

VIRGINIA:

**BEFORE THE SECOND DISTRICT SUBCOMMITTEE, SECTION II  
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF  
PHILIP JOHN GEIB**

**VS B Docket No. 21-022-120729**

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

On June 10, 2021 a meeting was held in this matter before a duly convened Second District Subcommittee, Section II consisting of Corrynn Jessica Peters, Chair, Patrick Lawton Maurer, member, and John L. Hodges, 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 Renu M. Brennan, Bar Counsel, and Philip John Geib, Respondent, pro se.

WHEREFORE, the Second District Subcommittee, Section II of the Virginia State Bar hereby serves upon Respondent the following Public Reprimand with Terms:

**I. FINDINGS OF FACT**

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1987. At all relevant times, Respondent was a member of the VSB.
2. Respondent estimates 80% of his practice is before the Workers’ Compensation Commission (“Commission”).
3. In *Been v. City of Norfolk*, JCN VA00000585787 (Dec. 18, 2019 Dep. Comm’r Order)<sup>1</sup>, based on concerns that Respondent concurrently represented a claimant and medical provider in the same case before the Commission, Deputy Commissioner Jenkins stayed the

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<sup>1</sup> See ¶¶ 9-36.

proceedings and directed Respondent to provide evidence of informed consent and waivers to the concurrent conflict of interest or legal authority to continue the concurrent representation. *See Exh. A.* The Commission denied Respondent's request for an interlocutory review. Respondent initially represented the claimant in his award of lifetime medical expenses, and Respondent subsequently filed a medical payment protective application on behalf of the medical provider. Respondent did not provide the waivers or authority. Rather Respondent filed the case before a different deputy commissioner and continued to act on the case. Respondent told the bar investigator that by re-filing on the other commissioner's docket, he effectively lifted the stay. Respondent has also asserted that there was no conflict because the protective claim he filed on behalf of the medical provider was dismissed without prejudice before he reasserted a claim on behalf of the claimant. Respondent did not withdraw as counsel for the medical provider after the dismissal without prejudice of its claim.

4. Respondent also concurrently represented the medical provider Sentara Healthcare, Inc. in four medical payment applications brought under Va. Code. §65.2-605, while Respondent represented claimants against Sentara in 20 unrelated compensability cases. In one case, *Shumake v. Sentara Healthcare*, JCN VA00000754691, Respondent represented the claimant, Janet Shumake, against his other client Shumake's insurer, Sentara Healthcare, Inc. (all Sentara entities are referred to herein as "Sentara") both of whom Respondent represented in different proceedings before the same tribunal. Respondent did not disclose this conflict to his clients prior to entering into the concurrent representation. By Corrected Order by Deputy Commissioner Jenkins entered September 4, 2020 and upheld by the full Commission December 30, 2020, Respondent was removed as counsel of record for Sentara

in the four cases because Respondent's simultaneous representation of claimants against Sentara while Respondent represented Sentara in unrelated medical payment applications is a breach of loyalty conflict under Rule 1.7(a)(1). Respondent did not appeal the Commission's December 30, 2020 Order.

5. Notwithstanding the identified concerns spelled out in exacting detail in both *Been* as of December 18, 2019, and Respondent's history and removal as counsel beginning in 2015, Respondent did not take sincere, meaningful steps to appreciate or address the direct adverse interest conflict arising out of the matters referenced above and herein. Instead, Respondent's "actions raise[d] serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another." See Deputy Commissioner Jenkins' September 4, 2020 Corrected Order concerning numerous cases<sup>2</sup>, at p. 18 citing *Richardson v. Maryview Medical Center*, JCN VA 01002422994 (Jul. 9, 2018).
6. As of the date of this agreed disposition, Respondent is in the process of filing letters seeking leave to withdraw from all cases in which he has a conflict of interest under Rule 1.7 including from representation of medical providers and insurers in medical payment applications where he simultaneously represents claimants against those medical providers and insurers.

### **Background**

7. In *Farr v. Lincoln Property Co.*, JCN VA02000002128 (Jan. 9, 2015), attached as Exh. G, the Commission removed Respondent as counsel because Respondent had a nonwaivable

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<sup>2</sup> [Flores v. Lowe's Home Centers, Inc.](#), JCN VA00000165031 (Dec.30, 2020), Exh. C.  
[Payne v. Broad Bay Country Club](#), JCN VA 00000938061 (Dec.30, 2020), Exh. D.  
[Cooper v. City of Virginia Beach](#), JCN VA 00000360230 (Dec.30, 2020), Exh. E.  
[Pruitt v. Gutter Works, Solutions](#), JCN VA00000109473 (Dec.30, 2020), Exh. F.

conflict of interest. Respondent represented both the claimant and the medical provider in the same case. Respondent asserted a claim on behalf of the medical provider for alleged unpaid medical expenses against the claimant's pending reimbursement of funds pursuant to Va. Code § 65.2-309 et seq. The Deputy Commissioner scheduled a telephone conference to discuss the concern over a possible conflict of interest between the claimant and the medical provider regarding the parties' dispute over a third party order. After the conflict was raised, Respondent obtained waivers of the conflicts. The Deputy Commissioner found the conflict was nonwaivable because the medical provider asserted a claim against pro rata reimbursement payments due directly to the claimant via the third party order. Respondent sought reconsideration arguing he obtained waivers from both parties; the matter did not involve adverse claims; and both the claimant and provider sought an opinion defining their respective responsibilities as to present and future medical expenses. The Deputy Commissioner denied reconsideration, and the full Commission affirmed the Deputy Commissioner's holding that the existence of a third-party settlement created a nonwaivable conflict of interest between the claimant and medical provider in violation of Rule of Professional Conduct 1.7(b).

