

VIRGINIA:

BEFORE THE THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
THOMAS PAGE CHEELEY

VS B Docket No. 21-032-120751

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On January 18, 2021, a hearing in this matter was held before a duly convened Third District Committee panel consisting of Kenneth Matthew Long, Chair, Jessica Virginia Bailey, Wyatt Jackson Taylor, Jason Wade Konvicka and Marx Eisenman, Jr., lay member.

Respondent appeared in person, *pro se*. Laura Ann Booberg, Assistant Bar Counsel appeared as counsel for the Virginia State Bar.

Pursuant to Part 6, Section IV, Paragraph 13-16.Z of the Rules of the Virginia Supreme Court, the Third District Committee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. For all times relevant hereto, Respondent has been licensed to practice law in the Commonwealth of Virginia. Respondent was licensed to practice law in Virginia on May 10, 1977.
2. For over 30 years, Respondent was the Commissioner of Accounts for the Circuit Court of the City of Colonial Heights ("COA"). He was removed as COA on August 31, 2020.
3. On February 12, 2006, Edward Skinner died testate. On June 26, 2006, Geraldine Skinner qualified as Executor of Edward Skinner's Estate ("the Estate").
4. The administration of the Estate was the subject of litigation in the Circuit Court of the City of Colonial Heights ("the Circuit Court").
5. On July 19, 2007, the Circuit Court removed Geraldine Skinner as Executor and ordered her to file an inventory and account.
6. On November 5, 2007, Geraldine Skinner filed an inventory and account, which Respondent later approved in March and April 2009. The litigation regarding the Estate was ongoing.

7. On November 26, 2007, Montague Barnum (“Barnum”) qualified as Administrator, c.t.a. of the Estate.
8. On December 21, 2009, an Order of Nonsuit was entered by the Circuit Court of Colonial Heights ending all litigation involving the Estate.
9. Pursuant to Va. Code Section 64.2-1300, Barnum’s inventory and first annual account were due March 26, 2008. Thereafter, Barnum was required to file annual accounts on or before March 26th of each year until a final accounting was filed and approved by the COA. For more than 11 years, Barnum failed to file an inventory or account with Respondent.
10. On January 14, 2010, Respondent wrote to Barnum asking to be brought up to date on the status of the Estate and the outstanding inventory. Respondent stated that if he did not receive the inventory or an explanation as to why it was not filed, he would have, “no other alternative than to turn [the] matter over to the Court.” Despite Barnum’s repeated delay in filing an inventory or accountings, Respondent did not send any other correspondence to Barnum or take any action against Barnum for more than 11 years.
11. In April 2019, Barnum filed an inventory and 11 accounts. Respondent was unable to approve the inventory because of discrepancies in the accounts. The filings contained no bank statements, no certificate of mailing and itemization sheets and no interest reported being earned. Baseball cards which were willed to legatee William J. Denny (“Denny”) had been instead sold at auction.
12. Barnum included a \$5,005 check for payment to Respondent within the filing, but Respondent did not believe it was appropriate to deposit the check and accept the fee.
13. In June 2019, Respondent conducted a Debts and Demands hearing at Barnum’s request. There were no responses to the hearing notice.
14. In July 2019, after being diagnosed with cancer, Barnum filed a motion to be removed as Administrator.
15. On September 4, 2019, Barnum filed another motion to be removed as Administrator and delivered a check for \$58,980 to the court. He stated in the motion that “such action was necessitated to avoid the payment of a bond premium of \$763 that would be due and payable later in the month of September.” He then filed the 12th account for the period ending August 31, 2019.
16. On September 5, 2019, the court entered an *ex parte* order removing Barnum as administrator and terminating his \$250,000 bond.
17. On September 18, 2019, Patricia O’Neal McNutt (“McNutt”) filed Beneficiary’s Objections to Account. On September 16, 2019, she also filed Beneficiary Complaint Against Colonial Heights Commissioner of Accounts Thomas Cheeley.

