

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
PAUL CHRISTIAN STAMM, JR.**

VSB Docket No. 04-060-3232

ORDER

This matter came before the Virginia State Bar Disciplinary Board upon certification from the Sixth District Committee. On June 14, 2005, a proposed Agreed Disposition was presented via telephone conference call to a duly convened panel consisting of Werner H. Quasebarth, lay member, and attorneys Robert E. Eicher, Joseph R. Lassiter, Jr., Janipher W. Robinson, and Robert L. Freed, presiding chair. The Respondent, Paul Christian Stamm, Jr., was present, and Barbara Ann Williams, Bar Counsel, represented the Virginia State Bar.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, verified that he had no conflicts.

Having considered the proposed Agreed Disposition and the representations of counsel, the Disciplinary Board accepted the Agreed Disposition and finds by clear and convincing evidence as follows:

I. Findings of Fact

1. Mr. Stamm was admitted to the practice of law in the Commonwealth of Virginia on May 23, 1978, and at all times relevant to these proceedings was active and in good standing to practice law in Virginia.

2. On January 29, 1997, Latane Haydon Stevens executed a will and trust agreement that Mr. Stamm prepared.

3. The trust agreement established an *inter vivos* irrevocable trust (“the Trust”), of which Mr. Stevens was the trustor, and named Barbara Allison Stevens, Mr. Stevens’ wife, as lifetime income beneficiary and Mr. Stamm as trustee of the Trust.

4. Schedule A to the Trust agreement indicates that at its inception the Trust held the following assets: a USG annuity valued at \$80,000, an Advest money market account valued at \$40,866.59 and a premium in the amount of \$1,400 for an Occidental Life Insurance policy.

5. As trustee, Mr. Stamm had a non-delegable duty to manage the Trust and administer its assets according to the terms and provisions of the Trust agreement.

6. In November 1997, Mr. Stamm executed a promissory note for the original principal amount of \$27,000.00 with interest at 8% on behalf of American Title of Lancaster as borrower of Trust funds.

7. American Title of Lancaster is a title insurance company owned by Mr. Stamm and his secretary, Rosie Jones.

8. American Title of Lancaster made payments on the note directly to the Trust, beginning on December 10, 1997.

10. Mr. Stamm did not deposit the payments American Title of Lancaster made on the note held by the Trust in a fiduciary account.

11. The Trust agreement contains no provision for the distribution of principal during Mt. Stevens’ lifetime.

12. Mr. Stamm distributed principal from the Trust at Mr. Stevens’ direction during his lifetime but in derogation of the terms of the Trust, including the proceeds from the surrender of USG Annuity Contracts #488125 and 532036.

13. Mr. Stamm failed to prepare annual written accountings required by Article XV of the Trust and his obligations as a fiduciary.

14. During Mr. Stevens’ lifetime, Mr. Stamm did not file federal and state fiduciary income tax returns for the Trust annually as required by the Trust agreement.

15. Mr. Stevens died suddenly on March 7, 2003; Mrs. Stevens survived him.

16. After Mr. Stevens died, Mr. Stamm executed a deed of gift transferring title to real property held by the Trust to Mrs. Stevens so she could sell it.

17. Mrs. Stevens filed a bar complaint against Mr. Stamm on or about March 30, 2004, alleging that Mr. Stamm had not responded to her requests for an inventory of

Trust assets and an accounting of Trust income and expenses.

18. There is no evidence that Mr. Stamm arranged the loan from the Trust to American Title of Lancaster without Mr. Stevens' knowledge or consent, or that Mr. Stamm failed to repay the loan in a timely manner.

19. There is no evidence that Mr. Stamm distributed principal from the Trust without Mr. Stevens' consent during his lifetime or without Mrs. Stevens' consent after her husband's death.

20. Although Mr. Stamm breached his fiduciary duties as trustee of the Trust by failing to prepare annual accountings and file income tax returns, there is no evidence of misappropriation of Trust assets or of any adverse tax consequences.

B. Findings of Misconduct

The foregoing findings of fact give rise to the following findings of misconduct.

The following findings relate to Mr. Stamm's conduct before January 1, 2000:

DR 6-101. Competence and Promptness.

(A) A lawyer shall undertake representation only in matters in which:

(1) The lawyer can act with competence and demonstrate the specific legal knowledge, skill, efficiency, and thoroughness in preparation employed in acceptable practice by lawyers undertaking similar matters, or

(2) The lawyer has associated with another lawyer who is competent in those matters.

(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.

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DR 9-102. Preserving Identity of Funds and Property of a Client.

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(B) A lawyer shall:

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(3) Maintain complete records of all funds, securities, and other properties of

a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

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The following findings relate to Mr. Stamm's conduct after January 1, 2000:

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 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

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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.

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RULE 1.15 Safekeeping Property

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- (c) A lawyer shall:

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- (3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them; and

- (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.

* * *

- (d) Funds, securities or other properties held by a lawyer or law firm as a fiduciary shall be maintained in separate fiduciary accounts, and the lawyer or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

* * *

For purposes of this Rule, the term "fiduciary" includes only personal representative, trustee, receiver, guardian, committee, custodian and attorney-in-fact.

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

* * *

- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:

- (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
- (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
- (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

III. Disposition

The Disciplinary Board usually takes a very strict approach to the mishandling and misuse of a client's property by an attorney, and the Virginia Rules of Professional Conduct apply to the actions of an attorney acting as a fiduciary. However, the consent of Mr. Stevens during his lifetime and the consent of Mrs. Stevens after Mr. Stevens' death of the Respondent's Misconduct mitigate what normally would have been a much more draconian sanction. Accordingly, the Disciplinary Board, Respondent and Bar Counsel agree that a public reprimand is an appropriate disposition of this matter. Therefore, it is **ORDERED** that a public reprimand shall be issued to the Respondent in this matter.

This Agreed Disposition is limited to the particular facts of this matter.

The court reporter for this hearing on the Agreed Disposition was Donna Chandler of Chandler and Halasz Court Reporters, P.O. Box 9349, Richmond, Virginia 23227, (804) 730-1222.

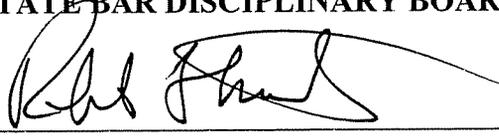
Pursuant to Part Six, Section IV, Paragraph 13.A.8.c.(1) of the Rules of the Supreme Court, the Clerk of the Disciplinary System shall assess costs.

It is **ORDERED** that a copy teste of this Order shall be mailed by certified mail, return receipt requested, to the Respondent, at his last address of record with the Virginia State Bar, Post Office Box 2015, Kilmarnock, Virginia 22482-2015, and hand delivered to Bar Counsel at the Virginia State Bar, 707 E. Main Street, Suite 1500, Richmond, Virginia 23219.

Enter this Order this 27th day of June, 2005.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: _____


Robert L. Freed, Presiding Chair