



VIRGINIA:

**BEFORE THE SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTERS OF
SONYA BORGAONKAR COSTANZO**

**VSB Docket Nos. 16-060-104804
16-060-106139
17-060-106529**

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND WITH TERMS**

On 4 May 2017 a meeting was held in this matter before a duly convened Sixth District Subcommittee consisting of Lisa Ashworth Seward, Chair, James H. Hudson, III, Member, and James G. Bruce, III, Lay Member. During the meeting, the Subcommittee voted to approve an Agreed Disposition for a Public Reprimand with Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The Agreed Disposition was entered into by the Virginia State Bar, by Prescott L. Prince, Assistant Bar Counsel, and Sonya Borgaonkar Costanzo, Respondent, and Michael L. Rigsby, Esquire, counsel for Respondent.

WHEREFORE, the Sixth District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

I. FINDINGS OF FACT

1. At all times relevant hereto, Ms. Sonya Borgaonkar Costanzo (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

Facts Relating to VSB Docket No. 16-060-104804 (Complainant: Beverly Jo Hanev; Commissioner of Accounts, Spotsylvania County)

2. Respondent was initially retained by the parents of the decedent, James Cole, to serve as administrator of his estate after he died in an automobile accident. At the time of his death, Mr. Cole had three children, two by one woman and one with another.

3. Respondent qualified to serve as guardian of the minor estates of the two children of one mother, but did not attempt to qualify as guardian of estate of the child of the other mother.

4. Through his employer, Mr. Cole had a life insurance policy that provided for payment of \$56,000 to his estate. The initial Inventory for the Cole decedent estate was filed substantially late and failed to include the proceeds from the life insurance policy. Concurrent with the filing of the Inventory for the decedent estate of Mr. Cole, Respondent filed inventories for the estates of the two minor children for whom she had qualified as guardian. (The filing of these inventories was also substantially late.) The inventories for the two children were identical and each showed the receipt of \$28,000 from the life insurance policy.

5. Even though the third child was listed as a beneficiary of the estate, no provision was made for said child to receive any of the life insurance benefits.

6. The Commissioner of Accounts ("CoA") for Spotsylvania County informed Respondent that the Inventory for the Cole decedent estate was improperly filed in that the \$56,000 death benefit should have been listed as an asset in the Inventory for Mr. Cole's estate. Thereafter, the death benefits would be tracked to all the beneficiaries when it was properly distributed along with any other assets of decedent estate. Respondent failed to make this correction. The Inventory for Mr. Cole was therefore never approved by the CoA.

7. Respondent also improperly approved reimbursement to Mr. Cole's parents for \$10,590 for funeral expense paid by them for Mr. Cole's funeral. Not only was the amount approved by Respondent substantially more than the amount provided by the relevant statute, but

the reimbursement was to be paid from the accounts of the minor estates of the two children for which Respondent was guardian with each child's account contributing \$5,295.¹

8. The CoA informed Respondent that the controlling statute provides for payment of funds for funeral expenses from a decedent's estate, but that authority did not exist for the payment of such funds from a minor child's trust fund. Notwithstanding the deficiencies noted and explained to Respondent by the CoA, Respondent failed to take appropriate action to correct these deficiencies.

9. After Respondent failed to make the necessary corrections to the inventories for the decedent estate of Mr. Cole and the minor guardianship estates of the two children, the CoA issued a summons to Respondent demanding that such filings be produced. Respondent did not satisfactorily respond to the summons and on 11 December 2015, the CoA filed her report with the Spotsylvania Circuit Court. Thereafter, the Spotsylvania Circuit Court issued a Show Cause against Respondent.

10. A hearing was held on 6 May 2016 regarding the estate of James Cole and the guardianships of the two minor children. Respondent admitted that she had made a number of errors in the accounting. The Court provided Respondent an opportunity to correct the problem and directed Respondent to submit corrected inventories and accountings within 30 days. The Court stated that there would be no excuse for being late. The matter was then taken under advisement until the next scheduled hearing on 3 August 2016.

11. Corrected documents were not filed within 30 days of the 6 May 2016 hearing.

12. Respondent subsequently reported to the Court that she had retained counsel (Walter Sheffield) and that Mr. Sheffield would be assisting her to correct the noted deficiencies.

