

VIRGINIA:

BEFORE THE FIFTH DISTRICT COMMITTEE, SECTION ONE,
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
PAUL ROBERT SMOLLAR

VSB DOCKET NO. 22-051-124275

AMENDED DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION WITH TERMS)

THIS MATTER came to be heard before a panel of the Fifth District Committee, Section One, of the Virginia State Bar on June 13, 2023, and July 26, 2023.¹ The panel consisted of attorneys David I. Gold (“Panel Chair”), Joseph C. Davis, Craig A. Guthery, and Marisa L. Santana, and lay member Marshall B. Rose.² The Virginia State Bar (“VSB”) was represented by Assistant Bar Counsel Tenley Carroll Seli. Respondent was present and was represented by Dennis J. Quinn, Esquire, and James M. McCauley, Esquire. Michelle L. Donath, court reporter, after being duly sworn, reported the hearing and transcribed the proceedings occurring on June 13, 2023.³ Peter Bloom, court reporter, after being duly sworn, reported the hearing and transcribed the proceedings occurring on July 26, 2023.⁴

¹ The June 13th portion of the hearing consisted of the presentation of each party’s case-in-chief on the question of misconduct. The July 26th portion of the hearing consisted of the presentation of each party’s case-in-chief on the question of sanctions.

² Pursuant to and consistent with Va. R. Sup. Ct. Part 6, § 4, ¶ 13-16.U, attorneys Brandon R. Sloane and Micah E. Ticatch were substituted onto the panel for the July 26, 2023 hearing in lieu of attorneys Craig A. Guthery and Marisa L. Santana, who were unable to appear on that date.

³ Ms. Donath is associated with Casano Court Reporting & Videography, 1010 Cameron Street, Alexandria, Virginia 22314, (703) 837-0076.

⁴ Mr. Bloom is associated with ICR Rudiger & Green, 8551 Rixlew Lane, Suite 330, Manassas, Virginia 20109, (703) 331-0212.

A. Events Associated with the June 13th Hearing

After calling the case, the Panel Chair polled all members of the panel for potential conflicts. All members of the panel advised that no conflicts existed. Assistant Bar Counsel, Respondent, and Respondent's Counsel then advised that they were ready to proceed. Witnesses were excluded pursuant to Va. R. Sup. Ct. Part 6, § 4, ¶ 13-16.K, and all of the VSB's exhibits and all of Respondent's exhibits were admitted into evidence consistent with the Panel Chair's Prehearing Order entered on June 5, 2023.

Alan Weil, Sandra Havrilak, and Edward Bosak, after being duly sworn, testified in the VSB's case-in-chief. After the conclusion of the VSB's case-in-chief, Respondent moved to strike the charges of misconduct pursuant to Va. R. Sup. Ct. Part 6, § 4, ¶ 13-16.R. After considering the argument of counsel, the Panel Chair, with no dissent from the other panelists, sustained the motion to strike the charge of misconduct related to Rule 3.3(a)(4) and denied the motion to strike the charges of misconduct related to Rules 1.1, 1.3(a), 3.1, and 3.4(e).

The Respondent, after being duly sworn, then testified in his case-in-chief. After the conclusion of the Respondent's case-in-chief, Respondent moved to strike the remaining charges of misconduct pursuant to Va. R. Sup. Ct. Part 6, § 4, ¶ 13-16.R. After considering the argument of counsel, the Panel Chair, with no dissent from the other panelists, denied the motion to strike the remaining charges of misconduct related to Rules 1.1, 1.3(a), 3.1, and 3.4(e).

Following the presentation of evidence and argument by both parties on the question of misconduct, the Committee recessed to deliberate. Upon reconvening, the Panel Chair announced the Committee's findings on the question of misconduct. The Committee found that (i) the VSB had established by clear and convincing evidence that the Respondent had violated Rule 3.4(e); and (ii) the VSB had failed to establish by clear and convincing evidence that the Respondent had

violated Rules 1.1, 1.3(a), and 3.1. The hearing was then adjourned to July 26, 2023, to consider the question of sanctions.

B. Events Associated with the July 26th Hearing

After calling the case, the Panel Chair polled all members of the panel for potential conflicts. All members of the panel advised that no conflicts existed. Assistant Bar Counsel, Respondent, and Respondent's Counsel then advised that they were ready to proceed, although neither party chose to present evidence. The Committee heard argument from both parties regarding aggravating and mitigating factors as well as the question of an appropriate sanction.

At the conclusion of the presentation of argument, the Committee recessed to deliberate. Upon reconvening, the Panel Chair announced the Committee's summary finding on the question of a sanction. The Committee found that the imposition of a public admonition with terms on the Respondent was appropriate and that Respondent must complete the VSB's Mandatory Professionalism Course for Newly Active Members within one year of the Committee's July 26, 2023 determination. Counsel for both parties were then directed to jointly prepare, for the Panel Chair's consideration, a draft Committee Determination, at which point the hearing was closed.

On August 25, 2023, counsel for both parties filed several documents. In brief, the parties – apparently unable to agree on the substance and form of a jointly authored draft Committee Determination – have each tendered their own independently authored version for the Panel Chair's consideration and adoption. Naturally, each party opposes the other's version. After considering the matter, the Panel Chair declines to adopt either party's independently authored version, and instead adopts this version on behalf of the Committee, consistent with Va. R. Sup. Ct. Part 6, § 4, ¶ 13-16.Y.

