

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF:
STEPHEN ALAN BAMBERGER**

VS B Docket No. 08-052-073229

MEMORANDUM ORDER

This matter came on August 23, 2011, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, Stephen Alan Bamberger, based upon the Certification of a Fifth District—Section II Subcommittee of the Virginia State Bar. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Mr. Robert W. Carter, lay member, William H. Atwill, Jr., Timothy A. Coyle, Whitney G. Saunders, and Martha JP McQuade, 1st Vice Chair, presiding.

Seth M. Guggenheim, representing the Bar, and John E. McIntosh, Jr., representing the Respondent, Stephen Alan Bamberger, presented an endorsed Agreed Disposition, entered into as of August 17, 2011, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Valarie L.S. May, RPR, Chandler & Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Certification and the Agreed Disposition, it was the unanimous decision of the Board that the Agreed Disposition be rejected, to the extent that it called for the imposition of an Admonition as the sanction to be imposed. The Board, through its undersigned Chair, advised the parties that the Board would unanimously approve the Agreed Disposition if the sanction to be imposed were a Public Reprimand. The Board gave the Respondent's counsel an opportunity to confer with his client following adjournment of the proceedings, in order that the parties might advise the Board, through the Clerk's Office, whether the imposition of a Public Reprimand were acceptable to the parties in lieu of the sanction provided for in the

Agreed disposition. Through counsel, the parties have advised the Board that the disposition of this matter by imposition of a Public Reprimand is acceptable. Accordingly, the Board accepts the Agreed Disposition, as revised regarding the sanction, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

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

2. On or around October 3, 2003, Col. Catherine Chase, who is the Complainant Martha Shoup's cousin, contacted the Respondent regarding concerns she, Ms. Shoup, and other of their family members had surrounding the passing of their grandmother and the subsequent role of the Complainant's brother, Kenneth Shoup, in both inheriting certain assets from their grandmother, and in his handling of the grandmother's affairs both prior to and following her death.

3. On or around January 12, 2004, Respondent sent an email communication to Ms. Chase, who was the point person for contact with the family at that time, advising that a "challenge to the inventory" of the Estate filed by Kenneth would cost approximately \$2,500.00. Subsequently, on or around February 12, 2004, Respondent sent a "Professional Services and Fee Contract" to Ms. Chase whereby he undertook to prosecute, "[A] protest with the Commissioner of Accounts of Arlington County, Virginia to the inventory and the accounting of the will of Zola D. Shoup, deceased." Col. Chase and the Complainant retained the Respondent's services, paying him \$2,500.00 as requested.

4. At the inception of the representation, the Respondent did not have formal authority from all of the parties whom he intended to represent. Thereafter, on February 24,

2004, Respondent wrote to the Commissioner of Accounts for Arlington County to advise of his clients' concerns and objections to the inventory.

5. On March 29, 2004, Respondent sent an email communication to Ms. Chase wherein he noted, "I will be moving to replace him [Kenneth Shoup] as Executor and will nominate you to act, if that is OK with you and the family[.]" Ms. Chase responded by asking that both she and the Complainant, Ms. Shoup, be nominated.

6. On April 19, 2004, the Respondent sent an email communication to Ms. Chase advising her that the Commissioner of Accounts supported his filing of a Petition to remove Kenneth Shoup as Executor.

7. On April 30, 2004, Respondent sent an email communication to Ms. Chase wherein he advised that he had prepared the petition seeking Kenneth Shoup's removal as Executor, assuring her that, "The law is pretty clear that this conflict makes [Kenneth's] removal necessary."

8. On May 24, 2004, following some informal proceedings before the Commissioner's office, Respondent filed a Petition to Remove Executor, naming as Complainants in that suit, "Catherine Chase *et al.*" This initial aggressive pleading to commence the action failed to name all of the actual parties who were necessary and indispensable petitioners in the action. The Respondent sought relief at the conclusion of this Petition on behalf of, "[T]he remaining heirs and beneficiaries of the Estate of Zola DeHaven Shoup with the exception of Kenneth Shoup," the Respondent against whom the Petition was filed. The Commissioner of Accounts did not join, or otherwise participate in, the filing or subsequent prosecution of this Petition.

9. As the matter progressed, the Respondent was unable to get required discovery responses from his clients. The Complainant and Col. Chase contend that the Respondent failed to keep them fully informed of the status of the case, the need for discovery responses, actions regarding a nonsuit and refiling of the matter by the Respondent, and sanctions awarded by the Court against the Complainant and other parties. The Respondent would testify that such matters were addressed with the Complainant and Col. Chase, and he has provided the Virginia State Bar with copies of letters which he contends he mailed to the Complainant and Col. Chase, which they contend they did not receive. A forensic analysis conducted by the Virginia State Bar does not resolve the issue conclusively, but suggests that the Respondent did not manufacture or fabricate any such letters for use in defending the bar complaint.

10. The Bar's investigation did reveal that the Respondent filed a motion to dismiss, with prejudice, the petition filed on behalf of his clients without each client's express consent to do so.

11. Without an express admission of liability to them, the Respondent settled to the Complainant's and Col. Chase's satisfaction a civil claim for malpractice which they asserted through private counsel regarding the Respondent's handling of this matter.

The Board also finds by clear and convincing evidence that Respondent's aforesaid conduct constitutes a violation of the following provisions of the Virginia Rules of Professional Conduct:

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 1.2 Scope of Representation

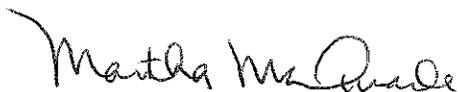
- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (b), (c), and (d), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision, after consultation with the lawyer, whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Upon consideration whereof, it is ORDERED as that the Respondent shall receive a PUBLIC REPRIMAND, and he hereby is so reprimanded, effective August 23, 2011.

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.

It is further ORDERED that a copy *teste* of this Order shall be mailed by Certified Mail, to the Respondent, Stephen Alan Bamberger, at his address of record with the Virginia State Bar, that being 15710 Beacon Court, Dumfries, VA 22025; and a copy sent by regular mail to John E. McIntosh, Jr., Respondent's Counsel, at 4118 Leonard Drive, Fairfax, VA 22030; and a copy be provided to Seth M. Guggenheim, Senior Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, VA 23219.

ENTERED this 24th day of August, 2011.



Martha JP McQuade, 1st Vice Chair
Virginia State Bar Disciplinary Board