¹ Virginia Code Section 64.2-528 provides that funeral expenses of up to \$4,000 may be paid from a decedent's estate. It does not preclude payment in excess of that amount, however.

13. The deficiencies were not corrected. Accordingly, on 6 April 2017 the Court found Respondent in contempt of court in the cases of the guardianships of the two minor children. The Court removed Respondent as fiduciary of the estates of the two minor children, appointed a substitute fiduciary in each case, ordered Respondent to deliver to the successor fiduciary all documents and funds related to the two minor estates and further ordered Respondent's bond forfeited in an amount to be determined by the Court at a later hearing.

Rules violated: 1.1; 1.3 (b)

Facts Relating to VSB Docket No. 16-060-106139 (Complainant: Jeannie P. Dahnk; Commissioner of Accounts, Stafford County)

14. Respondent qualified to serve as the Conservator for Charles Bernard, a disabled adult on 14 August 2014. Mr. Bernard died on 30 January 2015 and Respondent subsequently qualified as administrator of Mr. Bernard's estate.

15. The initial Inventory was required to be filed by 14 December 2014 (within four months of qualification), but was not filed until 14 May 2015. Respondent did not file said Inventory until after the CoA for Stafford County issued a summons.

16. The First Account was due on 14 February 2015 and was also not filed in a timely manner.

17. On 14 May 2015, Respondent filed a deficient First Account. By letter dated 10 June 2015, the CoA informed Respondent of the deficiencies and instructed her to file a proper First Account.

18. On 11 November 2015, the CoA reported to the Stafford Circuit Court that Respondent had not yet filed her First Account, and on 18 December 2015, the Court entered an Order requiring Respondent file with the CoA all filings required by statute for the first four months of her service as Conservator of Mr. Bernard. The Court further Ordered Respondent to

file a Final Account for the Conservatorship of Mr. Bernard, reporting all assets distributed to the Estate of Charles Bernard. The Order provided that both accounts were to be filed no later than 60 days from the date of the entry of the Order.

19. Respondent filed the First Account and Final Account on 16 February 2016, but said Accounts were deficient; the CoA advised Respondent of the deficiencies by letter dated 16 March 2016.

20. Respondent failed to address the deficiencies noted in the 16 March 2016 letter from the CoA.

21. On 23 May 2016, the CoA petitioned the Court and requested, *inter alia*, that a Show Cause be issued against Respondent, that her bond be forfeited and that a successor fiduciary be appointed.

22. A hearing on the matter was held on 20 June 2016 and Respondent was found in contempt of court, was removed as Conservator and as administrator of the decedent estate, forfeited her bond and a successor fiduciary was appointed. Respondent was further Ordered to return all fees paid to her in furtherance of her services as Conservator and as administrator of the decedent estate.

Rules violated: 1.1; 1.3 (b)

Facts Relating to VSB Docket No. 16-060-106529 (Complainant: Beverly Jo Hanev; Commissioner of Accounts, Spotsylvania County)

23. On 30 June 2016, the Commissioner of Accounts of Spotsylvania County filed a Report for Show Cause and Petition for Removal of Fiduciary and Forfeiture of Bonds (“Report and Petition”) for seven matters in which Respondent was serving as fiduciary. The cases included in the report were: Conservatorship for Phyllis Austin, Incapacitated Adult; Estate of Phyllis Austin, deceased; Conservatorship for June Phyllis Barclay, Incapacitated Adult;

Conservatorship for Dolly Beszterczey, Incapacitated Adult; Conservatorship for Margaret Ellen Casey, Incapacitated Adult; Conservatorship for Mary T. Pallone, Incapacitated Adult; and Conservatorship for Elsie M. Waller, Incapacitated Adult.

24. Attached to the Report and Petition was a chronology of the significant events and the deficiencies noted by the Spotsylvania CoA in each of the referenced cases. The events and noted deficiencies are summarized below.

A. Conservatorship of Phyllis Austin

1. Improperly submitted First Account. Respondent failed to correct after being informed of the discrepancy by the CoA.
2. Improperly filed Final Account. Respondent failed to correct after being informed of the discrepancy by the CoA.
3. As of the date of the filing of the Report and Petition, by the Spotsylvania CoA, neither a proper First Accounting or Final Accounting had been filed.

