

VIRGINIA:

BEFORE THE CIRCUIT COURT FOR THE COUNTY OF LANCASTER

**IN THE MATTER OF
JAN C. SMITH**

**CASE NO. 20-247
VSB DOCKET NO.. 21-060-115989**

**AGREED DISPOSITION MEMORANDUM ORDER
FOR A SUSPENSION OF ONE YEAR AND ONE DAY WITHOUT TERMS**

This matter came to be heard on Thursday, October 22, 2020, before a Circuit Court Three-Judge panel, upon the joint request of the parties for the Court to accept the Agreed Disposition endorsed by the parties and offered to the Court as provided by the Rules of the Supreme Court of Virginia. The panel consisted of the Honorable Cheryl Higgins, Judge of the Sixteenth Judicial Circuit, Designated Chief Judge, the Honorable Thomas B. Hoover, Retired Judge of the Ninth Judicial Circuit, and the Honorable Charles L. Ricketts, III, Judge of the Twenty-fifth Judicial Circuit. Jan C. Smith was present and was represented by counsel, William Tunner. The Virginia State Bar appeared through its Assistant Bar Counsel, Prescott Prince. The Chief Judge polled the members of the panel as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each judge responded in the negative. Court Reporter Lisa Wright, Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, respondent's Answer, respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Circuit Court accepts the Agreed Disposition and the Respondent shall receive a suspension of One Year and One Day. The Agreed Disposition is attached to and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective October 22, 2020.

The Respondent must comply with the requirements of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia. The Respondent shall forthwith give notice by certified mail of the Revocation or Suspension of his or her license to practice law in the Commonwealth of Virginia, to all clients for whom he or she is currently handling matters and to all opposing attorneys and presiding Judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his or her care in conformity with the wishes of his or her clients. The Respondent shall give such notice within 14 days of the effective date of the Revocation or Suspension, and make such arrangements as are required herein within 45 days of the effective date of the Revocation or Suspension. The Respondent shall also furnish proof to the Bar within 60 days of the effective day of the Revocation or Suspension that such notices have been timely given and such arrangements made for the disposition of matters.

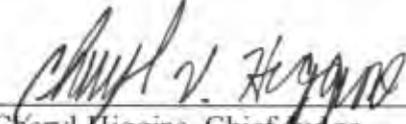
It is further **ORDERED** that if the Respondent is not handling any client matters on the effective date of the Revocation or Suspension, he or she shall submit an affidavit to that effect within 60 days of the effective date of the Revocation or Suspension to the Clerk of the Disciplinary System at the Virginia State Bar. All issues concerning the adequacy of the notice and arrangements required by Paragraph 13-29 shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of Revocation or additional Suspension for failure to comply with the requirements of this subparagraph.

The Clerk of the Disciplinary System shall assess costs pursuant to Paragraph 13-9.E. of the Rules.

A copy teste of this Order shall be mailed, to the Respondent, Jan C. Smith, at his last address of record with the Virginia State Bar, Jan C. Smith, Esq., 1751 Windmill Point Rd., White Stone, VA 22578, with an attested copy to: William Tunner, counsel for the Respondent, Prescott Prince, Assistant Bar Counsel, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia 23219-0026, and to the Clerk of the Disciplinary System, Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, VA 23219-0026.

ENTERED THIS 22nd DAY OF OCTOBER, 2020

CIRCUIT COURT FOR THE COUNTY OF LANCASTER



Cheryl Higgins, Chief Judge
Three-Judge Circuit Court



VIRGINIA:

IN THE CIRCUIT COURT FOR LANCASTER COUNTY

VIRGINIA STATE BAR EX REL
SIXTH DISTRICT COMMITTEE
VSB Docket No. 21-060-115989

Complainant,

v.

Case No. CL20-247

Jan C. Smith,

Respondent

AGREED DISPOSITION
(SUSPENSION OF LICENSE)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, ¶ 13-6.H, the Virginia State Bar, by Assistant Bar Counsel Prescott L. Prince and Jan C. Smith, Respondent and William C. Tunner, Respondent's Counsel, hereby enter into the following Agreed Disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. At all times relevant hereto, Jan C. Smith, ("Respondent") has been an attorney licensed to practice law in the Commonwealth of Virginia and the elected Commonwealth's Attorney of Lancaster County, having been elected Commonwealth's Attorney in November 2015.

2. As the result of a boating mishap that occurred in Lancaster County on or about 11 August 2017, John Randolph Hooper was charged with Aggravated Manslaughter (violation of Virginia Code Section 18.2-36.2) and Failing to Stop Boat to Provide Assistance (Virginia Code Section 29.1-740).

