

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF
THE SUPREME COURT OF OHIO**

In re: :

ERIE-HURON JOINT CERTIFIED
GRIEVANCE COMMITTEE
c/o Erie County Law Library
247 Columbus Avenue, Room 37
Sandusky, OH 44870

CASE NO.

COPY

15 - 012

CERTIFIED COMPLAINT

Relator, :

-v- :

CHARLES ROSS SMITH, III
2758 Canterbury Road
Ann Arbor, MI 49104

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Respondent :

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BOARD OF PROFESSIONAL CONDUCT

NOW COMES Relator, Erie-Huron Joint Certified Grievance Committee, which is sponsored by the Erie County Bar Association and the Huron County Bar Association, by and through the undersigned Bar Counsel, and alleges that Respondent, Charles Ross Smith, III (Ohio Registration No. 0020187) Attorney at Law, duly admitted and in good standing to practice law in the State of Ohio is guilty of the misconduct more fully described below.

INTRODUCTION

1. Relator sponsors the Erie-Huron Joint Certified Grievance Committee (“EHJCGC” or “Relator”). The EHJCGC is a certified grievance committee authorized to investigate allegations of misconduct by attorneys admitted to the bar of the State of Ohio and initiate complaints as a result of such investigations in appropriate instances.

2. Respondent, also known as C. Ross Smith (“Respondent”), was admitted to the practice of law in the State of Ohio on April 28, 1978. His last known address and attorney registration number are as set forth above.

3. Respondent is subject to the Ohio Rules of Professional Conduct and the Ohio Supreme Court Rules for the Government of the Bar.

4. Respondent has no prior Discipline from the Supreme Court of Ohio and his current status as an attorney in the State of Ohio is “Active.”

5. Respondent did not purchase or maintain professional liability insurance from July 2, 2013 through December 1, 2014.

6. On February 11, 2014, Respondent sent a self-reporting letter to the Office of Disciplinary Counsel (“ODC”) that was subsequently referred to the EHJCGC for investigation.

7. On March 24, 2014, a Grievance (EHJCGC 2014-1) was filed with the Toledo Bar Association that was subsequently referred to the EHJCGC.

8. The complaining parties in EHJCGC Grievance 2014-1 are Rebecca Jones and William Jones, former clients of Respondent.

9. On July 9, 2014, a Grievance (EHJCGC 2014-6) was filed with the EHJCGC.

10. The complaining parties in Grievance 2014-6 are Nathan Schoewe and Jennifer Schoewe, former clients of Respondent.

11. On August 13, 2014, a Grievance (EHJCGC 2014-9) was filed with the EHJCGC.

12. The complaining party in EHJCGC Grievance 2014-9 is David Howat, a former client of Respondent.

13. On September 9, 2014, a Grievance (EHJCGC 2014-10) was filed with the ODC which was subsequently referred to the EHJCGC for investigation.

14. The complaining parties in Grievance 2014-10 are John and Patricia Heilman, former clients of Respondent.

15. On November 4, 2014, a Grievance (EHJCGC 2014-14) was received by the EHJCGC.

16. The complaining party in Grievance 2014-14 is Sharon Carroll, a former client of Respondent.

FACTUAL ALLEGATIONS I
(Respondent Self-Reporting Letter)

17. Relator incorporates and re-alleges the allegations contained in paragraphs 1-16 above as if fully rewritten herein.

18. As previously stated supra, on February 11, 2014, Respondent sent a self-reporting letter to the ODC that was subsequently referred to the EHJCGC for investigation on April 17, 2014.

19. In his self-reporting letter, Respondent advised that he was immediately closing his law office in Sandusky, Ohio, that funds held in his IOLTA account were secure, that he had at least \$12,922.00 from 46 clients advanced for court costs he spent (and could not immediately refund to clients), that he admitted he should have held advance court costs, and that he would cooperate with additional request for information from the ODC.