B. Estate of Phyllis Austin Deceased

1. After Phyllis Austin died, Respondent qualified as executor of Ms. Austin's estate.
2. The Initial Inventory of estate was not properly submitted. Respondent failed to respond to the deficiency letter. (Respondent was unable to file a proper Inventory since there was not a properly filed Final Account for the Conservatorship.)
3. First Account/Final Account could not be accepted due to the failure to properly file the Inventory.
4. As of the date of the filing of the Report and Petition by the Spotsylvania CoA, the noted deficiencies had not been corrected.

C. Conservatorship of June P. Barclay

1. Respondent qualified as successor fiduciary, so an initial Inventory was not required.
2. Deficiencies were noted in the First Account filed by Respondent, but the deficiencies were corrected and the First Account was subsequently accepted.

3. The Second Account was not properly filed; Respondent provided an incomplete response to the Spotsylvania CoA's delinquency letter.
4. The CoA learned from an outside source that Ms. Barclay died during the period covered by the Second Account. No information regarding the death of the Ward or a Final Account had been filed as of the date of the filing of the Report and Petition.
5. As of the date of the filing of the Report and Petition by the CoA, the noted deficiencies had not been corrected.

D. Conservatorship of Dolly Breszterczy

1. Deficiencies were initially noted in the Inventory filed by Respondent, but the noted deficiencies were corrected and the Inventory was eventually accepted.
2. The First/Final Account was rejected on the grounds that, due to the length of the Conservatorship (six months) the applicable statute would not permit the filing of a joint First and Final Account. (The statute provides that First Account cover a four month period only.)
3. The CoA filed a deficiency letter, but Respondent failed to correct the deficiency.
4. As of the date of the filing of the Report and Petition by the CoA, the noted deficiencies had not been corrected.

E. Conservatorship of Margaret Ellen Casey

1. The Inventory was initially properly filed and accepted. Thereafter, however, Respondent filed an Amended Inventory. The CoA did not accept the Amended Inventory and sent Respondent a deficiency letter. The noted deficiencies were not corrected.
2. The First Account filed by Respondent was not accepted. A deficiency letter was sent to Respondent by the CoA, but Respondent failed to correct the deficiency.
3. Respondent filed a Second Account, but the CoA could not act on the Second Account since the First Account deficiencies were not cured.
4. As of the date of the filing of the Report and Petition by the Spotsylvania CoA, the noted deficiencies had not been corrected.

F. Conservatorship of Mary T. Pallone

1. Respondent initially filed the Inventory improperly, but the deficiencies were corrected by Respondent and the Inventory was eventually accepted.
2. The First Account was filed late and was not accepted by the Spotsylvania CoA due to the fiduciary fees being in excess of Virginia Supreme Court guidelines. Respondent did not correct the noted deficiency.
3. The Second Account was filed late and included a letter stating that Ms. Pallone was deceased. The Second Account could not be accepted as a Final Account since it reported assets remaining under the control of the Conservator.
4. As of the date of the filing of the Report and Petition by the Spotsylvania CoA, the noted deficiencies had not been corrected.

G. Conservatorship of Elsie Margaret Waller

1. Respondent initially filed the Inventory improperly, but the deficiencies were corrected and the Inventory was eventually accepted.
 2. The First Account filed by Respondent was not accepted. The CoA requested additional information to substantiate the fees charged by Respondent. A deficiency letter was sent to Respondent. Respondent did respond to the CoA's letter, but her fees were not approved; Respondent did not correct the deficiency.
 3. The Second Account was filed (late) and was not accepted due to deficiencies in the Account. A deficiency letter was sent to Respondent, but Respondent did not correct the noted deficiencies.
 4. The Third Account was filed late and noted that Ms. Waller was deceased. The Third Account could not be accepted as the Final Account since it reported assets remaining under the control of the Conservator. The transmittal letter from Respondent to the CoA stated that no further accounts would be filed.
 5. As of the date of the filing of the Report and Petition by the Spotsylvania CoA, the noted deficiencies had not been corrected.
25. The CoA's Report and Petition requested that Respondent be removed as fiduciary from each of the cases and that she forfeit bond on each case in amounts to be determined by the Court at later hearings.
26. A hearing was set for 3 August 2016, but was continued to 7 September 2016 on Respondent's motion due to her ill health. At the 7 September 2016 hearing, Respondent

appeared along with counsel (Walter Sheffield) and reported that Mr. Sheffield would be assisting her to correct the noted deficiencies.

