

BEFORE THE HEARING BOARD  
OF THE  
ILLINOIS ATTORNEY REGISTRATION  
AND  
DISCIPLINARY COMMISSION

In the Matter of: )  
)  
SIDNEY BOYSTON SMITH, ) Commission No. 2021PR00048  
)  
Attorney-Respondent, )  
)  
No. 6227144. )

**ANSWER TO COMPLAINT**

Now Comes Respondent, Sidney B. Smith, by and through his attorney, Allison L. Wood,  
and responds to the Complaint as follows:

**COMMISSION RULE 231 STATEMENT**

Respondent was licensed to practice law in the State of Illinois on May 2, 1995.  
Respondent is not admitted to practice law in any other state. Respondent holds no other  
professional licenses or certifications.

1. Prior to July 2008, Respondent’s mother, Mary Smith (“Mrs. Smith”), was receiving an  
employee annuity from the Municipal Employees Annuity and Benefit Fund (“MEABF”).

***Answer:* Respondent admits the allegations in paragraph 1.**

2. Prior to July 2008, MEABF deposited Mrs. Smith’s annuity payments into Mrs. Smith’s  
Chase Bank account ending in 7282. Mrs. Smith and Respondent were the only signatories to Mrs.  
Smith’s Chase bank account ending in 7282.

***Answer:* Respondent admits the allegations in the first sentence of paragraph 2 and denies the allegations in the second sentence of paragraph 2. Respondent states that he was not a signatory on Mrs. Smith bank account prior to July 2008.**

3. On July 18, 2008, Mrs. Smith signed a Power of Attorney for Property, appointing Respondent as her agent.

***Answer:* Respondent admits the allegations in paragraph 3.**

4. On August 3, 2010, Respondent signed a MEABF Power of Attorney form appointing Respondent as Mrs. Smith's attorney-in-fact. The MEABF power of attorney required Respondent "to notify MEABF in writing of [Mrs. Smith's] death immediately upon its occurrence."

***Answer:* Respondent admits the first sentence in paragraph 4. With respect to the second sentence, Respondent states that the MEABF power of attorney is a document that speaks for itself and to the extent the second sentence in paragraph 4 is inconsistent with the language in the document, the allegations in the second sentence in paragraph 4 are denied.**

5. On October 15, 2008, Mrs. Smith signed a trust agreement with ATG Trust Company creating Trust Number L-008163 ("ATG Trust"). Mrs. Smith placed into the ATF Trust her condo located at 4800 South Chicago, Illinois ("Smith Condo"). Mrs. Smith named Respondent and his brother, Leonard S. Smith, as the beneficiaries of the ATG Trust.

***Answer:* Respondent admits the allegations in paragraph 5.**

6. On November 2, 2012, Mrs. Smith died. Upon her death, the interest in the ATG Trust vested with Respondent and his brother Leonard S. Smith and Mrs. Smith was no longer entitled to receive annuity payments from MEABF. Respondent knew that pursuant to the MEABF power of attorney that he signed on August 3, 2010, he was required to immediately notify MEABF in writing of Mrs. Smith's death.

***Answer:* Respondent admits the first sentence in paragraph 6. Respondent denies the second sentence in paragraph 6. Respondent did not know he was required to immediately notify MEABF in writing of Mrs. Smith death.**

7. Respondent did not provide notice to MEABF and, as a result, MEABF continued to deposit Mrs. Smith's annuity payments into Chase Bank Account 7282. After the death of Mrs. Smith, Respondent became the sole signatory for Chase Bank Account 7282. Respondent knew he was not entitled to receive the annuity payments MEABF deposited in Chase Bank Account 7282 after November 22, 2012.

***Answer:* Respondent admits the allegations in paragraph 7.**

8. On December 12, 2012, MEABF mailed to Respondent Mrs. Smith's 2013 earnings statement. Respondent received the 2013 earnings statement. The earnings statement contained a notice that stated, "[i]t is illegal to collect or cash a deceased person's pension benefits by ineligible parties or joint account holder and may be a crime punishable under criminal law."

***Answer:* Respondent has no knowledge as to when MEABF mailed Mrs. Smith's 2013 earnings statement. Respondent admits that he received the earnings statement sometime in 2013. Respondent states that the earnings statement referenced in paragraph 8 is a document that speaks for itself and to the extent there are allegations in paragraph 8 that are inconsistent with the language in the earnings statement they are denied.**

9. Between December 2012 and September 2013, MEABF deposited into Chase Bank Account 7282 an additional \$37,151.92 in annuity payments for Mrs. Smith. Respondent used a portion of the funds from MEABF to pay the mortgage and expenses of the Smith Condo that he owned jointly with his brother.

***Answer:* Respondent admits the allegations in paragraph 9.**

10. Respondent's failure to notify MEABF of the death of Mrs. Smith and receipt and use of the MEABF funds was dishonest. Respondent knew it was dishonest because Respondent knew his mother had died in November 2012 and that he was not entitled to Mrs. Smith's annuity payments.

***Answer:* Respondent admits the allegations in paragraph 10, and he is remorseful about his actions.**

11. On July 19, 2013, MEABF mailed to Respondent a form to verify his mother was still eligible to receive annuity payments. Respondent did not return the form to MEABF. On September 17, 2013, MEABF canceled the automatic deposits into Chase Bank Account 7282 due to Respondent's failed to submit the July 19, 2013 verification form. On October 16, 2013, Respondent informed MEABF of the death of Mrs. Smith. Following this disclosure, MEABF demanded that Respondent repay the \$37,151.92 in annuity payments that neither he nor his mother's estate were entitled to receive after her death.

