

VIRGINIA:

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

**IN THE MATTER OF
BRUCE PATRICK GANEY**

VS B Docket No. 15-060-101162

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

On December 01, 2015 a meeting was held in this matter before a duly convened Sixth District Subcommittee consisting of Andrew Joseph Cornick, Chair, Bruce Collier Phillips, Member, and Mark Joseph Rickey, 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 Bruce Patrick Ganey, Respondent, *pro se*.

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, Bruce Patrick Ganey ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In August 2009, Respondent was retained to pursue the claim of Delmas R. Roberts, Sr. and his wife when the amount paid by Allstate Insurance for the property damage to the Roberts' home was substantially less than the cost incurred by Mr. Roberts in

- repairing the damage. The claim related to water damage that resulted from pipes that froze and burst when the Roberts were out of town in January of 2009.
3. The cost of the casualty was extensive. Mr. Roberts reported that not only did the insurance provider (Allstate) agree to pay only a portion of the bill, but further asserted that over the course of nearly nine months, Allstate failed to make payments as promised, frequently changing adjusters, and otherwise engaged in other tactics which the Roberts believed were intended to delay and avoid payment of the full amount to which they were entitled.
 4. It took Respondent over a year from the time he was retained to prepare and file suit in the matter even though it was clear from the start that Allstate was continuing to take a hard line and would pay little if anything beyond what had already been paid to the Roberts.
 5. During the year from the time he was retained until the time he filed suit, Respondent failed to take any significant action to negotiate, investigate, develop evidence or otherwise further the claim of the Roberts.
 6. From early in the case and continuing throughout the course of the representation, Respondent established a pattern in which he failed to return communication with Mr. Roberts in any consistent manner. Mr. Roberts determined that the only way he could ever get information about the case was to drive to the office to get information. Even then, when he communicated directly with Respondent and Respondent promised to call within a specified period of days to report progress, Respondent failed to call and Mr. Roberts would again have to drive to the office to get the promised report.

7. Respondent filed the lawsuit against Allstate Insurance Company on 24 September 2010, alleging that Allstate was in breach of its contract with Mr. Roberts by failing to properly compensate him for property damage suffered by Mr. Roberts along with attorney fees.
8. On or about 27 October 2010, Allstate filed Motion Craving Oyer and Demurrer alleging, *inter alia*, that:
 - a. Necessary parties had not been named in the suit, including Joyce Roberts (Mr. Roberts' wife and the co-owner of the property) and the mortgage holder of the property.
 - b. Respondent failed to include the insurance policy as an attachment to the proceeding; and
 - c. Plaintiff failed to state facts which would support a claim for attorney's fees.
9. Respondent agreed to amend the pleading to include Joyce Roberts and the mortgage holder as additional parties. He further agreed to add the insurance policy as an attachment to the pleadings and to withdraw the claim for attorney's fees. On or about 23 March 2011, an order reflecting the agreed upon amendments was presented by the Court and was entered by said Court on 15 July 2011.
10. The parties further agreed to go through an Appraisal process in accordance with the provisions of the Insurance Policy.
11. Respondent failed to amend the pleadings as agreed and further aggressively failed to follow through with the appraisal process.
12. On or about 17 December 2012, Allstate filed a Motion to Dismiss for Failure to Comply with the Court Order and for Failure to Prosecute the matter.

13. Thereafter, on 1 August 2013, Respondent took a voluntary non-suit in the matter.
14. On 8 November 2013, Respondent re-filed the lawsuit. As with the previously filed Complaint, Respondent's pleadings failed to include as parties to the matter the co-owner (Joyce Roberts) and the mortgage holder.
15. In response to the re-filed Complaint, Allstate filed a Demurrer on the grounds that the re-filed suit was filed after the contractual statute of limitations as was provided in the Insurance Policy. The Demurrer was granted and on 25 August 2014, the case was dismissed with prejudice.
16. Respondent did not file a responsive pleading to contest the Demurrer.
17. Respondent did not inform the Roberts that a Demurrer on the grounds of the violation of the contractual statute of limitations had been filed or that a hearing had been set on the matter until after the Demurrer was granted by the Court.
18. Respondent's failure to provide notice to the Roberts of the Demurrer and the hearing on the issue of the Demurrer was intentional as, on a number of occasions, in the days and weeks preceding the hearing of the Demurrer, Mr. Roberts had asked Respondent when the parties were going to court, but Respondent failed to make him aware of any court dates.
19. When Respondent eventually did inform Mr. Roberts that the case had been dismissed due to the running of the statute of limitations had run, he told Mr. Roberts that he believed that he could "make the judge change his mind". Notwithstanding this assertion, Respondent did not file a Motion to Reconsider or any other such pleading to change or mitigate the ruling of the court.