8. In *Richardson v. Maryview Medical Center*, JCN VA 01002422994 (Jul. 9, 2018) the Commission stayed all proceedings in the medical provider's claim pending Respondent's submission of legal authority to continue his concurrent representation of the claimant and medical provider notwithstanding the concurrent conflict of interest. As of December 30, 2020, Respondent had not provided the authority, and the cases remained stayed. The Commission stated as follows:

“We come full circle to the initial grounds for the stay, Mr. Geib's representation of Surgery Center. Maryview Medical Center, a division of the

Bon Secours Health Systems, has 40% interest in Surgery Center. As such, Mr. Geib's successful prosecution of Surgery Center's claim would financially benefit Maryview Medical Center and Bon Secours Health Systems. Meanwhile, Mr. Geib maintains representation of parties seemingly adverse to, or invoking a conflict of interest with, Bon Secours Health Systems: the claimant in *Kennedy v. Food Lion* against Bon Secours DePaul Medical Center, and a medical provider, Wardell Orthopaedics<sup>3</sup>, in *Richardson v. Maryview Medical Center*. Wardell's claim against Maryview Medical Center stands in stark contrast to Surgery Center's claim. Mr. Geib's successful prosecution of Wardell's claim would, potentially, harm the financial interests of Maryview Medical Center, and by their affiliation, the interests of Bon Secours Health Systems. The Commission believes that the inherent dangers of simultaneously representing and attacking the same client are present despite Mr. Geib's insistence that the two entities are entirely distinct from each other in both management and business.

... In some instances, notwithstanding dissimilarity of the subject matter, simultaneous representation of adverse clients creates a presumption of adverse effect on the lawyer's absolute duty of loyalty, unless both clients consent to the multiple representation. Counsel's actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another.

The Commission knows of no waivers completed by any involved parties. Mr. Geib provided no legal or ethical authorities to substantiate his continued representations of Wardell Orthopaedics against Maryview Medical Center. Therefore, all proceedings in Wardell Orthopaedics' claim against Maryview Medical Center are stayed pending counsel's submission of legal authority to continue such representation."

As of April 26, 2021 Respondent withdrew as Richardson's counsel.

**Been v. City of Norfolk, JCN VA00000585787 (Dec. 18, 2019 Dep. Comm'r Order)**

9. Respondent represented claimant who was awarded lifetime medical benefits by Order entered May 14, 2013. Claimant sustained injuries in a February 2012 accident and received treatment in 2012.
10. On August 31, 2018, Respondent, as counsel for one of claimant's medical providers, Chesapeake Bay Pain Medicine, filed a protective medical provider application. Respondent

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<sup>3</sup> In *Fetty v. City of Chesapeake*, JCN VA 00000688079 (Sep. 20, 2016), attached as Exh. H, the Commission vacated as overbroad a portion of an order requiring Respondent to disclose all claimant clients who treated with his medical provider client, Wardell Orthopaedics P.C.

sought to access the web-file to view the case history, and he sought entry of a protective claim.

11. On November 8, 2018, Respondent, as counsel for Chesapeake Bay Pain Medicine, filed a motion to withdraw the medical provider's August 31, 2018 application.
12. By Order entered November 8, 2018, the Commission dismissed without prejudice the Chesapeake Bay Pain Medicine's August 31, 2018 application.
13. Respondent did not withdraw as counsel of record for Chesapeake Bay Pain Medicine.
14. On November 28, 2018, Respondent, as counsel for the claimant, filed a Request for Hearing, which demanded \$164.96 in underpaid medical expenses from the employee/carrier for treatment provided by Chesapeake Bay Pain Medicine for a three week period in 2012. Respondent advised that the claimant would seek attorney's fees pursuant to Va. Code § 65.2-713.
15. On April 10, 2019, Respondent, on behalf of the claimant, submitted for entry a stipulated order providing the carrier would pay 90% of the \$164.96.
16. By letter dated April 24, 2019, Deputy Commissioner Jenkins declined to act on the stipulated order until Respondent addressed the concurrent representation, and the parties either provided (1) clarification regarding the application of the proposed order to the interests of the medical provider or (2) a new stipulated order which so clarified.
17. By response dated May 7, 2019, Respondent asserted that both parties "have an absolute interest in having the medical expenses paid by the Carrier" and that either party he represented had "standing to go forward to seek payment of the unpaid and/or underpaid billed charges and there is no conflict of interest present. . ."
18. In his May 7, 2019 response, Respondent further stated:

I would also note that on April 10, 2019, the Defendants and Claimant's counsel reached an Agreement with regards to the payment of the underpaid bill charges reflective of the medical treatment provided to the Claimant.

