

VIRGINIA:

BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

FEB 25 2013

IN THE MATTER OF
Robert P. Dwoskin

VS B Docket No. 11-070-086055

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On February 19, 2013 a meeting was held in this matter before a duly convened Seventh District Subcommittee consisting of Morris (lay member), Lois G. Pearson, Esquire, and David A. Penrod, Esquire, Chair, presiding. 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 Edward L. Davis, Bar Counsel, and Robert P. Dwoskin, Respondent, pro se.

WHEREFORE, the Seventh 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, Robert P. Dwoskin ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On October 13, 2006, Ruby Ella Gayle, age 77, collided with another vehicle at an intersection in Waynesboro, Virginia. Police determined that Ms. Gayle was at fault and issued her a summons for failure to yield right-of-way. Ms. Gayle, however, refused to sign the summons (signing merely indicates a promise to appear in court) thinking that her signature would be an admission of guilt, and that her insurance company did not want her to do so. When the officer advised her that he would have to arrest her if she did not sign, she still refused to do so. When he placed her in handcuffs (standard procedure) she became ill and the officer called an ambulance. Ms. Gayle suffered a torn rotator cuff and other injuries that may have been related to the arrest. She had similar pre-existing injuries that were aggravated during the arrest.

3. About 11 months later, on or around September 10, 2007, Ms. Gayle consulted with Mr. Dwoskin about suing the police for use of excessive force and other civil rights violations. Mr. Dwoskin's file contains an authorization for release of medical information executed by Ms. Gayle on September 10, 2007. Ms. Gayle and her family left the meeting thinking he was going to file suit. Mr. Dwoskin recalls that he was just going to look into the case. They did not execute a contingent fee agreement, and Mr. Dwoskin's file (398 pages long) reflects no further work on the matter at that time.

4. The following year, about two weeks before the statute of limitations was due to run, Ms. Gayle and her family saw Mr. Dwoskin again and demanded that he file the suit. Feeling obligated as her attorney, Mr. Dwoskin prepared and filed a complaint in the U.S. District Court for the Western District of Virginia on October 7, 2008. He named the arresting officer, the police department and the City of Waynesboro, among others, as defendants. Having done no research into the case, however, much of the complaint was based upon "information and belief."

5. The defense filed several motions after which the court dismissed all of the defendants from the case except for the arresting officer, by order, entered March 15, 2009. The order mentioned that the plaintiff made her civil rights claim under the wrong constitutional provision and granted leave to file an amended complaint. Mr. Dwoskin never filed an amended complaint.

6. Earlier, on January 5, 2009, the court entered its scheduling order requiring that the plaintiff, *inter alia*, make an expert witness disclosure by February 19, 2009. By agreement of counsel, Mr. Dwoskin delayed seven days in submitting his expert witness disclosure. He did not, however, meet the requirements of the scheduling order. He listed the names of the treating physicians, but did not provide a written report from each expert as required by the court's order.

7. In light of Mr. Dwoskin's apparent noncompliance with the scheduling order, the defense filed a motion to compel discovery. The court found that he failed to comply with the scheduling order and failed to participate in discovery. On May 13, 2009, the court, as a sanction for failure to comply with the scheduling order, disallowed any expert testimony from the plaintiff's (Ms. Gayle's) witnesses, allowing them to testify as fact witnesses only. The court further ordered that the plaintiff could present no evidence of medical expenses that she incurred.

8. The order indicates that plaintiff's counsel (Mr. Dwoskin) stated that she incurred no medical expenses as a result of this incident. Ms. Gayle, however, says that she incurred \$30,000 in medical expenses.

9. By letter, dated June 12, 2009, Mr. Dwoskin communicated this adverse development to his client and recommended that she allow him to move for a voluntary dismissal under Rule 41 of the Federal Rules of Civil Procedure. His letter said, "**I will then re-file it for you as your attorney if you decide to do so.**" and, "**Many cases are refilled (sic) then won and this must be done with your case.**" (Emphasis added.)

10. In reliance on his promise to refile the matter, Ms. Gayle agreed for Mr. Dwoskin to move for a voluntary dismissal, and he did so.

11. By order, entered August 13, 2009, the court granted Mr. Dwoskin's motion but on two conditions: (1) that Gayle refile only in that district and, (2) **that upon refiling, Gayle must pay the reasonable costs, expenses and attorney's fees that Fernandez (the arresting officer) incurred due to Gayle's failure to comply with the court's scheduling order and participate in discovery.** The defense was claiming about \$5,000 in fees.

12. Despite Ms. Gayle's request that he refile the suit, and contrary to his letter of June 12, 2009, Mr. Dwoskin never refiled the suit.

13. Ms. Gayle and her son wrote to Mr. Dwoskin on repeated occasions for more than a year asking for the status of the case. Mr. Dwoskin's file does not contain any responses to these inquiries. Receiving no response, on November 17, 2010, Ms. Gayle and her son complained to the bar.

14. In response to the bar complaint, Mr. Dwoskin explained that he had no information on damages to support the case and that the officer could not be held liable for a simple tort in making the arrest, that it was impossible to prove the use of excessive force because Ms. Gayle resisted and she had a pre-existing injury that was aggravated. Mr. Dwoskin also explained that about six weeks before trial he received a call from the magistrate judge telling him to get the case off the docket or he would grant sanctions.

15. In responding to the bar complaint, Mr. Dwoskin also acknowledged his promise to refile the case as set forth in his letter of June 12, 2009, but that "...what I meant and probably should have said more clearly was that the case was not winnable because of the lack of evidence concerning excessive force and the fact the injury occurred during a lawful arrest."

16. Mr. Dwoskin also indicated that it was a contingent fee case, but no contingent fee agreement was ever executed in the matter.

II. NATURE OF MISCONDUCT

Such conduct by Robert P. Dwoskin constitutes violations of the following provisions of the Rules of Professional Conduct:

In recommending for his client to agree to a voluntary dismissal of her case on his promise to refile it as her attorney, at a time when he knew or should have known that there was no merit to the case; by not refiling the case as promised; in accepting and filing a case on a contingent fee basis without reducing the contingent fee agreement to writing; in failing to comply with the court's scheduling order or to participate in discovery, as found by the court; and in failing to respond to repeated written inquiries from his client and her son for more than a year after the dismissal of the case, the Respondent was in violation of the following Rules of Professional Conduct:

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.

Rule 1.5 Fees

(b) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. A contingent fee agreement shall state in writing the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

Rule 3.4 Fairness To Opposing Party And Counsel

A lawyer shall not:

(d) Knowingly disobey or advise a client to disregard a standing rule or a ruling of a tribunal made in the course of a proceeding, but the lawyer may take steps, in good faith, to test the validity of such rule or ruling.

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. The terms shall be met by May 1, 2013 and are as follows:

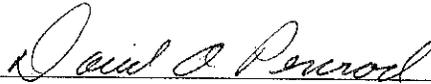
- 1. By May 1, 2013, the Respondent will have wound up his law practice and will cease practicing law in the Commonwealth of Virginia.**
- 2. The Respondent will accept no new clients from the date of this Agreed Disposition forward.**

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 a Certification for Sanction Determination before the Virginia State Bar 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.

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.

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



David A. Penrod
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on February 25, 2013, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Robert P. Dwoskin, Respondent, at Robert P. Dwoskin, PO Box 417, Stanardsville, VA 22973, Respondent's last address of record with the Virginia State.



Edward L. Davis
Bar Counsel