***Answer:* Respondent has no knowledge as to when MEABF mailed any forms as referenced in the first sentence of paragraph 11. Respondent states that he did not receive any such form as referenced in the first sentence of paragraph 11. Respondent further states that he did not become aware of the duty to notify MEABF about Mrs. Smith death until he reviewed the MEABF earnings statement. Reviewing the statement refreshed his recollection to notify MEABF based on the Power of Attorney he signed in 2010. His mistake was inadvertent and not intentional. Respondent admits that he did subsequently notify MEABF of the death of Mrs. Smith, he admits that MEABF canceled the automatic deposits into Mrs. Smith's Chase Bank Account, and that MEABF demanded that he repay \$37,151.92 for the annuity payments deposited in Mrs. Smith's Chase Bank Account after her death. All other allegations in paragraph 11 are denied as stating legal conclusions.**

12. On June 10, 2014, Respondent paid MEABF \$5,500 and requested a payment plan for the remaining \$31,651.92. As of that date, Respondent had used \$32,151.92 of MEABF's funds for his own personal purposes. Respondent signed a payment agreement with MEABF. In the payment agreement, Respondent acknowledged that he had a duty to inform MEABF in the event of Mrs. Smith's death. He also acknowledged that he had accepted and deposited Mrs. Smith's annuity checks from MEABF.

***Answer:* Respondent admits the allegations in the first sentence of paragraph 12. Respondent denies that he used MEABF funds for his own personal use. Respondent admits that he**

**signed a payment agreement with MEABF and that the agreement speaks for itself. To the extent any of the allegations in paragraph 12 are inconsistent with the language in the agreement they are denied.**

13. Between June 10, 2014 and January 15, 2015, Respondent did not timely make the required payments pursuant to the payment agreement.

***Answer:* Respondent states that he made payments to MEABF between June 10, 2014 and January 15, 2015, and he admits that some of his payments were not timely. Respondent further states that he sought to renegotiate the payment terms, but MEABF was unwilling to renegotiate.**

14. On January 15, 2015, MEABF filed a complaint in the Circuit Court of Cook County alleging Respondent failed to comply with the payment agreement and still owed \$19,290.98. The clerk of the court assigned the mater case number 2015- M1-110882.

***Answer:* Respondent admits the allegations in paragraph 14 and as stated above, Respondent was trying to renegotiate the payment terms so he could pay off the entire balance, but MEABF was unwilling to renegotiate.**

15. On January 19, 2017, the Honorable Daniel J. Kubasiak entered an agreed order in case 2015-M1-110882. Respondent agreed to pay MEABF a judgment in the amount of \$29,444.35 which represented the total amount due to MEABF including costs and interest.

***Answer:* Respondent admits the allegations in paragraph 15. Respondent further states that the order required Respondent to make payments of \$400/month for 6 months and then to make payments of \$1500/month until the balance was paid. Respondent struggled to keep up with the payments when they increased to \$1500/month, but he had reduced the amount owed from \$29,444.35 to \$14,669.92. Respondent offered to make payments of \$750/month**

**but his offer was rejected by MEABF. In 2019, MEABF sent Respondent an account statement that he owed \$13,869.92. In June 2019, Respondent sent MEABF a money order for \$13,869.92. MEABF cashed the money order on February 24, 2020.**

16. By reason of the conduct described above, Respondent has engaged in the following misconduct:

- a. Conduct involving dishonesty, fraud, deceit, or misrepresentation, by conduct including failing to disclose to MEABF that his mother had died and by accepting, depositing, and using annuity payments he was not legally entitled to, in violation of Rule 8.4(c) of the Illinois Rules of Professional Conduct (2010).

***Answer:* Respondent neither admits nor denies the allegations in paragraph 16 as said allegations are not factual, but state conclusions of law. To the extent an answer is deemed required, the allegations are denied.**

#### **AFFIRMATIVE DEFENSES TO THE COMPLAINT**

Respondent recognizes that he should have notified the MEABF about his mother's passing and he is remorseful for his actions. In a span of a year, Mr. Smith buried his mother, uncle, and an aunt. His solo practice was suffering financially because of the fall of the real estate market. He struggled to keep current with his own expenses and was unable to maintain his mother's condominium which ultimately went into foreclosure.

Respondent accepted responsibility for his actions, contacted MEABF, and entered into a payment plan with MEABF. The payment plan was too aggressive for his financial situation. When he tried to explain this to MEABF, they were not interested in engaging in any revised reasonable payment arrangement. Ultimately, Respondent was able to pay off the total amount owed to MEABF when he sent a money order to MEABF in June 2019 for the balance owed.

Respondent is an accomplished seasoned attorney having served clients for the past 26 years. There will be many attorneys and judges who will testify as his good character and reputation; and this his conduct in this case is singular and isolated.

**WHEREFORE**, Respondent respectfully requests that this cause be considered and that the Hearing Board make a just recommendation as is warranted by the facts.

Respectfully Submitted,



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Counsel for Respondent

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**Dated: September 10, 2021**