed a violation of Rule of Professional Conduct 1.15(a), (c), (e) and/or (f), said violation having occurred during the time frame specified, then this shall be a violation of this term.

2. The Respondent shall notify Assistant Bar Counsel Kathleen M. Uston, in writing, if she intends to recommence accepting new clients for legal representation within fourteen (14) days of her decision to do so. This term shall cease to have effect after August 1, 2016, and after that date, Respondent will be under no obligation to provide said written notice or to comply with this term.

Upon satisfactory proof that the above specified terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions have not been met, and the Respondent has failed to prove by clear and convincing evidence that she did not violate any of the terms set forth above at the conclusion of a show cause hearing, then this matter shall be certified to the Disciplinary Board for Sanction Determination in accordance with Paragraph 13-16.CC.

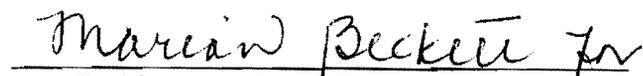
Pursuant to Paragraph 13-9.E of the Rules of Court, the Clerk of the Disciplinary System shall assess costs.

FIFTH DISTRICT SECTION I COMMITTEE
OF THE VIRGINIA STATE BAR

By 
John E. Coffey, Acting Chair
Fifth District Section I Committee

CERTIFICATE OF SERVICE

I certify that on October 28, 2011, I caused to be mailed by certified mail, a true copy of the District Committee Determination (Public Reprimand with Terms) to Cynthia G. Smith, Post Office Box 597, Fairfax, VA 22030, Respondent's last address of record with the Virginia State Bar.


Kathleen M. Uston, Esquire
Assistant Bar Counsel