

VERNON K. SMITH, JR.
(Suspension, Withheld Suspension, and Probation)

On July 15, 2022, the Idaho Supreme Court issued an Opinion suspending Vernon K. Smith, Jr., 76, from the practice of law for five years, with two years of that suspension withheld upon certain conditions. The suspension was effective August 8, 2022, the date the Court issued its Remittitur. The Court's Opinion followed a contested hearing held by a Hearing Committee ("Committee") of the Professional Conduct Board, which found clear and convincing evidence that Mr. Smith violated Idaho Rules of Professional Conduct ("I.R.P.C.") 1.7(a)(2), 2.1, 5.4(a), 5.4(d), 8.4(c), and 8.4(d). The Committee issued Findings of Fact, Conclusions of Law and Recommendation which recommended that Mr. Smith be suspended for two years and that he be required to take and pass the Multistate Professional Responsibility Exam ("MPRE") before reinstatement, if any. Mr. Smith appealed the Committee's Recommendation. After briefing, the Court found that the Committee's conclusions were supported by clear and convincing evidence and imposed a longer period of suspension and additional reinstatement and probation conditions. The Court also awarded \$30,248.82 in attorney fees and costs to the Idaho State Bar related to the disciplinary proceedings.

The formal charge case related to three separate matters. In the first matter, Mr. Smith was the exclusive attorney for his late mother, Victoria, since 1976. In February 1990, Victoria executed a holographic will bequeathing all her assets to Mr. Smith and disinherit her other two children, Joseph Smith ("Joseph") and Victoria Smith Converse. Mr. Smith was the only person present when Victoria executed that will and he served as the sole witness.

In July 1999, when Victoria was 85 years old, Mr. Smith drafted a durable power of attorney ("First POA") naming himself as her attorney-in-fact. The First POA stated that it would "endure the event of [Victoria's] disability and death." Victoria executed the First POA and Mr. Smith's legal assistant notarized the document. During the disciplinary hearing, Mr. Smith testified that he prepared the First POA because Victoria wanted him to "have a power of attorney to do whatever [he] wanted to do with [her] properties." In April 2008, when Victoria was 94 years old, Mr. Smith drafted a second power of attorney ("Second POA") again naming himself as her attorney-in-fact. The Second POA stated that Mr. Smith's authority over Victoria's affairs and legal rights, including over her real property, was "unconditional, unlimited and all inclusive." The Second POA also stated it was irrevocable and would remain in force despite Victoria's death or disability because it was her "long-standing intention and desire" that Mr. Smith "be the sole and exclusive heir of [her] entire estate" based on his devotion to her interests. Victoria executed the Second POA and Mr. Smith's legal receptionist notarized the document. Mr. Smith did not record the two POAs until three days after Joseph commenced probate proceedings of Victoria's estate in October 2014.

In May 2009, Mr. Smith drafted and executed a post-nuptial personal property ownership agreement assigning and transferring all his separate property interests to his new wife, Vicki, and relinquishing his rights to claim any community property interests obtained after April 19, 2009. Mr. Smith had several creditors at the time he executed that agreement; Vicki testified that she had no creditors.

When Victoria was 99 years old, Mr. Smith drafted and executed the following documents transferring all her property, totaling nearly 2,000 acres valued at approximately 30 to 37 million dollars, to himself. On July 3, 2012, Mr. Smith formed VHS Properties, LLC (“VHS”), and listed himself and Victoria as members. On July 4, 2012, he drafted and executed a document transferring all of Victoria’s real and personal property to VHS for \$10 and other “good and valuable lawful consideration.” Mr. Smith executed that document, on Victoria’s behalf, “pursuant to his exclusive Durable, and Irrevocable Power of Attorney.” That document stated that Victoria had named Mr. Smith as her “sole and exclusive Heir” in her will “to avoid any appearance of any influence by anyone” with respect to her estate. Mr. Smith’s friend and client, Royal Von Puckett, who had secured a judgment against Mr. Smith’s ex-wife which he later assigned to Mr. Smith, notarized the document.

Also on July 4, 2012, pursuant to the Second POA, Mr. Smith drafted and executed a document on Victoria’s behalf transferring and assigning all her interests in VHS to himself. Mr. Von Puckett also notarized that document. Later on July 4, 2012, Mr. Smith prepared six quitclaim deeds reflecting his transfer to VHS of all of Victoria’s real property. Based on those transfers, Mr. Smith had sole ownership of all of Victoria’s assets. The Committee concluded that “many of the transactions involving Victoria’s property and [Mr. Smith’s] law practice were performed to prevent [Mr. Smith’s] ex-wife from satisfying a judgment she acquired against [him] in their divorce proceedings.” The magistrate court in the probate case invalidated the transfers because the consideration Mr. Smith gave in exchange for all of Victoria’s assets was “so disproportionate as to suggest fraud” and described the transfers as a “sham” intended to disguise “a gift.” The magistrate court’s decision was affirmed by the Idaho Supreme Court on appeal.

During the disciplinary hearing, Mr. Smith testified that he transferred all of Victoria’s interests to VHS, and then to himself, to “preserve and protect” the properties. However, he acknowledged that although he had creditors, including primarily his ex-wife, Victoria had no creditors at the time of the July 2012 transfers. Mr. Smith testified during the probate trial that he transferred Victoria’s interests in 2012 because she wanted him to have her entire estate and he “chose to take it by deed transfer as opposed to testamentary disposition.” Mr. Smith acknowledged that he did not recommend to Victoria that she consult independent counsel for the transfers or for any estate planning and never informed her that all her property had been transferred to his new wife, Vicki, pursuant to the post-nuptial agreement. The Committee concluded that Victoria was competent to decide whether to transfer her assets but “was not offered the opportunity to execute” the relevant documents, that Mr. Smith did not discuss the transfers with Victoria, and that he used the Second POA to transfer her assets to his control to “protect himself and his financial interests” from his ex-wife “who had a judgment against him and from his siblings who had been disinherited” through his efforts.