With these procedural and preliminary matters addressed, the Committee sets forth the

following findings of fact, conclusions of law, and disposition in this matter:

Findings of Fact⁵

1. Respondent was admitted to the VSB in 1988.
2. At all relevant times, Respondent was a member of the VSB.
3. Respondent was hired on November 5, 2019, to represent his client in a post-divorce custody and visitation proceeding (the “Custody Proceeding”).
4. On December 11, 2020, Respondent was served with Interrogatories and Requests for Production of Documents (the “Discovery Requests”) in connection with the Custody Proceeding.
5. The Discovery Requests included a specific request for the health records of Respondent’s client.
6. Respondent repeatedly asked his client to produce documents to him responsive to the Discovery Requests, however Respondent’s client would not do so.
7. On February 23, 2021, three non-party *subpoena duces tecum* (the “Subpoenas”) were issued by Respondent’s opposing counsel in the Custody Proceeding.
8. The Subpoenas sought a subset of the health records sought through the Discovery Requests, including records from Beebe Healthcare (the “Beebe Records”).
9. On March 2, 2021, Respondent’s client produced the Beebe Records to Respondent, after which Respondent conducted a cursory and partial review of the Beebe Records.
10. On March 5, 2021, Respondent filed a motion to quash the Subpoenas.
11. On March 26, 2021, the Court presiding over the Custody Proceeding denied the

⁵ On May 10, 2023, the Panel Chair entered an Order granting the VSB’s consent motion to file certain documents relevant to this matter under seal. The Committee’s Findings of Fact are entered with due consideration for both the letter and the spirit of that Order.

motion to quash finding, among other things, that it was “critical” for the Court to get the information contained in the documents sought.

12. Although Respondent was aware that he possessed the Beebe Records, and although Respondent was on actual notice that the Court presiding over the Custody Proceeding deemed the information contained in the Beebe Records “critical” to the Custody Proceeding, Respondent failed to turn over the Beebe Records to Respondent’s opposing counsel in the Custody Proceeding.

13. In fact, Respondent’s opposing counsel in the Custody Proceeding only learned that Respondent was in possession of the Beebe Records when Respondent filed his client’s opposition to a separate motion for sanctions in the Custody Proceeding months later, on September 23, 2021.

Conclusions of Law

Rule 3.4(e) of the Virginia Rules of Professional Conduct provides that:

A lawyer shall not:

(e) Make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

Va. R. Sup. Ct. Part 6, § 2, ¶ 3.4(e). Here, the evidence presented at trial showed, by clear and convincing evidence, that Respondent failed to make reasonably diligent efforts to turn over the Beebe Records to Respondent’s opposing counsel in the Custody Proceeding. Respondent was both aware that he possessed the Beebe Records, and that the Beebe Records were sought under a lawfully issued discovery request. Accordingly, for these reasons the Committee concludes that Respondent engaged in misconduct violating Rule 3.4(e) of the Virginia Rules of Professional Conduct.

Disposition

The Committee hereby imposes on Respondent a **PUBLIC ADMONITION WITH TERMS**. The terms include the following:

1. Respondent shall attend and complete the VSB's Mandatory Professionalism Course for Newly Active Members (the "Course") within one (1) year of July 26, 2023.
2. Respondent's attendance at, and completion of, the Course shall not apply to any Mandatory Continuing Legal Education ("MCLE") requirement that Respondent was otherwise required to meet in Virginia or any other jurisdictions in which Respondent is licensed to practice law.
3. Respondent shall certify his attendance at, and completion of, the Course by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance for the Course to Tenley Carroll Seli, Assistant Bar Counsel, within thirty (30) days of his attendance at, and completion of, the Course.

If any of the above terms are not met by the dates and times set forth herein, the District Committee shall impose a Public Reprimand pursuant to Va. R. Sup. Ct. Part 6, § 4, ¶ 13-16.BB. Any proceeding initiated due to Respondent's failure to comply with the above terms will be considered a new matter and an administrative fee and costs will be assessed pursuant to Va. R. Sup. Ct. Part 6, § 4, ¶ 13-9.E.

It is further **ORDERED** that pursuant to Va. R. Sup. Ct. Part 6, § 4, ¶ 13-9.E, the Clerk of the Disciplinary System shall assess costs against Respondent.

It is further **ORDERED** that the Clerk of the Disciplinary System shall mail an attested copy of this Order to Respondent at his address of record, 1850 M Street, NW, Suite 880, Washington, DC 20036, by certified mail, return receipt requested, and shall send an electronic

copy to (i) Tenley Carroll Seli, Assistant Bar Counsel, Virginia State Bar, at tseli@vsb.org; (ii) Dennis J. Quinn, Esquire, at dennis.quinn@carmaloney.com; and (iii) James M. McCauley, Esquire, at jmccauesq@aol.com.

ENTERED THIS 28th DAY OF AUGUST 2023
VIRGINIA STATE BAR, FIFTH DISTRICT COMMITTEE § 1

A handwritten signature in black ink, appearing to read "D. I. Gold", written over a horizontal line.

~~David Isaac Gold, Committee Panel Chair~~