

RECEIVED

MAY 3 2010

VIRGINIA:

VSB CLERK'S OFFICE

BEFORE THE FIFTH DISTRICT—SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF STEPHEN ALAN BAMBERGER, ESQUIRE
VSB Docket No. 08-052-074046

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND, WITHOUT TERMS

On April 20, 2010, a meeting in this matter was held before a duly convened Fifth District--Section II Subcommittee consisting of Heather A. Cooper, Esq., Mr. Lee Wilkinson, lay person, and William B. Porter, Esq., presiding, to review an Agreed Disposition reached by the parties:

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-15, the Fifth District--Section II Subcommittee of the Virginia State Bar accepts the proposed Agreed Disposition and hereby serves upon the Respondent the following Public Reprimand, Without Terms, as set forth below:

I. FINDINGS OF FACT

1. At all times relevant hereto, Stephen Alan Bamberger (hereafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. Mr. Jon Rineman (hereafter "Complainant"), at all times a resident of New Hampshire, qualified before the Fairfax County, Virginia, Circuit Court on April 16, 1997, as executor of his late sister Marie Elaine Rineman Shafer's estate. The Complainant then engaged the Respondent to represent him in administering the affairs of the estate.

3. In March of 2001, the Estate and the Complainant were sued by the late Ms. Shafer's former husband upon a claim arising from the alleged breach of a property settlement agreement. The Respondent filed an answer and cross-bill of complaint on behalf of the Estate and the Complainant.

4. Just prior to the scheduled trial dates of March 5 and 6, 2002, the Respondent settled the case. Consistent with the settlement reached in the matter, a check dated May 13, 2002, in the

sum of \$142,132.51 was delivered to the Respondent. It was made payable to the order of "Stephen A. Bamberger, Esq. Trustee for the Estate of Marie Elaine Rineman."

5. The Respondent failed to invest the funds so received. He maintained them in an IOLTA account. Following settlement of the suit, the Respondent failed to respond promptly and in an informative manner to the Complainant's requests for information. The Respondent failed to prepare or otherwise assist the Complainant in filing accountings required by the Commissioner of Accounts for at least a decade. The Respondent wasted the assets of the Estate through his inaction by causing an annual bond premium of \$830.00 to be incurred for years beyond the time the Estate should have been closed.

6. Following the Complainant's informing the Virginia State Bar in February of 2008 that the Respondent was failing to communicate with him, the Respondent again tendered a proposed accounting and document entitled "Breakdown for Estate" to a bar investigator who, in turn, transmitted them to the Complainant. Finding deficiencies therein, the Complainant wrote to the Respondent on June 23, 2008. Despite his receipt of the Complainant's letter on June 25, 2008, the Respondent did not communicate with the Complainant as of July 28, 2008, when the Complainant wrote yet again to the Virginia State Bar.

7. The Complainant thereafter engaged successor counsel, who requested by letter dated November 6, 2008, that Respondent furnish such counsel with all file materials and documents related to the Estate. In addition, counsel requested that Respondent tender a check made payable to the order of the Executor (Complainant) for the Estate funds in the Respondent's possession.

8. The Respondent did not promptly tender to Complainant's new counsel the records pertaining to the Estate and the assets he was retaining, thus requiring that the Complainant, through successor counsel, institute suit against the Respondent on February 9, 2009, to compel production of such records and assets.

The Subcommittee finds that the following provisions of the Rules of Professional Conduct have been violated:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

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

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RULE 1.15 Safekeeping Property

- (c) 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 which such person is entitled to receive.

RULE 1.16 Declining Or Terminating Representation

- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).
- (e) All original, client-furnished documents and any originals of legal instruments or official documents which are in the lawyer's possession (wills, corporate minutes, etc.) are the property of the client and, therefore, upon termination of the representation, those items shall be returned within a reasonable time to the client or the client's new counsel upon request, whether or not the client has paid the fees and costs owed the lawyer. If the lawyer wants to keep a copy of such original documents, the lawyer must incur the cost of duplication. Also upon termination, the client, upon request, must also be provided within a reasonable time copies of the following documents from the lawyer's file, whether or not the client has paid the fees and costs owed the lawyer: lawyer/client and lawyer/third-party communications; the lawyer's copies of client-furnished documents (unless the originals have been returned to the client pursuant to this paragraph); transcripts, pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared or collected for the client in the course of the representation; research materials; and bills previously submitted to the client. Although the lawyer may bill and seek to collect from the client the costs associated with making a copy of these materials, the lawyer may not use the client's refusal to pay for such materials as a basis to refuse the client's request. The lawyer, however, is not required under this Rule to provide the client copies of billing records and documents intended only for

internal use, such as memoranda prepared by the lawyer discussing conflicts of interest, staffing considerations, or difficulties arising from the lawyer/client relationship. The lawyer has met his or her obligation under this paragraph by furnishing these items one time at client request upon termination; provision of multiple copies is not required. The lawyer has not met his or her obligation under this paragraph by the mere provision of copies of documents on an item-by-item basis during the course of the representation.

III. PUBLIC REPRIMAND, WITHOUT TERMS

Accordingly, it is the decision of the Subcommittee to impose a PUBLIC REPRIMAND, WITHOUT TERMS on Respondent, Stephen Alan Bamberger, Esquire, and he is so reprimanded.

IV. COSTS

Pursuant to Part Six, Section IV, Paragraph 13-9E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs against the Respondent.

FIFTH DISTRICT--SECTION II SUBCOMMITTEE OF THE VIRGINIA STATE BAR

By



William B. Porter, Esq.
Chair

CERTIFICATE OF SERVICE

I hereby certify that on 30th day of April 2010 I caused to be mailed by Certified Mail, Return Receipt Requested, a true and complete copy of the Subcommittee Determination (Public Reprimand, Without Terms) to Stephen Alan Bamberger, Esquire, 15710 Beacon Court, Dumfries, VA 22025, his address of record with the Virginia State Bar, and by first class, regular mail, to his counsel, John E. McIntosh, Jr., Esquire, at 4118 Leonard Drive, Fairfax, VA 22030.



SETH M. GUGGENHEIM
Senior Assistant Bar Counsel