

VIRGINIA:

BEFORE THE SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
WILLIAM G. BENINGHOVE
VSB Docket No. 02-060-2493

DISTRICT COMMITTEE DETERMINATION
(PUBLIC ADMONITION)

On June 8, 2004 and August 17, 2004, a hearing in this matter was held before a duly convened Sixth District Committee panel consisting of Mark A. Butterworth, Lay Member; John E. Graham, Lay Member; William E. Glover, Esq.; Richard H. Stuart, Esq.; and Christopher A. Abel, Esq., Chair, presiding.

William G. Beninghove appeared in person pro se. Deputy Bar Counsel Harry M. Hirsch appeared as counsel for the Virginia State Bar.

This matter was heard simultaneously with the case against Bruce Patrick Ganey, Esq., VSB Docket No. 02-060-2490.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Sixth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Admonition:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, William G. Beninghove [Beninghove], has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. In or about February 1999, Bruce Patrick Ganey [Ganey] was hired by Denise Seal-Connell [Denise] to sell two parcels of property [property] to obtain funds for back child support owed to Denise by her ex-husband, who had previously deeded his interest in the property to his children as part of a 1995 agreement drawn by Ganey to resolve then owed child support. The representation also included settling other arrearages in

payments for medical expenses and hospitalization costs. As a part of the representation, Ganey told Denise he would obtain a survey and appraisal for the property.

3. On or about February 5, 1999, Denise sent a memo to heirs of E.C. Mantlo and his wife, Georgia, both deceased, indicating her intention to file a partition suit for the purpose of selling the property. The memo went to potential respondents including Debra Sue Lagen [Debra] and others. Both Denise and Debra subsequently filed bar complaints against Ganey with the Virginia State Bar. The bar complaint by Denise was consolidated into the bar complaint previously filed by Debra. Both bar complaints arose out of the partition suit.

4. Debra and the other potential respondents hired Beninghove to represent them in the partition suit. Many of the potential defendants were elderly. Debra's bar complaint against Ganey also constituted a bar complaint against Beninghove.

5. Beninghove sent a letter to the potential respondents, the Mantlo heirs, who hired him regarding the potential partition suit. In the letter Beninghove indicated, inter alia, that the property would be appraised and probably surveyed, costs would be charged to each person's share with a possible nominal up front charge, the case would take several months to complete and he was in discussions with Ganey about the partition suit.

6. In or about June of 1999, Ganey and Beninghove presented a proposed agreement [agreement] to their clients regarding a partition suit including a provision that as special commissioners they would receive a 10% special commissioners' fee.

7. On or about July 19, 1999, Ganey filed the partition suit in Hanover County Circuit Court on behalf of the children of Denise by Denise, and on behalf of Sherry Rebman [Sherry].

8. All of the clients signed the agreement in or about September 15, 1999, except for Sherry.

9. Beninghove answered the partition suit on behalf of the respondents by essentially asking for entry of the proposed decree of sale and agreeing to all requests in the bill of complaint.

10. On November 13, 1999, Sherry noted her rejection of the agreement.

11. On November 29, 1999, a decree of sale was entered which appointed Ganey and Beninghove special commissioners and required them, inter alia, to request an appraisal and survey of the property before it was sold.

12. In or about early December of 1999, Debra wrote to Ganey and Beninghove revoking her signature on the agreement and Beninghove's other clients also noted on the agreement their rejection of it.

13. By letter dated February 21, 2000 to Beninghove, Ganey stated he will contact an appraiser and surveyor for the property and attempt to get both to defer payment until the property is sold.

14. By letter dated March 7, 2000 to his clients, Beninghove enclosed a copy of the November 29, 1999 decree of sale and Ganey's February 21, 2000 letter.

15. In or about March of 2000, Gregory Pomije, Esq. [Pomije] opened a file for limited representation of Debra and the other respondents in the partition suit. Debra, acting on behalf of herself and the other respondents, had consulted Pomije about the agreement and learned of the existence of Va. Code Section 8.01-109 [the statute] which limits the commission of a special commissioner in a judicial sale to five percent on amounts up to and including \$100,000.00 and two percent on all amounts over \$100,000.00 which amounts must be apportioned if there are two special commissioners. Debra and the respondents wanted the ten percent commission reduced.

