



VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDWARD SCOTT SMALLEY

VSB Docket No. 23-070-128259

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 19, 2024, a meeting was held in this matter before a duly convened Seventh District Subcommittee consisting of Ryan D. Ruzic, Chair; Hope Payne, Member; and Kimberly Gregg, Lay Member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4 of the Rules of Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Tenley Carroll Seli, Assistant Bar Counsel, and Edward Scott Smalley, Respondent, *pro se*.

WHEREFORE, the Seventh District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. In 1977, Edward Scott Smalley (“Respondent”) was licensed to practice law in the Commonwealth of Virginia. At all relevant times, Respondent has been licensed and in good standing with the Virginia State Bar (“VSB”).
2. In meetings that occurred in September and December 2000, Respondent agreed to represent William and Gloria Richardson regarding the transfer of ownership of property located at 112 Josephine Street in Berryville, Virginia, a National Historic District

founded by emancipated slaves. The Richardsons sought to consolidate ownership of the property from multiple heirs to William Richardson.¹

3. Respondent did not have a written fee agreement with the Richardsons.
4. According to deposit slips and copies of the checks and a money order maintained by Respondent in the client file, the Richardsons made the following payments to

Respondent:

- September 22, 2000 check in the amount of \$5,000 from Gloria Richardson (“Mrs. Richardson”);
- December 9, 2000 money order in the amount of \$3,000 from the Richardsons;
- December 12, 2000 check in the amount of \$500 from Mr. Richardson; and
- September 28, 2001 check in the amount of \$7,000 from Mrs. Richardson.

Respondent and the Richardsons agree that the funds were allocated as follows: \$15,000 to pay the heirs for their ownership interest in the property and \$500 as advanced legal fees.

5. Respondent deposited the funds into a trust account maintained at the Bank of Clarke County.
6. On November 2, 2000, Melvin signed a quitclaim deed that transferred her interest in the property to Mr. Richardson. On December 12, 2000, Respondent sent a check in the amount of \$3,000 to Melvin with a letter that stated, in part, that the payment was for “any real estate taxes or other costs and expenses [she] may have paid in connection with the above property.” Respondent did not record the quitclaim deed executed by Melvin.

¹ Respondent previously represented Rebecca Melvin, a family member and heir, who sought to obtain clear title to the property. On May 14, 1985, Respondent sent a letter to Melvin that advised, in part, that Melvin could have all heirs execute quitclaim deeds to establish clear title. Melvin, with the assistance of Pennsylvania attorney/heir Everett Gillison, began to obtain quitclaim deeds from the heirs, but they were unable to obtain quitclaim deeds from all heirs.

7. Respondent failed to make any additional payments to the heirs or to record any of the quitclaim deeds in his possession.²
8. On December 3, 2009, Respondent sent a letter to Mr. Richardson seeking clarification of the proposed owner of the property and the purchase price for each heir. Respondent asserted that the Richardsons never responded to his letter.
9. Respondent took no further action on the matter.
10. The Richardsons called Respondent several times between 2009 and 2019 to schedule a meeting, but he did not return their calls. In 2019, Mrs. Richardson and Donna Richardson travelled to Virginia for a family event. Mrs. Richardson made multiple calls to Respondent to schedule a meeting, however, he failed to return her calls.
11. For decades, Respondent did not return the client funds in the amount of \$12,500 that remained in his trust account to the Richardsons, even though he did not complete the work he was hired to perform.
12. During the time Respondent represented the Richardsons, he did not maintain a client ledger for them.
13. During the time Respondent represented the Richardsons, he did not maintain the required receipts and disbursement journals.
14. In December 2019, William Richardson passed away. As of that day, Respondent had not completed the work nor had he returned any funds to the Richardsons. After Mr. Richardson's death, Gloria Richardson and her daughter, Donna Richardson ("Ms. Richardson"), retained Susan French to represent them in the matter.³

² As of June 14, 2022, Respondent had at least ten quitclaim deeds executed by heirs in his client file for the Richardsons.

³ Donna Richardson is also the daughter of William Richardson and executor of his estate. Ms. Richardson has previously met with Respondent and her parents on at least two occasions.

15. On April 26, 2022, French sent Respondent a letter and advised him that she was hired to “take over the land title matter” by Ms. Richardson.⁴
16. On June 14, 2022, French and Ms. Richardson met with Respondent and advised him that French would assume legal representation on the transfer of ownership of the property. French and Ms. Richardson requested that Respondent return the \$12,500 belonging to the Richardsons. French and Ms. Richardson also provided Respondent with certified copies of Mr. Richardson’s death certificate and Donna Richardson’s appointment as executor of Mr. Richardson’s estate.
17. Notwithstanding the April 26, 2022 letter and the meeting in June 2022, Respondent did not return the \$12,500 to the Richardsons. Respondent contended the Richardsons did not request return of the money. Respondent acknowledged that he should have taken affirmative steps to ascertain to whom the clients funds should have been paid.
18. On October 24, 2022, French sent a demand letter to Respondent that asserted the Richardsons were damaged because he retained the \$12,500 for 22 years and did not perform the legal services for which he was hired. Respondent still did not return the \$12,500.
19. On February 10, 2023, French filed a bar complaint on behalf of Gloria and Donna Richardson. French alleged that over a period of 23 years, Respondent failed to complete the work that he was hired to perform and he failed to maintain communication with the Richardsons. French alleged that despite Respondent’s abandonment of the representation, Respondent failed to terminate the representation formally and kept \$12,500 of client funds, even though he did not complete the work.