19. Instead of addressing Deputy Commissioner Jenkins' concerns regarding the concurrent conflict of interest, on June 13, 2019, Respondent filed a new copy of the proposed stipulated order signed by (1) Respondent as counsel for the claimant; (2) another attorney as counsel for the defendant; and (3) the office manager for the medical provider. The settlement agreement resulted in the reduction by 10% of the claimant's pending claim for full payment and a foreclosure of the medical provider's alternative option to pursue its full claim.
20. Respondent sent Deputy Commissioner Jenkins two more letters, in July and November respectively, and then requested the Commission address the stipulated order.
21. By Order entered December 18, 2019, Deputy Commissioner Jenkins:
  - a. noted the concerns Respondent's simultaneous representation of the claimant and medical provider in the same case raised including the significant risk of adverse interests and the exercise of Respondent's professional judgment on behalf of one client over another;
  - b. observed that these concerns were further heightened by Respondent's statutory right to a fee, pursuant to Va. Code § 65.2-714(B), from the medical provider for any sums recovered on claimant's medical bills. The statutory right to pursue fees further elicited concern as to whether the medical provider could make an informed decision to retain an attorney simultaneously representing the claimant in the same case;

- c. noted that, per the record in the case, it did not appear that the medical provider was involved in the settlement negotiations or the decision to reduce its interests by 10% to compromise the dispute; and
- d. stayed and removed from the hearing docket “all proceedings related to Mr. Geib’s representation of the claimant and the medical provider in this matter. . . pending counsel’s submission of legal authority to continue such concurrent representation.” Deputy Commissioner Jenkins held that:

“before moving forward with consideration of these pending claims with Mr. Geib continuing to concurrently represent the interests of the claimant and the medical provider, it must first be determined whether sufficient and timely actions were taken by counsel to appropriately waive the potential conflict as required by the Rules of Professional Conduct. Also similar to *Richardson*, there is no indication that any of the involved parties have completed any waivers, nor has counsel provided any legal or ethical authorities to substantiate his continued representation of the claimant and medical providers in this matter.”

- 22. On January 10, 2020, Respondent filed a request for interlocutory review of the December 18, 2019 Order.
- 23. By Order entered January 22, 2020, the Commission denied interlocutory review of the December 18, 2019 Order based on the Commission’s review of the file and its holding in *Richardson v. Maryview Medical Center*, JCN VA01002422994 (July 9, 2018).
- 24. Respondent did not respond to the ethical concerns addressed in the December 18, 2019 Order nor did Respondent request the Commission lift the stay.
- 25. On March 23, 2020, Respondent filed a new Request for Hearing in violation of the December 18, 2019 Order staying the case. The Request for Hearing which Respondent filed on March 23, 2020 was identical to the previously pending November 28, 2018 Request for



Hearing that was subject to the December 18, 2019 Order, which stayed Respondent's continuing representation of the claimant and the medical provider in that matter.

26. Respondent did not disclose to the Commission that the matter was stayed.
27. Accordingly, the Commission processed the March 23, 2020 claim and referred the claim to Deputy Commissioner Wise's docket.
28. Respondent did not advise Deputy Commissioner Wise that the matter was stayed, nor did Respondent request referral of the matter back to Deputy Commissioner Jenkins for consideration and determination as to whether he would lift the stay.
29. On March 24, 2020, Respondent filed a letter with the Commission objecting to referral of that matter to the alternative dispute resolution on behalf of the claimant.
30. On May 11, 2020, Respondent filed a letter with Deputy Commissioner Wise stating "that the parties in the above referenced matter have resolved their issues to date. Therefore, the Claimant respectfully requests to withdraw the current claim, with prejudice, pending before the Commission." (Emphasis in original.)
31. This claim was stayed by the December 18, 2019 Order.
32. Respondent did not offer Deputy Commissioner Wise any reason why he filed an identical claim when the initial claim was stayed.
33. By Order entered May 12, 2020, Deputy Commissioner Wise dismissed the March 23, 2020 claim with prejudice and removed it from the Commission's On-The-Record hearing Docket.
34. By Corrected Order entered September 4, 2020 by Deputy Commissioner Jenkins, Deputy Commissioner Wise learned of the December 18, 2019 stay. The Corrected September 4, 2020 Order is attached as Exhibit B.

35. By letter Order entered September 11, 2020, Deputy Commissioner Wise declared his May 12, 2020 Order *void ab initio* as Deputy Commissioner Jenkins retained authority over the case. Alternatively, Deputy Commissioner Wise vacated the May 12, 2020 Order as a result of mistake and imposition on the Commission and referred the matter back to Deputy Commissioner Jenkins. Deputy Commissioner Wise made the following finding, which Respondent did not appeal:

“The March 23, 2020 claim was mistakenly referred to my docket due, at least in part, to the parties’ failure to disclose to the Commission this matter remained under the authority of the Honorable Terry Jenkins, Deputy Commissioner, pursuant to his Order dated December 18, 2019.”

36. In *Cooper v. City of Virginia Beach*, JCN VA00000360230 (Dec. 30, 2020) the Commission observed that Deputy Commissioner Jenkins’

“directive [in *Been*] went completely unheeded. Contrary to Attorney Geib’s assertions, his withdrawal from a case or other activity, or an attempt to do so, was not the equivalent of complying with the initial Order. Rather, it absurdly flew in the face of an unequivocal judicial directive. Attorney Geib’s continued participation in attempts to resolve any conflict does not address the prior existence of the conflict. Most significantly, none of these efforts comported with the mandate issued on December 19, 2019.

An attorney with a pending conflict of interest cannot settle the case in which the conflict exists and then maintain the conflict is moot. To accept such a proposition would allow an attorney engaged in unethical behavior to subvert the Rules of Professional Conduct and absolve himself or herself by effecting a compromise.”

