

VIRGINIA:

BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
BRUCE PATRICK GANEY

VSB Docket No. 05-060-2006

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On December 8, 2009, a hearing in this matter was held before a duly convened Sixth District Subcommittee consisting of Michael Heikes, Esquire; James Bruce, Lay Member; and Jean P. Dahnk, Esquire, presiding.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Sixth District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto, Bruce Patrick Ganey, (hereinafter "the Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about March of 2000, Richard Day, (hereinafter "Day"), hired the Respondent for representation following the initiation of divorce proceedings by Day's wife. The parties were unable to come to an agreement regarding equitable distribution of their considerable assets, and the matter was referred to a Commissioner in Chancery for the making of findings and a recommendation.
3. The Commissioner in Chancery found in favor of Day's wife on the majority of the issues, and Day requested that the Respondent file exceptions to the Commissioner's

findings. The Respondent thereafter filed the exceptions and presented argument at an exceptions hearing held on June 27, 2002, in the Circuit Court of the County of Hanover. The Court subsequently ordered that the Commissioner's report be accepted and ratified without alteration, and overruled the exceptions of both Day and his wife.

4. Day then requested that the Respondent file an appeal of the Court's decision to accept and ratify the Commissioner's report. The Respondent filed a Notice of Appeal on or about July 26, 2002. However, the Respondent failed to submit either the required transcript of the exceptions hearing or a statement of facts to the Court of Appeals within the time permitted. Based on the failure of the Respondent to submit the transcript, the Court of Appeals ordered the Respondent to show cause why the exceptions hearing transcript was not indispensable for consideration of the matter by the Court. The Respondent presented argument that the record was complete save for the omitted transcript of the exceptions hearing, that the exceptions hearing transcript was not necessary to a determination of the issues because there was no evidence presented at the exceptions hearing, and that the information needed by the Court of Appeals was contained in the report of the Commissioner in Chancery, the prior orders of the Circuit Court, and the other transcripts which had been provided.

5. Counsel for Day's wife also filed a response to the Show Cause, arguing that the transcript of the exceptions hearing was indeed indispensable to the deliberations of the Court of Appeals, as the transcript contained argument by counsel, the ruling of the Circuit Court and the reasoning upon which the ruling was based.

6. The Court of Appeals dismissed the appeal on or about February 3, 2003, on the grounds that either the transcript of the exceptions hearing or a statement of facts was indispensable to a determination of the issues raised.

7. The Respondent thereafter filed a Petition for Appeal with the Supreme Court of Virginia on or about March 5, 2003, but failed comply with Rule 5:17(c) of the Rules of the Supreme Court of Virginia, requiring that the appellant plead that the issue raised by the appeal involved a substantial constitutional question as a determinative issue or that the appeal had significant precedential value. Based on the failure of the Respondent to make the necessary representation, the Supreme Court denied the appeal. On or about June 6, 2003, the Supreme Court of Virginia likewise denied the Petition for Rehearing which had been filed by the Respondent on or about May 14, 2003.

8. The Respondent admits that he did not keep Day informed regarding the status of the case, and did not respond to Day's requests for information. In an interview with Virginia State Bar investigator O. Michael Powell the Respondent admitted that communication with the Day was "not great" and that the Respondent took responsibility for the degree of contact. The Respondent also admitted to Mr. Powell that he did not send Day correspondence informing him of developments of which he should have been made aware.

9. The Respondent's lack of communication with the Day included the failure to inform him that the appeal had been dismissed. Day informed investigator Powell that he spoke with the Respondent about the appeal in November of 2003, and that the Respondent assured him by stating "we'll take care of it." The Respondent did not inform Day at that time or on any occasion following that the appeal had been dismissed by the Virginia Supreme Court five months earlier. Day learned of the dismissal from his successor counsel, Irving Blank.

10. In addition to failing to communicate with his client, the Respondent failed to respond to requests for information from Murray Janus, Day's wife's counsel. Mr. Janus provided letters to investigator Powell dated June 15, 2001; July 11, 2001; July 19, 2001; August

3, 2001; and October 31, 2001, urging the Respondent to follow through on various issues that fell within his responsibility pursuant to his representation of Day or duties imposed upon him by the Court pursuant to the adoption of the report and recommendation of the Commissioner in Chancery.

11. During his representation of Day, the Respondent was given funds pursuant to court order from Day's and his wife's assets and from which the Respondent had been ordered to pay Day's spouse \$1,000 per month in spousal support. The Respondent was dilatory in making the payments, and on two occasions it was necessary for the wife's counsel to file Show Cause pleadings to accomplish the payments to his client.

12. On at least one occasion, the Respondent did not have sufficient funds in trust to pay the \$1,000 monthly spousal support, and made up the shortfall in the amount of \$516.73 from his personal funds. On another occasion, the wife's counsel moved to impose a jail sentence on Day as a result of the Respondent being held in contempt for failing to pay the spousal support as ordered.

13. The Respondent's successor counsel likewise had difficulty in obtaining information and funds remaining in trust from the Respondent. Mr. Blank provided the bar with correspondence dated July 9, 2003; July 14, 2003; July 21, 2003; July 25, 2003; July 30, 2003; August 4, 2003; August 5, 2003; August 8, 2003 and September 22, 2003, the collective purpose of which was to obtain information regarding the status of the case from the Respondent, obtain the client file from the Respondent and obtain the remaining trust funds. It was necessary to seek a court order, which was entered on October 30, 2003, to accomplish the transfer of funds.

II. NATURE OF MISCONDUCT

Such conduct by Bruce Patrick Ganey constitutes misconduct in violation of the following provisions of the 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 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

RULE 1.8 Conflict of Interest: Prohibited Transactions

- (e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation [.]

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).

RULE 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

- (d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

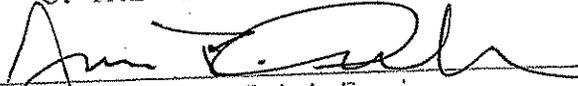
III. PUBLIC REPRIMAND

Accordingly, it is the decision of the subcommittee to impose a Public Reprimand and the Respondent is hereby so reprimanded.

Pursuant to Paragraph 13-9.E, the Clerk of the Disciplinary System shall assess costs.

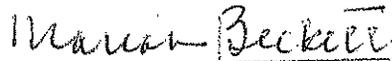
SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By


Jean Patricia Dahnk, Esquire
Presiding Chair

CERTIFICATE OF SERVICE

I certify that on 24 Feb, I caused to be mailed by Certified Mail, Return Receipt Requested, a true and correct copy of the Subcommittee Determination (Public Reprimand Without Terms) to Bruce Patrick Ganey, Esquire, Respondent, at 10985 Richardson Road, P.O. Box 6006, Ashland, VA 23005, his last address of record with the Virginia State Bar.



Marian L. Beckett
Assistant Bar Counsel