⁴ Donna Richardson had previously attended meetings between her parents and Respondent.

20. On October 4, 2023, Respondent and the Richardsons entered into a Settlement and Release Agreement. Respondent agreed to pay \$16,000 to Mrs. Richardson and an anonymous donation to a nonprofit entity selected by the Richardsons. On October 5, 2023, Respondent issued payment to Mrs. Richardson pursuant to the Settlement and Release Agreement.
21. Respondent advised VSB Investigator Ronald McCall that he did not perform the reconciliations required by Rule 1.15 from September 2000 through May 2023. After French filed the bar complaint, Respondent hired an accountant to perform a reconciliation of his trust account. Since there were no client ledgers, the accountant was unable to perform all the required reconciliations and Respondent was unable to provide complete ledgers of the client funds in his trust account as of October 31, 2023.

II. NATURE OF MISCONDUCT

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

For failing to perform any significant work on the Richardsons' case for over 20 years, Respondent violated Rule 1.3(a).

Rule 1.3 Diligence

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

* * *

For failing to maintain communication with the Richardsons for over 10 years and failing to keep the Richardsons reasonably informed about the progress of obtaining clear title to the property, Respondent violated Rule 1.4(a).

Rule 1.4 Communication

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

* * *

For failing to promptly return client funds when informed that French was retained to complete the legal matter, Respondent violated Rule 1.15(b)(4).

Rule 1.15 Safekeeping Property

* * *

(b) *Specific Duties.* A lawyer shall:

* * *

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities or other properties in the possession of the lawyer that such person is entitled to receive[.]

* * *

For failing to maintain a client ledger for the Richardsons and failing to maintain a receipts and disbursements journal for the trust account, Respondent violated Rule 1.15(c)(1) and (2).

(c) *Record-Keeping Requirements.* A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of disbursement; and current balance.

* * *

For failing to perform the required reconciliations on the trust account and for failing to maintain adequate records, Respondent violated Rule 1.15(d)(3)(i)-(iii) and 1.15(d)(4).

(d) *Required Trust Account 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:

* * *

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(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 OR PRIVATE REPRIMAND WITH TERMS

Accordingly, having approved the agreed disposition, it is the decision of the

Subcommittee to impose a Public Reprimand with Terms. The terms are:

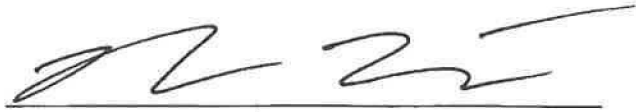
1. Respondent will read in its entirety *Lawyers and Other People's Money, 5th Edition*, and Legal Ethics Opinion 1606 and will certify compliance in writing to Assistant Bar Counsel Tenley Carroll Seli not later than 30 days following the date of approval of any Subcommittee Determination approving this Agreed Disposition.
2. On or before May 1, 2024, Respondent will certify in writing to Assistant Bar Counsel Tenley Carroll Seli, and provide an accounting and documentation reflecting that he disbursed all client funds contained in the trust account at Bank of Clarke County to the clients entitled to receive such funds.
3. Within 30 days from the date of any Subcommittee Determination approving this Agreed Disposition, Respondent must engage the services of an accountant who is familiar with the requirements of Rule 1.15 of the Rules of Professional Conduct to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. Respondent is obligated to pay when due the accountant's fees and costs for services. Upon completion of the accountant's review of Respondent's trust account record-keeping, accounting, and reconciliation methods and procedures, but no later than six months after the date of any Subcommittee Determination approving this Agreed Disposition, Respondent shall certify to Assistant Bar Counsel that he has engaged an accountant and has revised his trust accounting methods and procedures based on the accountant's recommendations and the requirements of Rule 1.15 of the Rules of Professional Conduct.

If any of the terms are not met by the deadlines set forth herein, the District Committee shall issue a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.F and G of the Rules of Supreme Court of Virginia. Any proceeding initiated due to failure to comply

with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of Supreme Court of Virginia,.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.


SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

A handwritten signature in black ink, appearing to read 'R. D. Ruzic', written over a horizontal line.

Ryan D. Ruzic
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on March 28, 2024, a true and complete copy of the Subcommittee Determination was sent by certified mail and email to Edward Scott Smalley, Respondent, at 16 N. Church Street, PO Box 644, Berryville, Virginia 22611-0644, Respondent's last address of record with the Virginia State Bar, and at essmalley@verizon.net, Respondent's email address of record with the Virginia State Bar.