***Flores v. Lowe’s Home Centers, Inc.*, JCN VA00000165031 (Dec. 30, 2020)**  
***Payne v. Broad Bay Country Club*, JCN VA00000930861 (Dec. 30, 2020)**  
***Cooper v. City of Virginia Beach*, JCN VA00000360230 (Dec. 30, 2020)**  
***Pruitt v. Gutter Works Solutions*, JCN VA00000109473 (Dec. 30, 2020)**  
***Shumake v. Sentara Healthcare*, JCN VA00000754691**

37. Respondent represented the medical provider, Sentara, in four medical provider payment applications (*Flores*, *Payne*, *Cooper*, and *Pruitt*) before the Commission. These cases were on Deputy Commissioner Jenkins’ docket. As is set forth, by letter dated January 30, 2020,

Deputy Commissioner Jenkins requested Respondent file a written response by February 10, 2020, as to the impact of certain Rules of Professional Conduct including Rule 1.7 Conflict of Interest in permitting the concurrent representation in *Shumake* and in the four medical payment provider applications and the 20 other cases before the Commission:

- a. In *Flores*, on October 25, 2019, Respondent filed an application alleging that his client, the medical provider, Sentara Healthcare, was owed an underpayment of \$2,391.10 and seeking an evidentiary hearing. On January 7, 2020, the Commission advised that the Alternative Dispute Resolution Department determined that the matter was unresolved and ripe for hearing. That day, Respondent filed a motion to compel responses to discovery requests propounded on the employer and carrier.
- b. In *Payne*, on October 30, 2019, Respondent filed an application alleging that his client, the medical provider, Sentara Healthcare, was owed an underpayment of \$47,142 and seeking an evidentiary hearing.
- c. In *Cooper*, on November 5, 2019, Respondent filed an application alleging that his client, the medical provider, Sentara Healthcare, was owed an underpayment of \$8,223.49 and seeking an evidentiary hearing. On December 10, 2019, the Commission advised that the Alternative Dispute Resolution Department determined that the matter was unresolved and ripe for hearing. On January 6, 2020, the medical provider and the claim administrator, CorVel Corporation, submitted an executed Protective Order for review and entry by Deputy Commissioner Jenkins.
- d. In *Pruitt*, on November 7, 2019, Respondent filed an application alleging that his client, the medical provider, Sentara Healthcare, was owed an underpayment of \$8,159.22 and seeking an evidentiary hearing. Thereafter, the Commission advised that the Alternative Dispute Resolution Department determined that the matter was unresolved and ripe for hearing. On January 6, 2020, the medical provider and the claim administrator, CorVel Corporation, submitted an executed Protective Order for review and entry by Deputy Commissioner Jenkins.

In *Pruitt*, on January 29, 2020, the Commission scheduled a hearing for March 30, 2020. On January 30, Respondent filed a motion to withdraw the pending claim.

38. By letter dated February 17, 2020, Respondent denied any conflict in the referenced cases and provided his rationale.

39. By letter dated February 17, 2020, Respondent asserted that, as to *Shumake*, Deputy Commissioner Jenkins had no jurisdiction over the case which was assigned to Deputy Commissioner Wilder. “That claim is expected to be resolved shortly, as the employer has agreed to the claimant’s providers [sic] recommendations.”
40. In his February 17, 2020 response, Respondent argued that as to *Shumake*, “neither client’s interest is materially adverse to the interests of one another in any way, shape, or form.”
41. Critically, in his February 17, 2020 response Respondent stated: “Nonetheless, it is my intent to withdraw from the Shumake claim. The claimant is now in a position to try to settle her case, given her current clinical condition, and if that occurs that would likely present a conflict of interest.”
42. Notwithstanding Respondent’s written representation to Deputy Commissioner Jenkins, Respondent did not withdraw for five months, after continued litigation and settlement negotiations:
- a. By letter dated February 26, 2020, Respondent requested that Deputy Commissioner Wilder continue the next hearing set for March 3 because the parties were attempting to resolve the issue pending.
  - b. By letter dated June 1, 2020, Respondent requested that Deputy Commissioner Wilder place the matter on the On-The-Record hearing docket for adjudication. Deputy Commissioner Wilder granted Respondent’s request and ordered written stated positions and supporting evidence by July 21, 2020.
  - c. By letter dated July 2, 2020, Respondent informed Deputy Commissioner Wilder of his and the parties’ settlement negotiations and requested the Commission cancel the July 21, 2020 directive and transfer the On-The-Record hearing to the Full and Final Mediation Docket.
43. On September 4, 2020, Deputy Commissioner Jenkins issued the Corrected Order removing Respondent as counsel of record in the four Sentara cases (*Flores, Payne, Cooper, and*

*Pruitt*). Deputy Commissioner Jenkins rejected Respondent's argument that he had no conflict of interest in *Shumake*:

In his response to the Commission's inquiry, Mr. Geib appears to argue that a pending settlement of the claim he is pursuing against Sentara Healthcare, Inc. and the fact that Sentara Healthcare, Inc. never told him it did not intend to pay for the treatment claimed by the claimant, Shumake, somehow absolves the impermissible conflict he created by filing a claim against Sentara Healthcare, Inc[.]—an entity which is also his client in the four matters pending on the undersigned Deputy Commissioner's docket. We hold that it does not.

