

VIRGINIA:

**BEFORE THE THIRD DISTRICT, SECTION I, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
BRIAN KEITH STEVENS**

VSB Docket No. 11-031-085469

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On October 6, 2011, a meeting in this matter was held before a duly convened Third District Subcommittee consisting of Stephanie Grana, Chair; Nelson Fisher, Member; and Dianne Reynolds Cane, Lay Member.

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

I. FINDINGS OF FACT

1. At all times relevant hereto, Brian Keith Stevens (Stevens), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On January 28, 2009, Stevens qualified as co-executor of the Estate of Dennis G. Gibson (estate) along with Michael C. Gibson (Christopher) in the Chesterfield County Circuit Court. Stevens had drafted the last will and testament of the decedent.
3. An inventory for the estate was filed on May 12, 2009.
4. The first accounting for the estate was due on May 28, 2010, pursuant to Va. Code Section 26-17.5 (1950, as amended).
5. On or about May 14, 2010, Christopher signed a first accounting which he prepared and sent to Stevens for review and signature.
6. By letter dated July 15, 2010, Commissioner of Accounts Bryan K. Selz (Selz) sent a letter to Stevens, copied to Christopher, stating an accounting for the estate was due on May 28, 2010, and asking Stevens to contact Selz's office and let him know the status of the accounting. Stevens did not respond to the letter.

7. On August 9, 2010, Christopher sent an electronic mail message to Selz saying he had not heard anything from Stevens regarding the estate inventory, he had contacted Stevens weekly since Christopher had received the letter, and he would continue trying to get in touch with Stevens and would let Selz know once he heard from Stevens.
8. On August 17, 2010, Selz issued a summons to Stevens to return and file with Selz's office an accounting as required by the Code of Virginia, and stated that Stevens was delinquent and not in compliance with the statutory requirements for a co-executor. The summons further stated that if an accounting was not filed within 30 days after the date the summons was served, Selz would report same to the Circuit Court for further proceedings against Stevens pursuant to Va. Code Section 26-13 (1950, as amended).
9. The summons was sent to Stevens by certified mail return receipt requested. Someone at Stevens' office signed the return receipt on August 19, 2010.
10. Stevens did not respond to the summons and did not file an accounting within the 30 days.
11. By letter dated September 29, 2010, to Stevens, Selz recited the history of the matter including the lack of response to his July 15, 2010 letter, that Christopher indicated he had not heard from Stevens, that Stevens should have received the summons since it was signed for by someone in his office, and the next step was for Stevens to appear in Chesterfield County Circuit Court in December.
12. The September 29, 2010 letter was copied to the Virginia State Bar and was treated by the Bar as a report by Selz pursuant to Va. Code Section 26-18 (1950, as amended). Said report is the basis for the underlying Bar complaint in this matter.
13. By letter dated October 25, 2010, Stevens responded to the Bar's preliminary investigation letter by indicating, *inter alia*, he had no substantive response regarding the late filing of an accounting, that the certified letter was placed in his office file for the estate unopened until Stevens received the preliminary investigation letter. Stevens further indicated that a draft of the accounting was sent to his office by Christopher in sufficient time for Stevens to review it and file it in a timely manner, that Christopher had reminded Stevens several times by electronic mail message but Stevens did not react to those reminders as he should have. Stevens stated he would make sure the accounting was filed with Selz within the next week.
14. Stevens' letter to the Bar dated October 25, 2010, was sent to Selz, as the complainant.
15. On November 30, 2010, Selz wrote Stevens stating he had still not received the accounting.

16. By letter dated December 2, 2010, Stevens filed with Selz the first accounting prepared by Christopher for the period of January 28, 2009 to May 14, 2010. The accounting reflected a signature date for Christopher of May 14, 2010 and a signature date for Stevens of December 2, 2010.
17. Selz approved the first accounting in January 2011.
18. During the investigation of this matter, Stevens was interviewed by Bar Investigator Cam Moffatt (Moffatt). During the interview Stevens indicated, *inter alia*, he dropped the ball on signing the accounting, he misunderstood what Christopher was asking him to do on the accounting and believed he was being asked to do something that would require him to set aside a block of time to work on it and he just did not get around to doing it. Stevens further stated when he eventually looked at the accounting, he realized that Christopher had actually done all the work and all Stevens needed to do was review and sign it. Stevens indicated that he did not have anything intelligent to say about how he handled the matter.
19. In the interview with Moffatt, Stevens also stated this was the first estate in which he had qualified as a co-executor and it was not something that was typically part of his practice.

II. NATURE OF MISCONDUCT

Such conduct by Brian Keith Stevens constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

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.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, it is the decision of the subcommittee to offer the Respondent an opportunity to comply with certain terms and conditions, compliance with which will be a predicate for the disposition of a Public Reprimand with Terms of this complaint. The terms and conditions are:

Respondent will be placed on probation for a period of two (2) years effective upon the issuance of a determination approving this agreed disposition. During such probationary period, Respondent will not engage in any professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia that Respondent engaged in professional misconduct during such probationary period shall conclusively be deemed to be a violation of this term.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, all of the terms and conditions are not met by the respective completion dates set out above, Respondent agrees that the alternative disposition shall be the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of sixty (60) days pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.G.

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

THIRD DISTRICT, SECTION I, SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By _____

Stephanie Elaine Grana
Chair

CERTIFICATE OF SERVICE

I certify that on October 12, 2011, I mailed by certified mail a true and correct copy of the Subcommittee Determination (Public Reprimand with Terms) to Brian Keith Stevens, Esquire, Respondent, at 3205 Attems Court, Glen Allen, VA 23060, Respondent's last address of record with the Virginia State Bar.