20. Respondent's failure to take any significant action in the case for over a year after being retained and further failing to aggressively prosecute the case thereafter constitutes a violation of Virginia Rules of Professional Conduct (RPC) Rule 1.3.
21. Respondent's consistent failure to communicate with his clients in a meaningful manner throughout the course of representation, and his further failure to notify his clients regarding the existence of the Demurrer and of the hearing on the Demurrer constitute a violation of RPC 1.4.

II. NATURE OF MISCONDUCT

Such conduct by Respondent 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.

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.
- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

III. PUBLIC REPRIMAND WITH TERMS

1. Within 30 days of the date that this Memorandum Order is forwarded to Respondent, as provided by the Certificate of Service herein, the Respondent shall further:
 - a. Engage an approved practicing attorney or law office management consultant (both known as "Consultant") acceptable to the Virginia State Bar. The Consultant's engagement shall be for the purposes of reviewing Respondent's

current law practice policies, methods, systems and record-keeping to ensure compliance with all provisions of Rules 1.3, 1.4, 1.5 and with the other provisions of law office management Rules of the Virginia Rules of Professional Conduct (hereafter "said Rules"), as determined relevant by the law office management consultant and to report to the Bar on a quarterly basis regarding Respondent's compliance with the Consultant's recommendation.

- b. In the event the Consultant determines that Respondent has complied with the Consultant's recommendations, the Consultant shall so certify in writing to the Respondent and the Virginia State Bar. In the event the Consultant determines that Respondent has not complied with the Consultant's recommendations, the Consultant shall notify the Respondent and the Virginia State Bar, in writing, of the measures that Respondent must take to bring himself into compliance with the Consultant's recommendations.
 - c. Upon receipt of a report of non-compliance with the Consultant's recommendations, the Respondent shall have thirty (30) days following the date the Consultant issues his written statement of the measures Respondent must take to bring his law office practice and procedures into compliance. The Consultant shall be granted access to Respondent's office, books, records, and files following the passage of the thirty (30) day period to determine whether Respondent has brought himself into compliance, as required. The Consultant shall thereafter certify in writing to the Virginia State Bar and to the Respondent either that the Respondent has brought his practice and procedures into compliance within the thirty day (30) period, or that he has failed to do so. Respondent's failure to bring himself into compliance with the Consultant's recommendations by the conclusion of the aforesaid thirty (30) day period shall be considered a violation of the Terms set forth herein.
 - d. The Consultant shall periodically consult with and/or examine the Respondent's law practice consistent with paragraph a, above, for a period of twelve (12) months following the date of the Consultant's initial certification of compliance pursuant to the terms hereof. The Consultant shall report to the Virginia State Bar on a quarterly basis and in said report either recertify Respondent's compliance with Consultant's recommendations said Rules or issue a report to the Virginia State Bar and the Respondent stating that the Respondent is not in compliance, and the basis for such a determination. The Respondent shall be deemed to have violated the Terms hereof in the event the Consultant, upon such re-examination of Respondent's said law practice policies, methods, systems and record-keeping, reports any material noncompliance.
2. That Respondent shall obtain six (6) continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matters of law office management. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph shall not be applied toward his Mandatory Continuing Legal Education Requirement in Virginia or in any other jurisdiction in which Respondent is licensed to

practice law. Respondent shall certify his 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 of the date that this Memorandum Order is forwarded to Respondent, as provided by the Certificate of Service herein.

3. The Respondent shall be obligated to pay when due any reasonable fees and costs charged by the Consultant for his or her services, (including provision to the Bar and to Respondent of information concerning this matter).

Upon satisfactory proof that such terms and conditions have been met, these matters shall be closed.

If, however, all the terms and conditions are not met by the deadlines imposed above, the Respondent agrees that the Disciplinary Board shall impose a six (6) month suspension of his license to practice law in the Commonwealth of Virginia pursuant to the Rules of the Supreme Court of Virginia, Part Six, § IV, ¶ 13-18.O. 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 ¶ 13-9.E of the Rules of the Supreme Court of Virginia. Respondent agrees that any proceeding to address compliance with terms under this Agreed Disposition will be heard by the Disciplinary Board.

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

By: _____

Andrew Joseph Cornick
Subcommittee Chair

PLP **CERTIFICATE OF MAILING**

I certify that on 06 Jan 2016, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Bruce Patrick Ganey, Respondent, at 10985 Richardson Rd, PO Box 6006, Ashland, VA 23005, that being Respondent's last address of record with the Virginia State Bar.



Prescott L. Prince
Assistant Bar Counsel