A review of the Shumake file indicates that contrary to Mr. Geib's assertion, as of today, the parties have not settled that matter, and Mr. Geib continues to represent the interests of the claimant against his client, Sentara Healthcare, Inc. On July 2, 2020, Mr. Geib filed a request to cancel the pending On-The-Record proceeding and have the parties' dispute transferred to the Commission's Mediation Docket for the parties to participate in a full and final mediation on behalf of the claimant, Shumake, against the interests of Sentara Healthcare, Inc., his client in the five pending matters on the undersigned Deputy Commissioner's docket.

In his responsive letters to the Commission's inquiry, Mr. Geib even acknowledged that attempting to settle the claimant's case in *Shumake* would likely cause a conflict. And despite his representation that he intended to withdraw from representation of the claimant due to this likely conflict, Mr. Geib continues to represent the claimant and even now seeks to participate in a full and final mediation to settle that case.

...

Mr. Geib's concurrent conflict present in these matters does not fall within the exception provided under Rule 1.7(b) as there is no indication Sentara [Healthcare], Inc. and the claimant, Janet Shumake, have consented to the conflict, there is no indication that such consent has been memorialized in writing, and most importantly, Rule 1.7(b)(3) applies as Mr. Geib is asserting a claim by his client, [Janet] Shumake, against his other client, Sentara Healthcare, Inc., both of whom he represents in different proceedings before the same tribunal.

Mr. Geib has provided no indication that the parties waived this conflict prior to his entering the concurrent representation, and Mr. Geib has not provided any authority to support an argument that his concurrent representation of a claim against Sentara Healthcare, Inc. falls within some exception to Rule 1.7 of the Rules of Professional Conduct. For these reasons, we hold that Mr. Geib's simultaneous representations of and against Sentara Healthcare, Inc. in these matters has created an impermissible conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct. Just as the Commission stated in *Richardson*

*v. Maryview Medical Center*, JCN VA 01002422994 (Jul. 9, 2018), here, we again find Mr. Geib’s “actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another.”

September 4, 2020 Corrected Order, Exh. B, at pp. 16-18.

44. Only after the September 4, 2020 Order, and only after five months, the above negotiations and continued action, did Respondent, by letter dated September 14, 2020, seek leave to withdraw as counsel in *Shumake*. By Order entered September 16, 2020, Deputy Commissioner Wilder granted Respondent leave to withdraw as counsel in *Shumake*.
45. By Orders entered December 30, 2020, the full Commission affirmed Deputy Jenkins in the four Sentara cases (*Flores, Payne, Cooper, and Pruitt*). Respondent did not appeal the Commission’s Orders.
46. As of May 12, 2021, Respondent has been reviewing his cases and clients, identifying conflicts, and withdrawing as counsel. Respondent notes that the Commission’s electronic filing system deems counsel who appeared in any historical case as current counsel until counsel files a subsequent motion to withdraw as counsel. Respondent expects to finish the identification and withdrawal in all cases by July 1, 2021.

## **II. NATURE OF MISCONDUCT**

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

RULE 1.7 Conflict of Interest: General Rule.

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

- (1) the representation of one client will be directly adverse to another client; or

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph(a), a lawyer may represent a client if each affected client consents after consultation, and:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law;
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
- (4) the consent from the client is memorialized in writing.

#### 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.

#### RULE 8.4 Misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

### **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 are:

1. Certify in writing to Bar Counsel that Respondent does not concurrently represent any adverse parties, and that he has in fact withdrawn from any and all conflicts of interest as identified herein and in violation of Rules 1.7, 1.8, 1.9, and 1.10 on or before July 1, 2021.
2. For a period of THREE (3) years following the entry of this Order, the Respondent shall not engage in any conduct that violates the Virginia Rules of Professional Conduct, including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this paragraph shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by a disciplinary tribunal in Virginia or elsewhere, containing a finding that Respondent has violated one or more provisions of the Rules of Professional Conduct, *provided, however*, that the conduct upon which such finding was based occurred within the period referred to above, and provided, further, that such ruling has become final.

If any of 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 by clear and convincing evidence that he timely complied and timely certified compliance. If the District Committee determines that Respondent did not prove timely compliance and certification by clear and convincing evidence, then the matter shall be certified to the Disciplinary Board for the imposition of the agreed alternate sanction of a three-year suspension. 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.

SECOND DISTRICT SUBCOMMITTEE,  
SECTION II OF THE VIRGINIA STATE BAR



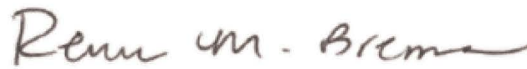
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Corrynn Jessica Peters  
Subcommittee Chair



CERTIFICATE OF MAILING

I certify that on June 11, 2021, a true and complete copy of the Subcommittee Determination Public Reprimand With Terms was sent by certified mail to Philip John Geib, Respondent, at 4360 Shore Dr Ste 103, Virginia Beach, VA 23455, Respondent's last address of record with the Virginia State Bar, and emailed to: [phil@philgeibl.com](mailto:phil@philgeibl.com)



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Renu M. Brennan  
Bar Counsel

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

FRANCIS BEEN v. CITY OF NORFOLK  
NORFOLK CITY OF, Insurance Carrier  
CORVEL CORPORATION, Claim Administrator  
Jurisdiction Claim No. VA00000585787  
Claim Administrator File No. 1197 WC 12 0503114  
Date of Injury: February 22, 2012

ORDER

This matter was referred to the Commission's hearing docket for consideration of the claimant's November 28, 2018 Request for Hearing, which demands full payment for medical treatment be made due to underpayment for treatment provided by the medical provider, Chesapeake Bay Pain Medicine, for the periods of April 19, 2012 through May 10, 2012.