18. McNutt is a pecuniary legatee and resides in Kentucky. McNutt alleged that Respondent waited over 16 months to approve the inventory and accounting filed by Geraldine Skinner on November 5, 2007. McNutt further alleged that Respondent failed to supervise Barnum, leading to the loss of assets, including the antique baseball collection that was sold at auction.
19. On October 15, 2019, the Chair of the Standing Committee on Commissioners of Accounts (“SCCA”) appointed a subcommittee to investigate McNutt’s complaint.
20. On November 13, 2019, Denny filed a complaint with the Circuit Court regarding Respondent’s failure to monitor the Estate. Denny is a pecuniary legatee and resides in Florida. He was specifically bequeathed an antique baseball card collection which had been sold at auction. The SCCA considered Denny’s complaint as a companion to McNutt’s.
21. Respondent cooperated with the SCCA investigation. He informed the SCCA subcommittee that there were phone calls back and forth between his office and Barnum. He could not access his entire file concerning the Estate because the file was maintained by his former secretary who had a crippling stroke. Respondent did not offer this as a defense or an excuse, but to explain why he could not access certain information.
22. On May 15, 2020, after completing its investigation, the SCCA issued its report and referred the matter to the Chief Judge of the 12th Judicial Circuit of Virginia.
23. On August 31, 2020, the Circuit Court terminated Respondent’s service as COA.
24. Va. Code § 64.2-1215; Power of commissioner of accounts to enforce the filing of inventories provides the following:
 - A. If any fiduciary fails to make the return required by § 64.2-1300, the commissioner of accounts shall issue, through the sheriff or other proper officer, a summons to the fiduciary requiring him to make such return. If the fiduciary fails to make the required return within 30 days after the date of service of the summons, the commissioner of accounts shall report the fact to the circuit court. The court shall immediately issue a summons to the fiduciary requiring him to appear and shall, upon his appearance, assess a fine against the fiduciary in an amount not to exceed \$500 unless excused for sufficient reason. If, after his appearance before the court, the fiduciary continues to fail to make the required return within such time as the court may prescribe, the fiduciary shall be punished for contempt of court.
 - B. Whenever the commissioner of accounts reports to the court that a fiduciary who is an attorney-at-law licensed to practice in the

Commonwealth has failed to make the required return within 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of his report to the Virginia State Bar.

25. Va. Code § 64.2-1216, Failure to account; enforcement, gave Respondent an alternative avenue to report delinquency. It provides:
 - A. If any fiduciary required to account fails to make a complete and proper account within the time allowed, the commissioner of accounts shall either (i) proceed against the fiduciary in accordance with the procedures set forth in § 64.2-1215 or (ii) file with the circuit court and the clerk at such times as the court shall order, but not less than twice a year, a list of all fiduciaries who have failed to make a complete and proper account within the time allowed, excepting those fiduciaries to whom the commissioner of accounts has granted additional time. Upon the filing of this list, the clerk shall issue a summons against each fiduciary on the list, returnable to the first day of the next term of court, and the court shall take action against the fiduciary in accordance with the procedures set forth in § 64.2-1215.
 - B. Every commissioner of accounts shall file with the court and the clerk at such times as the court shall order, but not less than quarterly, a list of all fiduciaries whose accounts for any reason have been before the commissioner of accounts for more than five months. The commissioner of accounts shall note on the list the fiduciaries who are deemed delinquent.
 - C. Whenever the commissioner of accounts reports to the court that a fiduciary who is an attorney-at-law licensed to practice in the Commonwealth has failed to make the required settlement within 30 days after the date of service of a summons, the commissioner of accounts shall also mail a copy of his report to the Virginia State Bar.
26. Respondent never issued a summons upon Barnum, nor included him on a list of delinquent fiduciaries furnished to the Clerk of the Circuit Court. Respondent never informed the Circuit Court of the Administrator's delinquency.
27. The CSSA report concluded that Respondent's failure to issue a summons or include Barnum on a list of delinquent beneficiaries for more than 11 years "had the effect of shielding [Barnum] from Circuit Court enforcement proceedings against him and from Virginia State Bar scrutiny."

28. Due to the minimal amount of administrator delinquency he experienced during his tenure as Commissioner of Accounts, Respondent did not recall ever reporting an attorney to the Virginia State Bar, "even if they were delinquent and hadn't followed the statute."
29. At the time of their complaints, it had been 14 years since Edward Skinner died. McNutt and Denny had never received any portion of their inheritances.

I. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct¹:

For failing to comply with Va. Code sections 64.2-1215 and 64.2-1216:

RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

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

THIRD DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 

KENNETH MATTHEW LONG
DISTRICT COMMITTEE CHAIR

¹ Although Respondent was acting in his capacity as Commissioner of Accounts, "a lawyer must comply at all times with applicable rules of the Code of Professional Responsibility, whether or not the attorney is acting in a professional capacity as a lawyer." See LEO No. 1185.