27. The noted deficiencies were not corrected. Accordingly, on 6 April 2017, in each of the cases addressed herein, the Court found Respondent in contempt of court and removed her as fiduciary from each of the cases. The Court appointed a substitute fiduciary in each case and ordered Respondent to deliver to the successor fiduciary all documents and funds related to each of the estates. In each case, the Court also ordered Respondent's bond forfeited in an amount to be determined by the Court at a later hearing.

Rules violated: 1.1; 1.3 (b)

Facts Relevant to All Complaints

28. Notwithstanding the significant and numerous discrepancies noted above, no evidence was presented that would lead to a finding that Respondent misused funds for her personal benefit.

29. Respondent is experiencing deteriorating health and reports that she is suffering from a degenerative disease that has progressed to the point where she is not currently able to continue in the active practice of law.

30. In February 2017, at Respondent's request, her license status was changed to disabled.

II. NATURE OF MISCONDUCT

Such conduct by Respondent 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 1.3 Diligence

* * * *

(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.

III. PUBLIC REPRIMAND WITH TERMS

Accordingly, having approved the Agreed Disposition, it is the decision of the Subcommittee to impose a Public Reprimand with Terms. Unless otherwise specified below, the terms shall be met by 12 months of the date of the entry of this Public Reprimand with Terms and are as follows:

1. Having been removed as fiduciary from each of the cases detailed herein, Respondent shall promptly cooperate with the substitute fiduciary appointed by the Court to permit said fiduciary to take over said cases and pay all fees as Order by the Court.
2. That Respondent shall obtain (12) Continuing Legal Education credits (CLE) by attending courses approved by the Virginia State Bar. Such CLE credits shall include
 - a. Nine (9) hours of credit in the area of serving as a fiduciary for Trusts and/or Estates and
 - b. Three (3) additional CLE ethics hours.

Such CLE credits as set forth in this paragraph shall not be applied toward Respondent's Mandatory Continuing Legal Education Requirement in Virginia or in any other jurisdiction in which Respondent is licensed to practice law. Respondent

shall certify her compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance Form to Assistant Bar Counsel, Prescott L. Prince, or his designee, promptly following Respondent's attendance of each such CLE program and no later than twelve (12) months from the date that the Subcommittee Determination memorializing the acceptance of this Agreed Disposition is forwarded to Respondent, as provided by the Certificate of Service herein. It is specifically noted that Respondent has physical disabilities which may preclude her from physically attending CLE programs; it is therefore specifically noted that the CLE obligation detailed herein may taken in the alternate means permitted by the Virginia CLE Board (e.g. online courses, webcast courses, etc.)²

3. That Respondent shall engage in no further conduct resulting in sanctions by the Virginia State Bar for a period of two (2) years from the date that the Subcommittee Determination memorializing the acceptance of this Agreed Disposition is forwarded to Respondent, as provided by the Certificate of Service herein.

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why an alternate sanction of Certification to the Disciplinary Board should not be imposed. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

² The specific permission to take the CLE credit hours imposed by the Agreed Disposition by alternate means in no way affects Respondent's obligation pursuant to the Virginia Mandatory Continuing Legal Education Requirement that the required 12 hours of annual CLE include at least four credit hours of live interactive programming.

Pursuant to Part 6, § IV, ¶ 13-9.E. of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

SIXTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Lisa Ashworth Seward
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 15 May 2017, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Sonya Borgaonkar Costanzo, Respondent, at P.O. Box 485, Fredericksburg, VA 22404, that being Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Michael L. Rigsby, counsel for Respondent, at Michael L. Rigsby, PC, P.O. Box 29328, Henrico, VA 23242.



Prescott L. Prince
Assistant Bar Counsel