On April 10, 2019, counsel for the claimant, Philip J. Geib, Esquire, filed a letter advising the matters were resolved along with a proposed stipulated order for entry. After review of the proposed stipulated order, the Commission issued the following correspondence to the parties:

The Commission has received the proposed Stipulated Order submitted by the parties on April 10, 2019. Upon review of the proposed Stipulated Order, there appears to be ambiguity as to the affect this order should have on the interests of the medical provider, Chesapeake Bay Pain Medicine.

On the first paragraph of the second page, the agreement states "[p]ursuant to the Stipulated Agreement between the Claimant and/or the Defendant, the Carrier will pay 90% of the underpaid . . ." However, the third paragraph on the second page states ". . . payment is being made in full satisfaction of any medical expenses incurred with the Healthcare Provider and the Defendant shall have no additional payment responsibility to Chesapeake Bay Pain Medicine . . ."

On the last page of the agreement, Ms. Kirkpatrick signed the order on behalf of the Defendant and Mr. Geib signed the Order on behalf of the Claimant. As written, the language of the Stipulated Order appears to extinguish any ongoing claims for further payment that may be asserted by the medical provider; however, it does not appear the medical provider has agreed to the proposed Stipulated Order.



A review of the Commission's file indicates that Mr. Geib also made an appearance in this matter as counsel on behalf of the medical provider, Chesapeake Bay Pain Medicine, when he filed a Medical Provider Application on August 31, 2018. On November 8, 2018, Mr. Geib, as counsel for the medical provider, filed a Motion to Withdraw the medical provider's August 31, 2018 Application. The Commission issued a November 8, 2018 Order dismissing without prejudice the medical provider's August 31, 2018 Application.

Mr. Geib has not withdrawn as counsel of record for the medical provider in this matter; and therefore, it appears Philip J. Geib, Esquire is concurrently representing the claimant and the medical provider, Chesapeake Bay Pain Medicine, in this matter.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); *accord Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is **ORDERED** to file a written response by May 7, 2019, which advises the Commission as to the impact of Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing this concurrent representation before the Workers' Compensation Commission.

The Commission will take no action on the proposed Stipulated Order until the appropriateness of the concurrent representation has been determined and the parties have provided clarification regarding the application of the proposed order to the interests of the medical provider, or if appropriate, a new stipulated order that provides such clarity.

(Emphasis in original.)

Mr. Geib filed a response to the Commission's April 24, 2019 correspondence on May 7, 2019. Additionally, on June 13, 2019, Mr. Geib filed a new copy of the proposed stipulated order signed by Mr. Geib as counsel for the claimant, by Ms. Kirkpatrick as counsel for the defendant, and by Marianne Mayer, the Office Manager for the medical provider, Chesapeake Bay Pain Medicine.

The Commission has addressed concerns involving conflicts of interest related to Mr. Geib's representation of a different medical provider as follows:

Rule 1.6(a) instructs that "[a] lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which . . . would be likely to be detrimental to the client unless the client consents after consultation." Rule 1.7 addresses the general rule regarding a conflict of interest:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) the consent from the client is memorialized in writing.

Rule 1.8(b) provides that "[a] lawyer shall not use information relating to representation of a client for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation." Lastly, Rule 1.9(a) advises that, "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation."

. . . In some instances, notwithstanding dissimilarity of the subject matter, simultaneous representation of adverse clients creates a presumption of adverse effect on the lawyer's absolute duty of loyalty, unless both clients consent to the multiple representation. Counsel's actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another.

The Commission knows of no waivers completed by any involved parties. Mr. Geib has provided no legal or ethical authorities to substantiate his continued representations of Wardell Orthopaedics against Maryview Medical Center. Therefore, all proceedings in Wardell

Orthopaedics' claim against Maryview Medical Center are stayed pending counsel's submission of legal authority to continue such representation.

*Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018).

According to Rule 1.7 (a)(2) of the Virginia Rules of Professional Conduct, a concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. In his May 7, 2019 response to the Commission's inquiry, Mr. Geib asserts that both parties "have an absolute interest in having the medical expenses paid by the Carrier" and that either party he represents have "standing to go forward to seek payment of the unpaid and/or underpaid billed charges and there is no conflict of interest present . . ."

We agree with Mr. Geib that both of his clients have a joint interest in acquiring full payment of the medical provider's entire bill. However, as Mr. Geib explained, in this circumstance, Mr. Geib, apparently acting only on behalf of one client, the claimant, entered into a settlement agreement that resulted in the reduction by 10% of the medical provider's pending claim for full payment. In his May 7, 2019 response to the Commission's inquiry, Mr. Geib stated:

I would also note that on April 10, 2019, the Defendants and Claimant's counsel reached an agreement with regards to the payment of the underpaid bill charges reflective of the medical treatment provided to the Claimant.

Based upon Mr. Geib's statement, it appears he only intended to represent the interests of the claimant when he negotiated the settlement agreement. In such a scenario, it is difficult to imagine how an attorney with a duty of loyalty to both clients can provide legal advice without conflict to both parties regarding their rights, responsibilities and recommended actions regarding settlement of the pending medical charges. On the record before us, it also appears the medical provider was not involved in the settlement negotiations or the decision to reduce its interests by 10% in order to compromise the pending dispute.

