

VIRGINIA:

BEFORE THE FOURTH DISTRICT (SECTION TWO) COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
DAVID BENJAMIN WEINBERG

DEC 9 2011

VS B Docket No. 10-042-081186

DISTRICT COMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)

On October 13, 2011, a hearing in this matter was held before a duly convened panel of the Fourth District (Section Two) Committee, consisting of the following members: Dennis C. Barghaan, Jr., Chair presiding, Anne Marie Heishman, Vice-Chair, Thomas J. Curcio, Secretary, Drewry B. Hutchinson, Esquire, Christopher K. Leibig, Esquire, and Laura H. Plaze, lay person.

The Virginia State Bar provided proper notice to the respondent through a charge of misconduct transmitted – via certified mail – to the address that the respondent himself provided to the Virginia State Bar. That charge of misconduct informed respondent of the nature of the charges averred by the Virginia State Bar, and of the date, place, and time of the hearing. The United States Postal Service ultimately returned the properly-mailed charge of misconduct to the Virginia State Bar, indicating that the mailing had been “unclaimed.”

Respondent did not appear at the hearing. Paulo E. Franco, Jr., appeared as counsel for the Virginia State Bar.

After calling the hearing to order, and identifying the matter before the district committee, the chair ensured both that a quorum existed to adjudicate the charges brought against the respondent, and that none of the committee members present had any personal or financial conflict of interest. In order to ensure that respondent had every opportunity to be present at the hearing and to present any evidence in opposition to the bar’s allegations and any argument regarding the import of his conduct, the chair waited an additional ten (10) minutes before continuing the hearing. Additionally, after the expiration of that ten minute period, the chair left the hearing room, and canvassed the lobby area of the building in which the hearing was held, without locating the respondent.

Mr. Franco provided an opening statement, and proceeded to call a single witness – William H. Sterling, III. During its case-in-chief, the Virginia State Bar admitted into evidence Exhibits 1-4. At the conclusion of the Virginia State Bar’s case-in-chief, Mr. Franco delivered a closing statement.

The committee members then retired to deliberate. At the conclusion of its deliberations, the committee announced that it had, by majority vote, concluded that the Virginia State Bar had established, by clear and convincing evidence, that the respondent had violated Virginia Rules of Professional Responsibility 1.4, 1.16, and 8.1.

The chair then invited the Virginia State Bar to be heard on the issue of an appropriate disciplinary sanction against respondent for the noted rule violations. The Virginia State Bar admitted the respondent’s prior disciplinary record, and – through Mr. Franco -- offered the Virginia State Bar’s recommended sanction. The committee members then retired to deliberate on the sanction issue. At the conclusion of its deliberations, the chair announced that the committee had voted to impose the sanction of a Public Reprimand without Terms.

Pursuant to Part 6, Section IV, Paragraph 13-16.Z. of the Rules of the Virginia Supreme Court, the Fourth District Committee, Section Two, of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant to the charges of misconduct that led to the instant Public Reprimand, David Benjamin Weinberg (“Respondent”), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. An individual by the name of Leilani Zutrau retained respondent to represent her interests in filing an action in the United States Bankruptcy Court for the Eastern District of Virginia to determine the dischargeability of a debt incurred by a person that engaged in identity theft against Ms. Zutrau.
3. Ms. Zutrau and the bankruptcy debtor settled the case sometime in 2008 and to that end, executed a settlement agreement.
4. In May 2009, Ms. Zutrau attempted to contact respondent to obtain a copy of the settlement agreement. To this end, Ms. Zutrau left several voicemail messages, sent a fax to respondent’s office, and also mailed him a letter – all in order to obtain a copy of the agreement.

5. Respondent did not respond, and indeed never responded, to any of Ms. Zutrau's messages regarding her need for a copy of the settlement agreement.
6. Ms. Zutrau filed a complaint against the respondent with the Virginia State Bar ("Bar"), citing his failure to return her messages and/or provide her with a copy of the settlement agreement.
7. On October 1, 2009, the Bar transmitted a letter to the respondent (at the address he had provided to the Bar), asking him to provide Ms. Zutrau with either a copy of the settlement agreement she had requested, or an explanation as to why he could not comply with her request. The respondent did not take any action in response to this correspondence.
8. On October 19, 2009, the Bar transmitted yet another letter to the respondent (to the address he had provided to the Bar), asking him once again to take action to assist Ms. Zutrau. The respondent again took no action in response to this correspondence.
9. After the Bar referred Ms. Zutrau's complaint for a preliminary investigation, Paulo Franco, Bar Counsel, informed the respondent – during a personal conversation – that, once again, he needed to produce the agreement to Ms. Zutrau or explain why he could not comply with her request. Mr. Franco also informed the respondent that an investigator from the Bar would be in contact with him, and that he needed to cooperate with the Bar's investigation. The respondent indicated to Mr. Franco that he understood his obligation to Ms. Zutrau, and would forward to her a copy of the requested settlement agreement.
10. The Bar's investigator attempted to contact the respondent on five separate occasions to schedule an interview from January 25 through January 28, 2011. The respondent did not return any of the Bar investigator's telephone calls.
11. The respondent never contacted Ms. Zutrau, and never provided her either with a copy of the settlement agreement as per her wishes, or with any explanation as to why he could not comply with her request.

II. NATURE OF MISCONDUCT

The respondent's conduct, as found by the committee above, constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

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 1.16 DECLINING OR TERMINATING REPRESENTATION

- (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.

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RULE 8.1 BAR ADMISSION AND DISCIPLINARY MATTERS

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law, or in connection with a disciplinary matter, shall not:

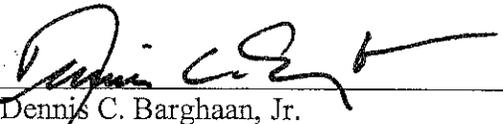
- (c) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, it is the decision of the district committee to impose a Public Reprimand Without Terms and the Respondent is hereby so reprimanded.

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

FOURTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By 
Dennis C. Barghaan, Jr.
Chair

CERTIFICATE OF SERVICE

I certify that on December 9, 2011, I caused to be mailed by certified mail, a true copy of the District Committee Determination (Public Reprimand) to David Benjamin Weinberg, Law Offices of David B. Weinberg PLLC, P.O. Box 4134, Alexandria, Virginia 22303-4134 Respondent's last address of record with the Virginia State Bar.