20. On March 27, 2014, ODC requested additional information from Respondent, to wit: information regarding his health status, name and contact information for the approximately seventy clients for which he yet needed to file bankruptcy including identification of which stage of bankruptcy was reached for each client and the plan he developed to file all of the seventy

bankruptcies for which he was retained. In that letter, the ODC advised Respondent that his response was required on or before April 11, 2014.

21. Respondent failed to respond to the March 27, 2014 inquiry sent by the ODC.

22. After receiving Respondent's self-reporting letter from the ODC, the EHJCGC sent Respondent a letter on May 5, 2014, via Certified U.S. Mail, Return Receipt Requested, advising Respondent that his self-reporting letter was referred from ODC to the EHJCGC and requesting the information ODC had previously requested no later than May 19, 2104. The return receipt indicates that Respondent received this letter on May 7, 2014.

23. Respondent failed to respond to the May 5, 2014 inquiry sent by the EHJCGC. Additional letters were sent to Respondent by the EHJCGC in June and July of 2014 renewing the requests for information.

24. On July 18, 2014, Respondent responded via email to the EHJCGC and requested an extension until July 28, 2014, to respond to the EHJCGC's request from May, as well as the follow-up requests dated June and July 2014.

25. Nevertheless, Respondent failed to respond to the EHJCGC until November 4, 2014, when he appeared for his deposition.

26. On November 4, 2014, Respondent appeared for his deposition with a list of forty-three client files each of which contained one or more clients. For each file, Respondent had been retained to file bankruptcy, had been paid legal fees and/or court costs but did not either file a bankruptcy petition or refund all of their money. This list demonstrated that as of November 4, 2014, Respondent owed a total of \$36,799.69 to the clients he disclosed.

27. As of November 4, 2014, Respondent advised the EHJCGC that he owes the following former clients the following amount of money:

- i. Clients 1-2: \$1,193.00;
- ii. Client 3: \$450.00;
- iii. Clients 4-5: \$756.00;
- iv. Client 6: \$806.00;
- v. Client 7: \$60.00;
- vi. Client 8 – Complainant Sharon Carroll: \$606.00;
- vii. Clients 9-10: \$1,000.00;
- viii. Clients 11-12: \$650.00;
- ix. Clients 13-14: \$1,306.00;
- x. Client 15: \$756.00;
- xi. Client 16: \$324.00;
- xii. Client 17: \$531.00;
- xiii. Clients 18-19: \$1,203.00;
- xiv. Client 20: \$306.00;
- xv. Client 21: \$904.00;
- xvi. Client 22: \$1,200.00;
- xvii. Client 23: \$1,206.00;
- xviii. Client 24: \$1,206.00;
- xix. Clients 25-26 – Complainants John and Patricia Heilman: \$1,000.00;
- xx. Clients 27-28: \$250.00;
- xxi. Client 29: \$618.59;
- xxii. Clients 30-31: \$900.00;
- xxiii. Client 32 – Complainant David Howat: \$1,206.00;

- xxiv. Clients 33-34 – Complainants William and Rebecca Jones: \$920.00;
- xxv. Client 35: \$60.00;
- xxvi. Client 36: \$450.00;
- xxvii. Clients 37-38: \$500.00;
- xxviii. Clients 39-40: \$1,500.00;
- xxix. Clients 41-42: \$500.00;
- xxx. Clients 43-44: \$1,606.00;
- xxxi. Clients 45-46: \$1,211.00;
- xxxii. Clients 47-48: \$1,306.00;
- xxxiii. Client 49: \$356.00;
- xxxiv. Clients 50-51: \$531.00;
- xxxv. Client 52: \$1,200.00;
- xxxvi. Clients 53-54 – Complainants Nathan and Jennifer Schoewe: \$1,000.00;
- xxxvii. Client 55: \$1,210.00;
- xxxviii. Client 56: \$500.00;
- xxxix. Clients 57-58: \$1,206.00;
 - xl. Client 59: \$1,206.00;
 - xli. Clients 60-61: \$1,000.00;
 - xlii. Clients 62-63: \$1,531.00;
 - xliii. Client 64: \$980.00; and,
 - xliv. Client 65: \$306.00.

