

VIRGINIA :

**BEFORE THE FOURTH DISTRICT SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
ELIZABETH MARGARET FISCHER**

VS Docket No. 10-042-083573

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)**

On January 6, 2012 a meeting in this matter was held before a duly convened Fourth District Subcommittee consisting of Dennis C. Barghaan, Jr., Esquire, Chair Presiding, John R. Ates, Esquire and Sandra L. Northrop, lay person.

Pursuant to Part 6, Section IV, Paragraph 13-15.E. of the Rules of the Virginia Supreme Court, the Fourth 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, Respondent was a member in good standing with the Virginia State Bar.
2. Respondent was admitted to the practice of law in the Commonwealth of Virginia on October 6, 2000.
3. Mr. Bekim Veseli experienced water damage to his condominium and as a result would have to file a lawsuit against several defendants. Mr. Veseli retained the law firm of Cohen Mohr.
4. Respondent was employed by the law firm of Cohen Mohr when she was assigned to handle Mr. Veseli's case. Respondent left Cohen Mohr to work on her own. With the consent of both Mr. Veseli and Cohen Mohr Respondent took Mr. Veseli's case with her.
5. Respondent took with her Mr. Veseli's entire file, which contained original documents and other papers relevant to the case.

6. In August of 2008, Respondent filed suit against various defendants on Mr. Veseli's behalf in the Circuit Court of Loudoun County, Virginia to seek recovery for water damage to his condominium.

7. Unbeknownst to Mr. Veseli, none of the defendants were served with process.

8. Despite not serving any of the defendants, Respondent corresponded with Mr. Veseli over the next several months.

9. During that time, Respondent and Mr. Veseli did discuss damages and did amend the complaint, but the amended complaint was never filed in the Loudoun County Circuit Court. Prior to going forward with litigation, Respondent and Mr. Veseli participated in a mediation process with the defendants that was not successful.

10. From August of 2009 through December of 2009, Mr. Veseli requested updates of the case. Despite not having served the defendants with service of process, Respondent went so far as to email Mr. Veseli that in December of 2009 that she was going to be taking and defending depositions in January of 2010.

11. On December 31, 2010, Respondent left Mr. Veseli a voice mail advising that the case was moving forward, that depositions of the defendants would begin in the next two to three weeks, and expressing her optimism that there would be a positive resolution of the case.

12. At the time that Respondent wrote the December emails and left the voice message, she knew or should have known that the depositions would not be taking place because none of the defendants had been served and Respondent had not served any discovery requests.

13. Over the course of January of 2010, Mr. Veseli wrote Respondent several emails attempting to set the deposition dates. Respondent never responded.

13. On February 8, 2010, Mr. Veseli emailed Respondent asking her to respond and warning her that if she did not contact him he would have to take action against her.

14. On February 20, 2010, Mr. Veseli emailed Respondent again asking for a response to his inquiries.

15. On February 23, 2010, Mr. Veseli emailed Respondent advising that her email never reached him and demanded an explanation as to why Respondent had deceived him about discovery.

16. On March 4, 2010, Mr. Veseli wrote to Respondent stating that he was aware that Respondent had not been truthful in her representations concerning the status of the case. In that email, he identified his new attorneys as Moore & Lee and stated that he expected Respondent to fully cooperate the transition to the new lawyers. Respondent alleges that she is not aware of ever having received the March 4, 2010 email.

17. Shoshana Rothstein was, at all times relevant, a lawyer with the law firm of Moore & Lee. She was assigned to handle to Mr. Veseli's claim.

18. Mr. Rothstein attempted to contact Respondent on various occasions to obtain Mr. Veseli's file.

19. Respondent sometimes returned Ms. Rothstein's calls very early in the morning not during normal business hours, but they did speak with each other on several occasions during business hours.

20. Despite numerous phone calls and letters from Mr. Rothstein, Respondent did not turn over or otherwise make arrangements for the transfer of Mr. Veseli's file.

21. On March 8, 2010, Respondent purportedly wrote to Mr. Veseli stating that until she heard from him directly, she would not turn over the file, but that if he contacted her she would make such arrangements. Mr. Veseli alleges he never received that letter.

22. Despite having made such contact on March 4, 2010, Respondent failed and refused to turn over the file despite proper and lawful demands from Mr. Veseli's lawyers.

23. On April 5, 2010, Respondent purportedly wrote to Mr. Veseli stating that his file was available for pick up. Mr. Veseli alleges he never received that letter.

24. As of June 22, 2010, despite efforts by Mr. Veseli and his new lawyers to retrieve the file from Respondent, she failed to make it available for pick up.

25. On June 22, 2010, Respondent wrote to the Virginia State Bar stating that she had not heard from Mr. Veseli and that he had not responded to her letters.

26. At the time that Respondent wrote to the Bar, Mr. Veseli alleges that he had already personally notified her by email that she was being replaced by Moore and Lee and that Mr. Veseli demanded her full cooperation. Moore & Lee also advised Respondent that they were taking over the case.

II. NATURE OF MISCONDUCT

Such conduct by Elizabeth Margaret Fischer 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.

(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.

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RULE 1.16 Declining or Terminating Representation

(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

(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 shall be returned to the client 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. Upon request, the client must also be provided 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); pleadings and discovery responses; working and final drafts of legal instruments, official documents, investigative reports, legal memoranda, and other attorney work product documents prepared 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.

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RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

- (b) engage in professional conduct involving dishonesty, fraud, deceit or misrepresentation.

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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:


1. The Respondent shall complete four (4) hours of ethics in addition to her mandatory requirements for 2012. Of the four additional hours, Respondent shall be required to take the online CLE course available from www.vacle.org entitled "A Lawyer's Ethical Obligations Regarding Client Files." The course is currently available online as of January 18, 2012.
2. If the course is not available online at the time that Respondent attempts to take it, she must submit proof from Virginia CLE as to when the course was no longer made available.
3. Respondent must submit proof of having taken the additional hours before October 31, 2012 to both the Virginia State Bar Membership section and to Assistant Bar Counsel Paulo E. Franco, Jr.

Upon satisfactory proof that such terms and conditions have been met, this matter shall be closed. If, however, the terms and conditions are not met by October 31, 2012, the Respondent agrees that the district committee shall impose an alternative sanction of a Certification For Sanctions Determination pursuant to Rules of Court, Part Six, Section IV, Paragraph 13-15.F. The Burden of Proof shall be on the Respondent to show by clear and convincing evidence compliance with the terms. Respondent waives her right to have alternative sanction heard by a three judge panel.

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

FOURTH DISTRICT SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

By


Dennis C. Barghaan, Jr.
Chair

CERTIFICATE OF SERVICE

I certify that on this 26th day of March, 2012 I mailed by certified mail a true and correct copy of the Subcommittee Determination (PUBLIC Reprimand with Terms) to Elizabeth Margaret Fischer, Esquire, Respondent, at #303, 2323 Henshaw Place, Alexandria, VA 22311, Respondent's last address of record with the Virginia State Bar.



Paulo E. Franco, Jr.
Assistant Bar Counsel