16. On April 3, 2000, Pomije wrote to Beninghove and Ganey in an effort to change the agreement to conform to the statute. Ganey replied by letter dated April 18, 2000, in which he indicated he would not agree to a reduced commission in accordance with the statute although he noted he knew of the statute's import. Ganey also indicated that he had engaged the services of an appraiser and was ready for a surveyor to survey the property.

17. Pomije replied in an April 24, 2000 letter that the respondents did not agree with Ganey, but all agreed the property must be sold. Pomije also enclosed a case which he felt made his point, Austin v. Dobbins, 219 Va. 930 (1979).

18. On May 23, 2000, Pomije filed a motion to amend the decree of sale which was heard on June 22, 2000. A second decree was entered on June 22, 2000 in which the agreement was deemed void upon agreement of the parties, the decree of sale was ordered conformed with statutory requirements of judicial sales and a one million dollar surety bond was imposed. At the hearing Beninghove and Ganey agreed to a commission amount in accordance with the statute.

19. Neither Beninghove nor Ganey discussed with their clients the potential need for them to pay for a survey and appraisal before the farm was actually sold.

20. In August of 2000, Ganey approached Cameron B. Wood [Wood] about doing an appraisal and locating a surveyor.

21. On or about August 9, 2000, Benninghove told Debra a survey was not yet ordered but its estimated cost was \$11,500.00.

22. In or about September of 2000, Debra and her husband visited Benninghove's office. Benninghove asked them to provide names of reputable surveyors because he thought the \$11,500.00 price was high. Subsequently, Debra's husband informed Benninghove of the name of a surveyor who had offered to survey the property for \$9,000.00.

23. In November of 2000, Ganey notified Denise of the entry of the June 2000 decree.

24. On November 8, 2000, Benninghove told Debra he had spoken with Ganey, that a survey had been ordered ten days earlier and would take three to four weeks to complete.

25. In December of 2000, Denise hired John Goots, Esq. on the child support collection issue.

26. Pomije wrote Ganey and Benninghove a January 29, 2001 letter on behalf of the respondents asking for progress on a survey and appraisal and offering assistance to facilitate a sale of the property.

27. Wood found a surveyor in March of 2001. The survey was completed on or about April 30, 2001.

28. On October 3, 2001, Denise wrote Ganey stating he had been previously fired on the partition suit and he now needed to withdraw as special commissioner. Denise received no response to the letter.

29. Denise wrote Ganey on November 6, 2001, stating that she had received no response to her October 3, 2001 letter, no communication from Ganey since the fall of 2000 and requesting the status of the partition suit. Denise received no response to the letter.

30. On December 17, 2001, Debra called Benninghove who returned her call later that day. Benninghove told her Wood had been sick, but should be finished with the appraisal by now.

31. Robert Harris, Esq. [Harris] was retained by Denise, superceding Ganey and Goots. On December 28, 2001, he wrote Ganey and Beninghove seeking their voluntary withdrawal as special commissioners in the partition suit.

32. Wood did not begin an appraisal of the property until January of 2002. But due in part to family responsibilities which minimized his ability to work the first half of 2002, his appraisal reports on the property were not completed until October 6, 2002.

33. On January 10, 2002, Wood wrote Ganey indicating that Ganey had requested a proposal for an appraisal of the property in August of 2000, that he found a surveyor in March of 2001, and was still preparing his report.

34. Separate related proceedings by Denise involving child support were suspended pending the completion of the partition suit. As a result of a conflicting order in the related case, Ganey wrote to Judge Alderman on August 22, 2002, seeking the advice and guidance of the court about how to proceed in the partition suit.

35. On October 9, 2002, a hearing was held in the partition suit on the request for advice and guidance resulting in an order to sell the property pursuant to the November 29, 1999 order and report the highest bid to the court before December 13, 2002. On December 11, 2002, a hearing was held to approve the sale.