28. According to Respondent's calculations as of November 4, 2014, Respondent owed these clients a total of \$39,799.59. This includes advanced court costs and advanced legal fees.

FACTUAL ALLEGATIONS II
(Grievance of William and Rebecca Jones)

29. Relator incorporates and re-alleges the allegations contained in paragraphs 1-28 above as if fully rewritten herein.

30. On April 2, 2014, the EHJCGC received a grievance against Respondent from Complainants William and Rebecca Jones in which they requested a refund of \$920.00 previously paid to Respondent to file a Chapter 7 bankruptcy on their behalves.

31. On April 2, 2014, the EHJCGC sent Respondent a letter of First Inquiry along with a copy of the Jones' grievance, via Certified U.S. Mail, Return Receipt Requested.

32. On April 14, 2014, the EHJCGC received a response from Respondent, wherein he advised that he had moved to Ann Arbor, Michigan to live with his daughter because of a medical condition, that he had retired from the practice of law due to his medical condition and that he owed the Jones a refund of \$420.00.

33. Between May 2014 and September 2014, the EHJCGC sent four requests for additional information to Respondent, via Certified U.S. Mail, Return Receipt Requested.

34. At least two requests for additional information delivered between May 2014 and September 2014 contained a specific request for additional information regarding the Jones' grievance.

35. Respondent did not respond to the EHJCGC's request for additional information regarding the Jones' grievance until he appeared for his deposition on November 4, 2014.

36. On November 4, 2014, Respondent provided the EHJCGC sub-committee investigating the grievances filed against him a list of clients to whom he continues to owe money. The Joneses were not included in that list of individuals to whom Respondent owes money.

37. On November 4, 2014, Respondent testified that he owes the Joneses \$920.00 and that he has not refunded the Joneses any of the advance legal fees they paid him and has not prepared or filed a Chapter 7 bankruptcy on their behalf.

FACTUAL ALLEGATIONS III
(Grievance of Nathan and Jennifer Schoewe)

38. Relator incorporates and re-alleges the allegations contained in paragraphs 1-39 above as if fully rewritten herein.

39. On July 9, 2014, the EHJCGC received a grievance against Respondent from Nathan and Jennifer Schoewe in which they requested a refund of \$1,306.00 paid to Respondent to file a Chapter 7 bankruptcy on their behalf.

40. On July 10, 2014, the EHJCGC sent Respondent a letter of First Inquiry along with a copy of the Schoewe grievance, via Certified U.S. Mail, Return Receipt Requested.

41. Respondent did not respond to the Schoewe grievance until he appeared for his deposition on November 4, 2014.

42. On November 4, 2014, Respondent provided the EHJCGC sub-committee investigating the grievances filed against him a list of clients to whom he continues to owe money.

43. On November 4, 2014, Respondent testified that he owes the Schoewes \$1,000.00, that on July 18, 2014, he refunded the Schoewes \$306.00 (advanced court costs) and that he has not prepared or filed a Chapter 7 bankruptcy on their behalf.

FACTUAL ALLEGATIONS IV
(Grievance of David Howat)

44. Relator incorporates and re-alleges the allegations contained in paragraphs 1-48 above as if fully rewritten herein.

45. On August 13, 2014, the EHJCGC received a grievance against Respondent from David Howat in which he requested a refund of \$1,306.00 paid to Respondent to file a Chapter 7 bankruptcy on his behalf.

46. On August 13, 2014, the EHJCGC sent Respondent a letter of First Inquiry along with a copy of the Howat grievance, via Certified U.S. Mail, Return Receipt Requested.

47. Respondent did not respond to the Howat grievance until he appeared for his deposition on November 4, 2014.

48. On November 4, 2014, Respondent provided the EHJCGC sub-committee investigating the grievances filed against him a list of clients to whom he continues to owe money.

