

VIRGINIA:

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

**IN THE MATTER OF
Phillip Stone Griffin, II**

VS **Docket No. 13-070-093861**

**SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITHOUT TERMS)**

On May 26, 2015 a meeting was held in this matter before a duly convened Seventh District Subcommittee consisting of David Watson Thomas, Esquire, and Alfred James Sisley, lay member, and James Christopher Chamblin, Esquire, presided as Subcommittee Chair, Designate. During the meeting, the Subcommittee voted to approve an agreed disposition for a PUBLIC Reprimand without 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 Alfred L. Carr, Assistant Bar Counsel, and Phillip Stone Griffin, II, Respondent, and John Philip Flannery, II, Esquire, counsel for Respondent.

WHEREFORE, the Seventh District Subcommittee of the Virginia State Bar hereby serves upon Respondent the following PUBLIC Reprimand without Terms:

I. FINDINGS OF FACT

1. At all relevant times, Respondent, Phillip Stone Griffin, II, ("Respondent") was licensed to practice law in the Commonwealth of Virginia.

A. The Truck Purchase

2. On October 9, 2011, Mr. Rosalio Amilpa-Hernandez and his wife Mrs. Karen Amilpa Hellenbach (Mr. and Mrs. Hernandez) (the Complainants) purchased a used 1995 GMC Sierra pickup truck (truck) in Stephens City, Virginia from Mr. and Mrs. Greg and Lisa Humbertson (Mr. and Mrs. Humbertson). While the truck was registered in Maryland to a Maryland resident, the truck lacked a Maryland inspection sticker. Furthermore, the truck owner was not present at the sale of the truck but Mr. and Mrs. Hernandez held the registration.

3. Prior to the purchase, Mr. Hernandez asked whether there were any major problems with the truck. Mrs. Humbertson responded there were no major problems with the truck except a very rusty bumper and the need for new tires. She said it wasn't perfect but was a good truck that could use some minor cosmetic fixes. Mrs. Humbertson said that the truck could pass inspection. Mrs. Humbertson had found a bumper that was supposed to fit the truck and gave it to Mr. Hernandez as a part of the sale. The parties ultimately agreed on \$1,700 for the truck and bumper.
4. Mrs. Humbertson provided a piece of paper stating the selling price and the date of sale. Mr. Hernandez handed the document to his wife for signature. Both parties signed the document. Included was a statement that the truck was being sold "as is".

B. The Truck Repair

5. On October 15, 2011, Mr. Hernandez took the truck to Pep Boys for new wheels and an alignment. On October 16, 2011, Mr. Hernandez was informed by Pep Boys that it could not perform the alignment given the rusted undercarriage of the truck and that the truck was a danger to drive. Pep Boys recommended that Mr. Hernandez take the truck to a body repair shop for further review. Mr. Hernandez, however, purchased and installed the new tires. Plainly, the truck could not pass inspection.
6. On October 18, 2011, Mr. Hernandez took the truck to Sterling Collision Repair Shop in Winchester, Virginia. Mr. Hernandez was advised it would cost about \$4,800.00 to repair the truck. The Sterling Collision Repair Shop confirmed that the truck could not pass inspection despite the representations earlier made. Mr. Hernandez called Mrs. Humbertson that same day seeking to return the truck in exchange for the return of his money. Mrs. Humbertson said she would talk to her brother about the money but she never called back. Mr. Hernandez called back several times without response.
7. On October 20, 2011, Mr. Humbertson called Mr. Hernandez to find out about the damage to the truck. Mr. Hernandez explained what was wrong and said he could send Mr. Humbertson pictures. Mr. Hernandez took pictures of the truck and emailed them to Mr. Humbertson. Having not gotten a response, he re-sent the photos on October 22, 2011.
8. On Sunday, October 23, Mr. Humbertson called and spoke with Mrs. Hernandez. Mr. Humbertson asked to come and see the vehicle himself. Mr. Humbertson looked at the truck on the evening of October 24, 2011. Mr. Humbertson offered to fix the truck. Mr. Hernandez asserted that he would like to get his money back and return the truck. Mr. Humbertson said "the boy" had spent the money and he, Mr. Humbertson, would speak with a friend of his about repairing the truck. Mr. Humbertson asserted that he would be in touch with Mr. Hernandez.