In September 2013, Victoria died. In October 2014, Joseph petitioned for formal adjudication of intestacy and formal appointment of personal representative, alleging the 1990 holographic will was the result of Mr. Smith’s undue influence. Three days after Joseph filed that petition, Mr. Smith recorded the First POA, Second POA, and the deeds transferring Victoria’s real property to VHS.

In September 2018, Mr. Smith filed for Chapter 11 bankruptcy. He testified that he filed for bankruptcy because his ex-wife was trying to satisfy a judgment against him. In September 2019, the Bankruptcy Court dismissed Mr. Smith's bankruptcy petition, rejecting Mr. Smith's explanations that he was "protecting [Victoria's] interests." The Bankruptcy Court stated that the transactions executed by Mr. Smith gave the Court "great cause for concern" and, referring specifically to the post-nuptial agreement, stated that it "strains credulity that it has any other purpose in mind other than to strictly and solely hinder, delay, and prevent [Mr. Smith's] creditors from getting access to any of his assets and property."

With respect to the conduct in the first matter, the Idaho Supreme Court affirmed the Committee's conclusions that Mr. Smith violated I.R.P.C. 1.7(a)(2) [Conflict of interest based on the personal interests of the lawyer], I.R.P.C. 2.1 [Failure to exercise independent professional judgment and render candid advice], I.R.P.C. 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation], and I.R.P.C. 8.4(d) [Engaging in conduct prejudicial to the administration of justice].

In the second matter, Mr. Smith filed a Certificate of Organization creating the Law Office of Vernon K. Smith, LLC, in January 2016. Mr. Smith identified himself and his nonlawyer wife, Vicki, as the LLC's "governors" and organizers. Vicki signed and filed the LLC's annual reports for reporting years 2017, 2018, and 2019, and identified herself therein as a member of the LLC. Mr. Smith testified during the disciplinary hearing that he gave Vicki a 90 percent interest in his law firm LLC and he retained a 10 percent interest "to show a right to use" his law office. Mr. Smith also testified that from January 2016 to March 2019, Vicki received all income from the LLC and that such income was earned from the practice of law and client fee payments. In or around March 2019, after questions were raised in his bankruptcy case about his law firm LLC, Mr. Smith converted the LLC to a PC and became its sole member. In its September 2019 oral ruling dismissing Mr. Smith's bankruptcy petition, the Bankruptcy Court stated that Mr. Smith had "entered into an arrangement whereby he effectively agreed to practice law for his wife as an employee," even though his wife was a nonlawyer. With respect to that conduct, the Idaho Supreme Court affirmed the Committee's conclusions that Mr. Smith violated I.R.P.C. 5.4(a) [Sharing fees with a nonlawyer] and I.R.P.C. 5.4(d) [Practicing with or in the form of a professional corporation or association authorized to practice law for a profit in which a nonlawyer owns an interest].

In the third matter, Mr. Smith testified during an October 2018 meeting of creditors in his bankruptcy case that he had not filed his 2006 through 2018 tax returns. During the disciplinary hearing, Mr. Smith acknowledged that he had testified during his bankruptcy case that he had not filed his tax returns, but claimed he was "justified in what [he] did." In its oral ruling, the Bankruptcy Court found Mr. Smith's explanations for failing to file his tax returns "unpersuasive." Mr. Smith did not file his federal or state tax returns for the years 2006 through 2018 until at least November 2020, after the Idaho State Bar filed its disciplinary Complaint. With respect to that conduct, the Idaho Supreme Court affirmed the Committee's conclusions that Mr. Smith violated I.R.P.C. 8.4(c) [Engaging in conduct involving dishonesty, fraud, deceit or misrepresentation] and I.R.P.C. 8.4(d) [Engaging in conduct prejudicial to the administration of justice].

In determining the appropriate sanction, the Idaho Supreme Court reviewed the aggravating factors in the disciplinary case, including Mr. Smith's failure to show any "contrition or remorse" and his refusal to "accept responsibility for his actions." The Court also considered the following mitigating factors: (a) Mr. Smith's I.R.P.C. 1.7 violation "occurred in the context of advising his mother," with whom he apparently had a close relationship; (b) his violation of I.R.P.C. 5.4 did not involve interference with his professional judgment by his nonlawyer wife; and (c) his failure to timely file his tax returns in violation of I.R.P.C. 8.4 did not result in criminal charges against him. The Court ordered that Mr. Smith be suspended from the practice of law for five years, with two years of that suspension withheld upon Mr. Smith being granted permission to reinstate to active status after three years. The Court ordered that before Mr. Smith will be eligible for reinstatement, he must satisfy all licensing and disciplinary requirements under Idaho Bar Commission Rules 304, 305, 516, 517, and 518(b), and must pass the MPRE with a scaled score of at least 85 or its equivalent.

The Idaho Supreme Court ordered that upon reinstatement, if any, Mr. Smith will be placed on disciplinary probation for two years with conditions including a requirement that he make arrangements for a supervising attorney, approved by the Idaho State Bar, to supervise him during his probation and with whom he must meet monthly to ensure his compliance with the Idaho Rules of Professional Conduct. Additionally, if Mr. Smith is found to have violated any I.R.P.C. for which a sanction is imposed for any conduct occurring between the date of his suspension through the period of his probation, then the withheld suspension will be immediately imposed.

Inquiries about this matter may be directed to: Bar Counsel, Idaho State Bar, P.O. Box 895, Boise, Idaho 83701, (208) 334-4500.