49. On November 4, 2014, Respondent testified that he owes David Howat \$1,206.00 and that he has not prepared or filed a Chapter 7 bankruptcy on his behalf.

FACTUAL ALLEGATIONS V
(Grievance of John and Patricia Heilman)

50. Relator incorporates and re-alleges the allegations contained in paragraphs 1-54 above as if fully rewritten herein.

51. On October 20, 2014, the EHJCGC received a grievance against Respondent from John and Patricia Heilman in which they requested a refund of \$1,306.00 paid to Respondent to file a Chapter 7 bankruptcy on their behalf, included with John and Patricia Heilman's grievance was a copy of their fee agreement with Respondent.

52. On October 20, 2014, the EHJCGC sent Respondent a letter of First Inquiry along with a copy of the Heilman grievance, via Certified U.S. Mail, Return Receipt Requested.

53. Respondent's response to the Heilman grievance was received by the EHJCGC on October 28, 2014, wherein he acknowledged that he owes the Heilmans a refund in the amount of \$1,000.00.

54. On November 4, 2014, Respondent provided the EHJCGC sub-committee investigating the grievances filed against him a list of clients to whom he continues to owe money.

55. On November 4, 2014, Respondent testified that he owes John and Patricia Heilman \$1,000.00 and that he has not prepared or filed bankruptcy on their behalf.

56. After his deposition on November 4, 2014, in response to a request for additional information, Respondent acknowledged that he owes John and Patricia Heilman \$1,306.00.

FACTUAL ALLEGATIONS VI
(Grievance of Sharon Carroll)

57. Relator incorporates and re-alleges the allegations contained in paragraphs 1-61 above as if fully rewritten herein.

58. On November 4, 2014, the EHJCGC received a grievance against Respondent from Sharon Carroll wherein she requested a refund of fees paid to Respondent to file bankruptcy for her, included with Sharon Carroll's grievance was a copy of her fee agreement with Respondent.

59. On November 4, 2014, a copy of the Carroll grievance was hand delivered to Respondent.

60. On November 4, 2014, Respondent provided the EHJCGC sub-committee investigating the grievances filed against him a list of clients to whom he continue to owe money.

61. On November 4, 2014, Respondent testified that he owes Sharon Carroll \$606.00 and that he has not prepared or filed bankruptcy on her behalf.

62. On November 13, 2014, the EHJCGC sent Respondent a letter of First Inquiry along with a copy of the Carroll grievance, via Certified U.S. Mail, Return Receipt Requested.

63. Respondent's response to the Carroll grievance was received by the EHJCGC on December 8, 2014 wherein he acknowledged that he owes Sharon Carroll \$606.00 of the \$1,206.00 that she paid him to prepare and file a bankruptcy on her behalf.

COUNT ONE
(ORPC 1.3 DILIGENCE)

64. Relator incorporates and re-alleges the allegations contained in paragraphs 1-68 above as if fully rewritten herein.

65. Ohio Rule of Professional Conduct ("ORPC") requires a "lawyer to act with *reasonable* diligence and promptness in representing a client." (Emphasis in the original.)

66. As outlined supra, Respondent failed to act with *reasonable* diligence or promptness in representing his client because he failed to file bankruptcy petitions on their behalves.

67. As a direct and proximate result of Respondent's failure to act diligently and promptly, multiple clients were harmed by the failure of Respondent to finalize and file their bankruptcy petitions.

68. Respondent's failure to represent his clients with reasonable diligence constitutes a violation of ORPC 1.3.

COUNT TWO
(ORPC 1.4(c) COMMUNICATION: INSURANCE)

69. Relator incorporates and re-alleges the allegations contained in paragraphs 1-73 above as if fully rewritten herein.

70. At all times relevant hereto, Respondent was required by ORPC 1.4(c) to "inform a client at the time of the client's engagement of the lawyer or at any time subsequent to the engagement of the lawyer if the lawyer does not maintain professional liability insurance in the amounts of at least one hundred thousand dollars per occurrence and three hundred thousand dollars in the aggregate or if the lawyer's professional liability insurance has terminated. The notice shall be provided to the client on a separate form set forth following this rule and shall be signed by the client."