Comment No. 8 to Rule 1.7 of the Virginia Rules of Professional Conduct states “[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer’s other responsibility or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. . . .” Here, Mr. Geib’s entry into the settlement on behalf of the claimant, resulted in a 10% reduction of the medical provider’s claim; and therefore, resulted in a foreclosure of the medical provider’s alternative option to pursue its full claim.

Mr. Geib’s relationship with the medical provider is further complicated by his pursuit of the payment of the medical provider’s medical bills on behalf of the claimant pursuant to Virginia Code § 65.2-714(B), a provision which in this instance also provides Mr. Geib with a statutory right to impose a fee for this service on the medical provider without providing the medical provider with legal representation. *See Strickley v. FF Acquisition, L.L.C.*, JCN VA00000783106 (2015)(stating “Virginia Code § 65.2-714(B) contemplates that attorneys who secure the payment of medical expenses should be compensated by the medical providers who directly benefit from those effects”); *see also* Rule 6.2 of the Rules of the Commission (establishing the process for attorneys to obtain fee awards against health care providers for sums recovered). This statutory right to pursue fees against the medical provider for any sums recovered on these bills further calls into question whether a medical provider can even make an informed decision to retain an attorney who is simultaneously representing a claimant in the same case.

Mr. Geib relies on the fact that the medical provider has now acquiesced to the settlement deal he struck on behalf of the claimant as evidenced by the medical provider’s signature and agreement to the re-submitted proposed Stipulated Order. However, such acquiescence by the medical provider, when faced with the choice of whether or not to accept the negotiated settlement proceeds, is more

tantamount to duress than an informed decision.

Similar to the circumstances in *Richardson*, we find counsel's actions in this matter raise serious concerns over simultaneous representation of clients with a significant risk of adverse interests and the exercise of his professional judgment on behalf of one client over another. We hold that before moving forward with consideration of these pending claims with Mr. Geib continuing to concurrently represent the interests of the claimant and the medical provider, it must first be determined whether sufficient and timely actions were taken by counsel to appropriately waive the potential conflict as required by the Rules of Professional Conduct. Also similar to *Richardson*, there is no indication that any of the involved parties have completed any waivers, nor has counsel provided any legal or ethical authorities to substantiate his continued representation of the claimant and medical provider in this matter. In light of the above identified concerns, it is hereby **ORDERED** that all proceedings related to Mr. Geib's representation of the claimant and the medical provider in this matter are **STAYED** and **REMOVED** from the Commission's hearing docket pending counsel's submission of legal authority to continue such concurrent representation.

Any party may appeal this decision to the Commission by filing a Request for Review with the Commission within thirty (30) days of the date of this Order.

Entered this 18th day of December, 2019.

VIRGINIA WORKERS' COMPENSATION COMMISSION

  
\_\_\_\_\_  
Terry L. Jenkins, Deputy Commissioner

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**Additional Parties**

**Chesapeake Bay Pain Medicine**  
329 Edwin Dr  
Virginia Beach, VA 23462-4522

**Bon Secours/DePaul Medical Center**  
150 Kingsley Ln  
Norfolk, VA 23505-4602



**Patrick F Heinen**  
**Paperless**

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**Interested Parties**

Employer:  
CITY OF NORFOLK  
WC CLAIMS MANAGER  
810 Union St  
Norfolk, VA 23510-2717

Injured Worker:  
FRANCIS BEEN  
800 Giles Ct  
Virginia Beach, VA 23453-3314

Patrick F Heinen  
Paperless

Claimant Attorney:  
Phillip J. Geib  
4360 Shore Dr Ste 103-104  
Virginia Beach, VA 23455-2994

Claim Administrator Attorney:  
Emily Kirkpatrick  
300 Arboretum Pl Ste 420  
North Chesterfield, VA 23236-3465

Claim Administrator Attorney:  
Katharina K. Alcorn  
300 Arboretum Pl Ste 420  
North Chesterfield, VA 23236-3465

Claim Administrator:  
CORVEL CORPORATION  
4820 Lake Brook Dr Ste 150  
Glen Allen, VA 23060-9251

Insurance Carrier:  
NORFOLK CITY OF  
810 Union St Ste 100  
Norfolk, VA 23510-2736

**VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION**

**DAVID PRUITT v. GUTTER WORKS, SOLUTIONS**  
BUILDING INDUSTRY INSURANCE ASSOCIATION, Insurance Carrier  
METIS, Claim Administrator  
Jurisdiction Claim No. VA00000109473  
Claim Administrator File No. 20090024937  
Date of Injury June 18, 2009

**ANGELA FLORES v. LOWE'S HOME CENTERS, INC.**  
Lowe's Home Centers, Inc., Insurance Carrier  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC, Claim Administrator  
Jurisdiction Claim No. VA00000165031  
Claim Administrator File No. 0362503007000101625  
Date of Injury September 30, 2009

**TIMOTHY PAYNE v. BROAD BAY COUNTRY CLUB**  
FEDERAL INSURANCE COMPANY, Insurance Carrier  
GALLAGHER BASSETT SERVICES INC, Claim Administrator  
Jurisdiction Claim No. VA00000930861  
Claim Administrator File No. 005524000037WC01  
Date of Injury May 13, 2014

**VIDA SIMPKINS v. CINEMARK HOLDINGS INC**  
LIBERTY INSURANCE CORPORATION, Insurance Carrier  
LIBERTY MUTUAL INSURANCE CO, Claim Administrator  
Jurisdiction Claim No. VA02000013845  
Claim Administrator File No. 80DA44603  
Date of Injury February 10, 2012

