

Jan 27, 2016

VIRGINIA:

BEFORE THE FIRST DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

VSB CLERK'S OFFICE

IN THE MATTER OF  
KEVIN PETER SHEA

VSB Docket No. 15-010-102761

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITHOUT TERMS)

On January 13, 2016 a meeting was held in this matter before a duly convened First District Subcommittee consisting of James Edward Short, Charles Tayloe Griffith, and Walter P. Nullet. 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 Elizabeth K. Shoenfeld, Assistant Bar Counsel, and Kevin Peter Shea, Respondent, *pro se*.

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

I. FINDINGS OF FACT

1. At all times relevant hereto, Kevin Peter Shea ("Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On or about December 15, 2011, Dameon Saunders was involved in an accident that rendered him unconscious. When he regained consciousness, he called his home. Mr. Saunders's sister and his mother's significant other transported him to Mary Immaculate Hospital, where he was treated for his injuries.
3. During his treatment at Mary Immaculate Hospital, Mr. Saunders developed an infection that required him to be hospitalized for several months. While Mr. Saunders was still in the hospital, Respondent was retained to represent Mr. Saunders.
4. Mr. Saunders and Respondent agreed that Respondent's representation would be on a contingency fee basis. However, Mr. Saunders and Respondent never entered into a written fee agreement.

5. Mr. Saunders was originally interested in filing a medical malpractice lawsuit against the hospital where he developed the infection. After obtaining and reviewing Respondent's medical records, Respondent told Mr. Saunders that he did not think he had a strong medical malpractice case. Nonetheless, Respondent said that he would represent Mr. Saunders in the medical malpractice matter if Mr. Saunders would identify and pay a medical expert who was willing to testify that the hospital had violated the applicable standard of care.
6. Respondent suggested to Mr. Saunders that he could obtain the money to pay the expert by filing an uninsured motorist claim with Assurance America, which was the company that provided auto insurance to Willie Mae Saunders, Mr. Saunders's mother. Respondent agreed to represent Mr. Saunders for purposes of collecting on the uninsured motorist claim.
7. By letter dated May 17, 2012 to Assurance America, Respondent advised that he represented Mr. Saunders. Respondent claimed that because Mr. Saunders was residing with his mother at the time of the accident, Mr. Saunders had an uninsured motorist claim against Assurance America.
8. By letter dated June 4, 2012, Kristine Thompson, a claims representative for Assurance America, advised Respondent that Assurance America was handling Mr. Saunders's claim under a reservation of rights because Mr. Saunders was not listed as a household resident on the policy and because the loss was not reported in a timely manner.
9. By a June 12, 2012 letter to Ms. Thompson, Respondent replied Mr. Saunders "resides with his mother, Willie Mae Saunders, and has for many years. He does not drive and, therefore, his mother did not list him as an insured driver on her policy with Assurance America."
10. Also in his June 12, 2012 letter to Ms. Thompson, Respondent represented that "it wasn't until [he] inquired of [Mr. Saunders's] injury that [he] learned of this hit and run accident. The family simply had no idea that Dameon could be compensated for his injuries under his mother's policy."
11. On or about December 3, 2012, Assurance America filed a Motion for Declaratory Judgment with regard to coverage of Mr. Saunders's December 2011 accident in the Circuit Court for the City of Newport News. In its motion, Assurance America alleged that Mr. Saunders was not covered under his mother's policy because he was not residing with his mother at the time of the accident and he was not a named insured under the policy.
12. On or about December 18, 2012, Respondent signed and caused to be filed an Answer and Cross-Claim<sup>1</sup> on behalf of Mr. Saunders. In the Answer, Respondent "adamantly den[ie]d" that Mr. Saunders was living at an address separate from his mother's at the

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<sup>1</sup> Because this claim was asserted by a defendant against a plaintiff, it is actually a counterclaim pursuant to Va. Sup. Ct. R. 3:9 and not a cross-claim pursuant to Va. Sup. Ct. R. 3:10. Nonetheless, because Respondent called it a cross-claim, this charge uses the same terminology.

time of the accident. In the Cross-Claim, Respondent alleged that “regardless of the proof of residency the Defendant has furnished to the Plaintiff, the Plaintiff has failed and refused to accept his uninsured motorist claim and has acted in bad faith at all times relevant hereto.”

13. On behalf of Mr. Saunders, Respondent requested judgment in the amount of Five Million Dollars (\$5,000,000.00), plus costs and interest.
14. This Cross-Claim was the only legal action Respondent filed on Mr. Saunders’s behalf.
15. Assurance America demurred to the Cross-Claim.
16. On November 13, 2013, Respondent filed a Praecipe in which he stated that the case “is matured for trial on its merits” and requested “that the Clerk place it on the docket to be called on January 13, 2013 [sic], at 10:00 a.m.”
17. On December 15, 2013, the statute of limitations for any personal injury claim regarding Mr. Saunders’s December 15, 2011 accident expired.
18. On January 13, 2014, counsel for Assurance America noticed a hearing on Assurance America’s Demurrer to Mr. Saunders’s Cross-Claim.
19. On February 18, 2014, the Circuit Court for the City of Newport News sustained Assurance America’s Demurrer to Mr. Saunders’s Cross-Claim because Respondent did not file a John Doe action before the expiration of the statute of limitations and thus did not satisfy the condition precedent to enforcing an uninsured motorist claim under Va. Code § 38.2-2206. As a result of Respondent’s failure to file the John Doe action, Mr. Saunders did not have and never could have a legally enforceable right of recovery and Assurance America could not possibly have denied his claim in bad faith.
20. On or about May 12, 2015, Mr. Saunders filed a complaint with the Virginia State Bar (“VSB”). The VSB opened an investigation into Mr. Saunders’s complaint.
21. On October 14, 2015, a VSB investigator interviewed Respondent. When asked why he did not file a John Doe action before the statute of limitations expired, Respondent said that he chose not to file the John Doe action because he knew he would not prevail and it would have been in bad faith to do so.

## 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

- (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.

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.

RULE 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

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 Kevin Peter Shea 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.

FIRST DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR

By:   
Charles Tayloe Griffith  
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on Jan. 27, 2014, a true and complete copy of the Subcommittee Determination (Public Reprimand without Terms) was sent by certified mail to Kevin Peter Shea, Respondent, at 34 West Queens Way, Hampton, VA 23669, Respondent's last address of record with the Virginia State Bar.

  
Elizabeth K. Shoenfeld  
Assistant Bar Counsel