71. Respondent has not maintained professional liability insurance since July 2, 2013. Respondent has failed to produce any written and signed forms by any of the twenty (20) clients that he disclosed that retained him after July 3, 2013 to the present as required pursuant to Rule 1.14(c). Therefore, information and belief, Respondent failed to maintain professional liability insurance and failed to inform his clients in writing that he did not. Respondent further failed to maintain copies of the notice to his clients of lack of professional liability insurance as required by Rule 1.4(c)(1).

72. Respondent's failure to either maintain professional liability insurance or inform his clients in writing that he did not constitutes a violation of ORPC 1.4(c). Neither of the exceptions of Rule 1.4(c)(3) apply to the facts herein.

COUNT THREE

(ORPC 1.5(d)(3) COMMUNICATION: NONREFUNDABLE FEES)

73. Relator incorporates and re-alleges the allegations contained in paragraphs 1-77 above as if fully rewritten herein.

74. At all times relevant, Respondent was prohibited by the ORPC from charging a client a nonrefundable fee unless Respondent advised the client in writing that the client may be entitled to refund of all or part of the fee based upon the value of the representation.

75. Respondent charged John Heilman, Patricia Heilman and Sharon Carroll a nonrefundable fee and did not notify them in writing that they may be entitled to refund of all or part of the fee based upon the value of the representation.

76. Respondent's failure to notify John Heilman, Patricia Heilman and Sharon Carroll in writing that they may be entitled to refund of all or part of the nonrefundable fee based upon the value of the representation constitutes a violation of ORPC 1.5(d)(3).

COUNT FOUR

(ORPC 1.15(a) CLIENTS FUNDS SEPARATE IN TRUST ACCOUNT)

77. Relator incorporates and re-alleges the allegations contained in paragraphs 1-81 above as if fully rewritten herein.

78. At all times relevant hereto, Respondent was required by the ORPC to hold property of his clients separate from his own. Specifically, funds received from clients were to be

kept in Respondent's IOLTA account and detailed records were to be maintained by Respondent documenting funds received, disbursements made and current balance in the account.

79. During Respondent's representation of the 43 clients he identified at his deposition on November 4, 2014, Respondent did not hold funds received from his clients separate from his own funds in his IOLTA account.

80. During Respondent's representation of the 43 clients he identified at his deposition on November 4, 2014, Respondent comingled his funds and his clients' funds by depositing all legal fees and court costs into a business account that was not an IOLTA account.

81. As a direct and proximate result of Respondent's failure to hold his clients' funds separate from his own funds, the clients he identified at his deposition on November 4, 2014 above were harmed by the failure of Respondent to hold his clients' funds separate from his own funds.

82. Respondent's failure to deposit advanced legal fees and court costs into his client trust account constitutes a violation of ORPC 1.15(a).

COUNT FIVE
(ORPC 1.15(c) TRUST ACCOUNT DEPOSITS)

83. Relator incorporates and re-alleges the allegations contained in paragraphs 1-87 above as if fully rewritten herein.

84. At all times relevant hereto, Respondent was required by the ORPC to deposit into his client trust account legal fees and expenses that have been paid in advance and to withdraw them only as fees are earned or expenses incurred.

85. During Respondent's representation of the individuals identified above in Paragraph 27, Respondent did not deposit any of the advanced legal fees or court costs into his client trust account.

86. As a direct and proximate result of Respondent's failure to deposit advanced legal fees and court costs into his client trust account, the clients he identified at his deposition on November 4, 2014 were harmed by the failure of Respondent to deposit advanced legal fees and court costs into his client trust account.