3. The mishap occurred at night and there were no eye-witnesses other than Mr. Hooper who claimed to have no recollection of events surrounding the mishap.

4. Respondent recognized that there would be significant weaknesses in the Commonwealth's case and therefore believed that justice could best be served by negotiating a plea agreement. In furtherance of that belief, Respondent negotiated a plea agreement that provided for conviction on two felonies, a sentence of 15 years of incarceration with all but 14 years suspended (one year of active jail time to be served in the local jail).

5. On or about 9 June 2020, Respondent had a brief discussion with the judge during which he informed the judge that the Commonwealth and the defense had reached a proposed plea agreement and discussed the date for presenting the plea agreement. In the course of the discussion, Respondent generally discussed Respondent's motivations for entering into the plea agreement and the judge made a non-committal statement regarding the difficulty the Commonwealth faces in prosecuting cases.¹

6. In furtherance of the Virginia "Victim Rights Act," (Virginia Code Section 19.2-11.01) Respondent disclosed the proposed plea agreement to the decedent's mother and father and to Benjamin Woodson, the owner of the property where the decedent's body was discovered.² The decedent's parents and Mr. Woodson all expressed dismay at the proposed plea agreement, stating that they believed that it was too lenient.

¹ The short discussion occurred in the courtroom with other witnesses present and neither the judge nor Respondent considered this to be an inappropriate *ex parte* communication with the judge since it dealt only with administrative and scheduling matters.

² Mr. Woodson had previously been compensated by insurance for damage caused to his property. Respondent therefore believed that he did not qualify as a "victim" pursuant to VCS 19.2-11.01 and did not provide him with a form to submit input to the court.

7. In his communication to the father of the decedent and to Mr. Woodson, Respondent asserted that he had discussed the case with the judge and the judge had expressed doubts as to whether the Commonwealth could prove its case.

8. Mr. Woodson submitted a letter to the judge expressing his dissatisfaction with the proposed plea agreement. In his letter, Mr. Woodson stated, *inter alia*, "I was shocked when the Commonwealth Attorney told me that you and he had determined that there was not enough relevant information to convict Mr. Rand Hooper in a jury trial. and therefore, a plea agreement was reached."

9. As the result of Mr. Woodson's letter, the judge recused himself, stating that Respondent's statement to Mr. Woodson wrongfully and inaccurately suggested that the he had pre-judged the case based on information improperly communicated to him by Respondent. He further noted that he was recusing himself to protect the integrity of the judicial system and to avoid even the appearance of impropriety.

10. Mr. Woodson subsequently prepared a sworn affidavit in furtherance of a Motion to Disqualify Commonwealth's Attorney in which he reaffirmed the statement made in his letter. The decedent's father also submitted a sworn affidavit in which he stated, *inter alia*, "Mr. Smith told me that he had gone over the case with the judge and the judge had some doubts about whether the Commonwealth could meet its burden of proof on the manslaughter charge."³

II. NATURE OF MISCONDUCT COMMITTED

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

³ The Motion to Disqualify was denied by the court. Respondent was subsequently not re-elected, and the case was taken over by his successor in office.

RULE 4.1 Truthfulness In Statements To Others

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of fact or law[.]

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

* * * * *

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law[.]

III. PROPOSED DISPOSITION

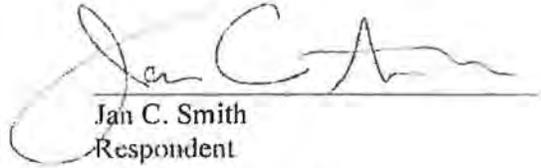
Upon the stipulations of misconduct, the VSB and Respondent considered the aggravating and mitigating factors in the ABA Standards for Imposing Lawyer Sanctions and tender to the Three-Judge Panel for its approval the agreed disposition of SUSPENSION OF RESPONDENT'S LICENSE TO PRACTICE LAW IN THE COMMONWEALTH OF VIRGINIA FOR ONE YEAR AND ONE DAY as an appropriate sanction if this matter were to be heard through an evidentiary hearing. Assistant Bar Counsel and the Respondent agree that the date for commencement of the Suspension shall be the date of entry of the Order approving this Agreed Disposition.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess an administrative fee.

THE VIRGINIA STATE BAR



Prescott L. Prince
Assistant Bar Counsel



Jan C. Smith
Respondent



William U. Tunner
Counsel for Respondent