9. On October 28, 2011, Mr. Hernandez again reached out to the Humbertsons. Mr. Humbertson said he would be in touch but never called back.

C. Legal Assistance, provided by Mr. Griffin

10. Mr. Griffin met with Mr. and Mrs. Hernandez on Tuesday, November 1, 2011 and provided a letter of representation on November 2, 2011. On November 9, 2011, Mr. Griffin sent Mr. and Mrs. Humbertson notice of an attempt to collect a debt for the sale of the truck. Mr. Griffin notes that if the Humbertson's do not pay, attorney's fees will be sought under Virginia code sections found in the Virginia Consumer Protection Act.
11. Mr. and Mrs. Humbertson responded by November 29, 2011, disputing the debt and asserting that the truck was sold "as is," as agreed to in writing. Mr. Griffin forwarded this letter to his clients on November 29, 2011.
12. On December 7, 2011, counsel for Mr. and Mrs. Humbertson, Nate Adams, responded to Mr. Griffin's November 9 notice. Mr. Adams asserted that the Virginia Consumer Protection Act did not apply to his clients and that he would seek attorney's fees if this matter continued. Mr. Griffin forwarded this letter to his clients on December 9. Mr. Griffin responded to Mr. Adams letter on January 13, 2012, seeking referenced documents, and again on February 6, 2012 when he had yet to receive a response.
13. On February 9, 2012, Mr. Adams responded to Mr. Griffin's request with a document request of his own and did not provide the requested documents. Mr. Griffin forwarded this response to his clients on February 13, 2012.

D. Warrant in Debt is Filed.

14. On March 1, 2012, Mr. Griffin again asked for documents requested on January 13, 2012. On March 22, 2012, Mr. Griffin provided notice that he would be filing suit within 10 days, as he had not received requested documents since October 2011. A Warrant in Debt was filed April 18, 2012.

E. Lack of Communication

15. Mr. Griffin concedes that he failed to explain that the cost of his services, after forwarding several demand letters to counsel for the Humbertsons, could cost more than the value of the vehicle, that further litigation could, and very likely would, outstrip the value of any recovery for the damaged vehicle, unless Mr. Griffin convinced the court to award the damages requested, plus interest and the legal fees that Mr. Hernandez incurred, and that Mr. Griffin had included among the requested relief.
16. Mr. Griffin agrees that he did not adequately explain that the litigation challenge of the "as-is" modification at the time of "sale" did create an increased risk to a

favorable litigation outcome, although, it was arguably surmountable given the false representations by the Humbertsons that were also included in the warrant in debt.

17. Mr. Griffin has explained these risks to other clients, that is spending more than they might recover, and some clients preferred to go forward – despite the risk or recovering less than the possible litigation costs and fees. Of course, others have decided not to do so as well. Nevertheless, Mr. Griffin agrees that he had not specifically communicated these risk factors to his client to inform his discretion, and that is the basis of Mr. Griffin’s agreed disposition.

II. NATURE OF MISCONDUCT

Such conduct by the Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.4 Communication

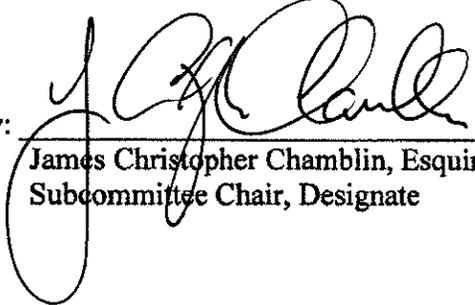
(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a PUBLIC Reprimand Without Terms and Phillip Stone Griffin, II is hereby so reprimanded. 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

By:


James Christopher Chamblin, Esquire
Subcommittee Chair, Designate

CERTIFICATE OF MAILING

I certify that on June 1, 2015, a true and complete copy of the Subcommittee Determination (PUBLIC Reprimand Without Terms) was sent by certified mail, return receipt requested, to Phillip Stone Griffin, II, Respondent, at 102 South Kent Street, Winchester, VA 22601 at Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to John Philip Flannery, II, counsel for Respondent, at Campbell Flannery, 1602 Village Market Blvd., Suite 220, Leesburg, VA 20175.



Alfred L. Carr
Assistant Bar Counsel