87. Respondent's failure to deposit advanced legal fees and court costs into his client trust account constitutes a violation of ORPC 1.15(c).

COUNT SIX
(ORPC 1.16(e) RETURN UNEARNED FEES)

88. Relator incorporates and re-alleges the allegations contained in paragraphs 1-92 above as if fully rewritten herein.

89. At all times relevant hereto, Respondent was required by the ORPC to promptly return any unearned fees upon his withdrawal from employment.

90. On or about March 13, 2014, Respondent sent a letter to his clients (including, but not limited to, the individuals identified *supra* at Paragraph 27), advising that he was retiring from the practice of law and he was withdrawing from their employment.

91. As a direct and proximate result of Respondent's failure to promptly return any unearned fees upon Respondent's withdrawal from employment, all of the clients identified in Paragraph 27 above were harmed by the failure of Respondent to promptly return any unearned fees and court costs.

92. Respondent's failure to promptly return any unearned fees and court costs upon his withdrawal from employment constitutes a violation of ORPC 1.15(e).

COUNT SEVEN

(ORPC 8.1(b) & Gov. Bar R. V§ (4) (G) – DUTY TO COOPERATE)

93. Relator incorporates and re-alleges the allegations contained in paragraphs 1-97 above as if fully rewritten herein.

94. Respondent failed on multiple occasions to cooperate with the investigation of the EHJCGC.

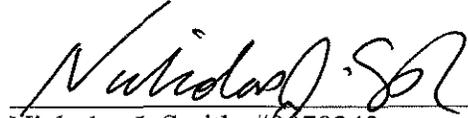
95. Examples of Respondent's failure to cooperate include, but are not limited to:

- a.) Failure to respond by April 11, 2014 to the request for additional information sent by the ODC in response to Respondent's self-reporting letter.
- b.) Failure to respond to multiple requests by the EHJCGC for further information regarding his self-reporting letter. The EHJCGC requests were dated May 5, 2014, June 2, 2014 and July 2, 2014. Respondent sent one email to the EHJCGC on July 18, 2014 requesting an extension until July 28, 2014. The EHJCGC granted his request for a new deadline of July 28, 2014 but Respondent failed to submit any materials or response.
- c.) Failure to respond to requests for further information regarding the Jones' grievance. That response deadline was July 28, 2014.
- d.) Failure to respond to the letter of First Inquiry sent by the EHJCGC on July 10, 2014 regarding the Schoewe grievance. That response deadline was July 25, 2014.
- e.) Failure to respond to the letter of First Inquiry sent by the EHJCGC on August 13, 2014 regarding the Howat grievance. That response deadline was August 29, 2014.
- f.) Failure to provide a complete list of client files to whom funds are owed, including, but not limited to that of Rebecca and Williams Jones.

96. Respondent's failure to cooperate in a disciplinary investigation constitutes violations of ORPC 8.1(b) & Gov. Bar R. V § (4) (G).

97. Respondent's failure to cooperate in a disciplinary investigation constitutes violations of ORPC 8.1(b) & Gov. Bar R. V§ (4) (G).

Respectfully submitted,



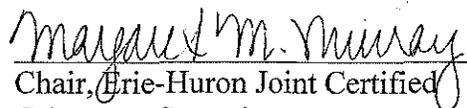
Nicholas J. Smith, #0079242
Attorney for Relator & Bar Counsel
Erie-Huron Joint Certified Grievance
Committee

CHAIR'S AUTHORIZATION

The undersigned, Margaret M. Murray, Chair of the Erie-Huron Joint Certified Grievance Committee, hereby certifies that Attorney Nicholas J. Smith, Bar Counsel, is duly authorized to represent Relator in the premises and has accepted the responsibility of prosecuting this complaint to its conclusion.

After investigation, Relator believes reasonable cause exists to warrant a hearing on such complaint *in re*: CHARLES ROSS SMITH, III.

Dated: January 21, 2015.



Chair, Erie-Huron Joint Certified
Grievance Committee