36. On January 7, 2003, an order was entered approving the sale, noting the special commissioners' fees were in accordance with Va. Code Section 8.01-109 and the costs of sale were to be paid in accordance with an attached schedule. The property, consisting of two parcels, sold for \$450,000.00 and \$370,000.00, respectively.

37. The sale of the property closed on February 7, 2003, and an order approving final settlement statements and disbursements was entered on April 22, 2003.

38. Both Denise and Debra attempted to communicate with Ganey and Beninghove, both as their respective attorneys and as special commissioners. Ganey and Beninghove failed to communicate reasonably with Denise and Debra as their respective clients and as special commissioners.

39. Ganey and Beninghove failed to attend promptly to the partition suit until completed or until they had withdrawn. Ganey and Beninghove failed to act with reasonable diligence and promptness in respectively representing Denise and Debra and as special commissioners.

40. In his letter dated April 18, 2000 to Pomije, Ganey misrepresented that he had engaged the services of an appraiser when in fact he had not done so.

41. In his conversation on November 8, 2000 with Debra, Beninghove misrepresented that a survey had been ordered ten days earlier when in fact no such survey had yet been ordered.

42. Debra incurred attorney's fees to Pomije in the amount of about \$3,000.00 which she maintains resulted from the way in which Beninghove and Ganey conducted the partition suit.

43. Denise incurred about \$15,000.00 in attorney's fees for the services of subsequent counsel Robert Harris, which she believes resulted from the way in which Beninghove and Ganey conducted the partition suit.

44. There were delays in the completion of the partition suit. Denise was told by Ganey that Debra and the other defendants had hired an attorney to fight the sale. However, when Debra and Denise ultimately met and discussed the matter, they realized that both sides wanted to complete the sale as soon as possible but both sides were unhappy because of the attempt to charge a ten percent commissioners' fee.

45. The attempt to charge a ten percent special commissioner's fee amounted to an attempt to charge an unreasonable fee.

II. NATURE OF MISCONDUCT

Such conduct on the part of William G. Beninghove constitutes misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 6-101. Competence and Promptness.

- (B) A lawyer shall attend promptly to matters undertaken for a client until completed or until the lawyer has properly and completely withdrawn from representing the client.
- (C) A lawyer shall keep a client reasonably informed about matters in which the lawyer's services are being rendered.

DR 2-105. Fees.

- (A) A lawyer's fees shall be reasonable and adequately explained to the client.

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 1.5 Fees

- (a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:
 - (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
 - (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - (3) the fee customarily charged in the locality for similar legal services;
 - (4) the amount involved and the results obtained;
 - (5) the time limitations imposed by the client or by the circumstances;
 - (6) the nature and length of the professional relationship with the client;
 - (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - (8) whether the fee is fixed or contingent.

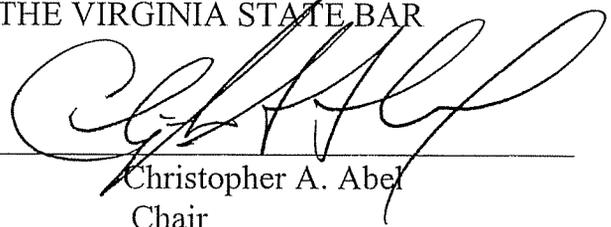
III. ADMONITION

Accordingly, it is the decision of the Sixth District Committee to impose an admonition and the Respondent is hereby so admonished.

Pursuant to Part Six, Section IV, Paragraph 13.B.8.c.(1) of the Rules of the Virginia Supreme Court, the Clerk of the Disciplinary System shall assess costs.

SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR

By _____



Christopher A. Abel
Chair

CERTIFICATE OF SERVICE

I certify that on September 27, 2014 caused to be mailed by Certified Mail, Return Receipt Requested, a true copy of the District Committee Determination (Admonition) to the Respondent, William G. Beninghove, at Suite B, 8235 Mechanicsville, VA 23111, his last address of record with the Virginia State Bar.