Tenley Carroll Seli
Assistant Bar Counsel

VIRGINIA:

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OF THE VIRGINIA STATE BAR

IN THE MATTER OF
EDWARD SCOTT SMALLEY

VS B Docket No. 23-070-128259

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

The Virginia State Bar, by Assistant Bar Counsel Tenley Carroll Seli, and Edward Scott Smalley, Respondent, enter into the following agreed disposition arising out of this matter pursuant to Part 6, Section IV, Paragraph 13-15.B.4 of the Rules of the Supreme Court of Virginia.

I. STIPULATIONS OF FACT

1. In 1977, Edward Scott Smalley ("Respondent") was licensed to practice law in the Commonwealth of Virginia. At all relevant times, Respondent has been licensed and in good standing with the Virginia State Bar ("VSB").
2. In meetings that occurred in September and December 2000, Respondent agreed to represent William and Gloria Richardson regarding the transfer of ownership of property located at 112 Josephine Street in Berryville, Virginia, a National Historic District founded by emancipated slaves. The Richardsons sought to consolidate ownership of the property from multiple heirs to William Richardson.¹
3. Respondent did not have a written fee agreement with the Richardsons.

¹ Respondent previously represented Rebecca Melvin, a family member and heir, who sought to obtain clear title to the property. On May 14, 1985, Respondent sent a letter to Melvin that advised, in part, that Melvin could have all heirs execute quitclaim deeds to establish clear title. Melvin, with the assistance of Pennsylvania attorney/heir Everett Gillison, began to obtain quitclaim deeds from the heirs, but they were unable to obtain quitclaim deeds from all heirs.

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² As of June 14, 2022, Respondent had at least ten quitclaim deeds executed by heirs in his client file for the Richardsons.

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II. NATURE OF MISCONDUCT

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

For failing to perform any significant work on the Richardsons' case for over 20 years, Respondent violated Rule 1.3(a).

Rule 1.3 Diligence

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

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For failing to maintain communication with the Richardsons for over 10 years and failing to keep the Richardsons reasonably informed about the progress of obtaining clear title to the property, Respondent violated Rule 1.4(a).

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

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For failing to promptly return client funds when informed that French was retained to complete the legal matter, Respondent violated Rule 1.15(b)(4).

Rule 1.15 Safekeeping Property

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- (b) *Specific Duties.* A lawyer shall:

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(4) promptly pay or deliver to the client or another as requested by such person the funds, securities or other properties in the possession of the lawyer that such person is entitled to receive[.]

* * *

For failing to maintain a client ledger for the Richardsons and failing to maintain a receipts and disbursements journal for the trust account, Respondent violated Rule 1.15(c)(1) and (2).

(c) *Record-Keeping Requirements.* A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of disbursement; and current balance.

* * *

For failing to perform the required reconciliations on the trust account and for failing to maintain adequate records, Respondent violated Rule 1.15(d)(3)(i)-(iii) and 1.15(d)(4).

(d) *Required Trust Account 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:

* * *

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

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(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(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. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to a subcommittee of the Seventh District Committee for its approval the Agreed Disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Seventh District Committee. The terms shall be met by the deadlines set forth herein and are as follows:

1. Respondent will read in its entirety *Lawyers and Other People's Money, 5th Edition*, and Legal Ethics Opinion 1606 and will certify compliance in writing to Assistant Bar Counsel Tenley Carroll Seli not later than 30 days following the date of approval of any Subcommittee Determination approving this Agreed Disposition.
2. On or before May 1, 2024, Respondent will certify in writing to Assistant Bar Counsel Tenley Carroll Seli, and provide an accounting and documentation reflecting that he disbursed all client funds contained in the trust account at Bank of Clarke County to the clients entitled to receive such funds.
3. Within 30 days from the date of any Subcommittee Determination approving this Agreed Disposition, Respondent must engage the services of an accountant who is familiar with the requirements of Rule 1.15 of the Rules of Professional Conduct to review Respondent's attorney trust account record-keeping, accounting, and reconciliation methods and procedures to ensure compliance with Rule 1.15 of the Rules of Professional Conduct. Respondent is obligated to pay when due the accountant's fees and costs for services. Upon completion of the accountant's review of Respondent's trust account record-keeping, accounting, and reconciliation methods and procedures, but no later than six months after the date of any Subcommittee Determination approving this Agreed Disposition, Respondent shall certify to Assistant Bar Counsel that he has engaged an accountant and has revised his trust accounting methods and procedures based on the accountant's recommendations and the requirements of Rule 1.15 of the Rules of Professional Conduct.

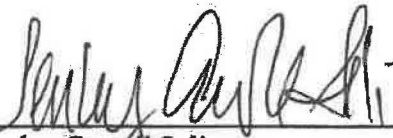
If any of the terms are not met the deadlines set forth herein, the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, § IV, ¶ 13-15.F and G of the Rules of the Supreme Court of Virginia. Any proceeding initiated due to failure to comply

with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

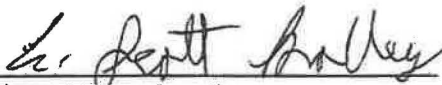
If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs.

Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of Supreme Court of Virginia.

THE VIRGINIA STATE BAR



Tenley Carroll Seli
Assistant Bar Counsel



Edward Scott Smalley
Respondent