**ROBERT COOPER v. CITY OF VIRGINIA BEACH**  
VIRGINIA BEACH CITY OF, Insurance Carrier  
CorVel Enterprise Comp, Claim Administrator  
Jurisdiction Claim No. VA00000360230  
Claim Administrator File No. VA-11-500357  
Date of Injury October 6, 2010

**CORRECTED ORDER**

These matters are before the Commission for consideration of the Commission's inquiry regarding representation by Philip J. Geib, Esquire of Sentara Healthcare, Inc. on pending



JCN VA00000109473; JCN VA00000165031;  
JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230  
medical provider Applications in the five pending cases (JCN VA00000109473; JCN  
VA00000165031; JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230) on  
the undersigned Deputy Commissioner's docket while concurrently representing claimants in 20  
cases (VWC No. 2339146; VWC No. 2393253; JCN VA00001345357; JCN VA00001434730;  
JCN VA00001129625; JCN VA00001060444; JCN VA00000770893; JCN VA00000759173;  
JCN VA00000754651; JCN VA00000754691; JCN VA00000603208; JCN VA00000670300;  
JCN VA00000635036; JCN VA00000569147; JCN VA00000199245; JCN VA00000236685;  
JCN VA00000177751; JCN VA00000362084; JCN VA00000497567; and JCN  
VA00000549871) in which Sentara Healthcare, Inc. is an adverse party insurer.

This matter is not the first time the Commission has inquired regarding the  
appropriateness of Mr. Geib's concurrent representation of claimants and medical providers. In  
*Farr v. Lincoln Property Co.*, JCN VA02000002128, the Commission first inquired regarding  
Mr. Geib's assertion of a medical provider's claim for payment against the claimant's pending  
reimbursement of funds pursuant to a third-party lien. Mr. Geib represented both the claimant  
and the medical provider in that matter, and on review, the Commission confirmed that  
Mr. Geib's assertion of a claim on behalf of the medical provider against the interests of the  
claimant was an impermissible conflict of interest pursuant to Rule 1.7(b) of the Rules of  
Professional Conduct, and Mr. Geib was removed as counsel for the medical provider. *Farr*,  
JCN VA02000002128 (Jan. 9, 2015).

In *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sept. 20, 2016), the Commission  
determined that Mr. Geib's representation of the medical provider and the claimant in that matter

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

did not create a concurrent conflict of interest where the pending dispute was the medical provider's claim for payment of the medical bills pursuant to awarded medical treatment and settlement negotiations between the parties was unlikely at that time.

In *Richardson v. Maryview Medical Center*, JCN VA01002422994, the full Commission performed an inquiry into Mr. Geib's concurrent representations connected to a different medical provider, Bon Secours Health System, Inc., and issued an Order, in relevant part, stating:

We come full circle to the initial grounds for the stay, Mr. Geib's representation of Surgery Center. Maryview Medical Center, a division of the Bon Secours Health Systems, has 40% interest in Surgery Center. As such, Mr. Geib's successful prosecution of Surgery Center's claim would financially benefit Maryview Medical Center and Bon Secours Health Systems. Meanwhile, Mr. Geib maintains representation of parties seemingly adverse to, or invoking a conflict of interest with, Bon Secours Health Systems: the claimant in *Kennedy v. Food Lion* against Bon Secours DePaul Medical Center, and a medical provider, Wardell Orthopaedics, in *Richardson v. Maryview Medical Center*. Wardell's claim against Maryview Medical Center stands in stark contrast to Surgery Center's claim. Mr. Geib's successful prosecution of Wardell's claim would, potentially, harm the financial interests of Maryview Medical Center, and by their affiliation, the interests of Bon Secours Health Systems. The Commission believes that the inherent dangers of simultaneously representing and attacking the same client are present despite Mr. Geib's insistence that the two entities are entirely distinct from each other in both management and business.

Rule 1.6(a) instructs that "[a] lawyer shall not reveal information protected by the attorney-client privilege under applicable law or other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which . . . would be likely to be detrimental to the client unless the client consents after consultation." Rule 1.7 addresses the general rule regarding a conflict of interest:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

- (1) the representation of one client will be directly adverse to another client; or
  - (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:
- . . . .
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  - (4) the consent from the client is memorialized in writing.

Rule 1.8(b) provides that "[a] lawyer shall not use information relating to representation of a client for the advantage of the lawyer or of a third person or to the disadvantage of the client unless the client consents after consultation." Lastly, Rule 1.9(a) advises that, "[a] lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless both the present and former client consent after consultation."

. . .

. . . In some instances, notwithstanding dissimilarity of the subject matter, simultaneous representation of adverse clients creates a presumption of adverse effect on the lawyer's absolute duty of loyalty, unless both clients consent to the multiple representation. Counsel's actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another.

The Commission knows of no waivers completed by any involved parties. Mr. Geib has provided no legal or ethical authorities to substantiate his continued

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

representations of Wardell Orthopaedics against Maryview Medical Center. Therefore, all proceedings in Wardell Orthopaedics' claim against Maryview Medical Center are stayed pending counsel's submission of legal authority to continue such representation.

*Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018). As of today, Mr. Geib has taken no action since that matter was stayed by the Commission on July 9, 2018, and the pending action of his client remains undetermined.

In *Lister v. Management Consulting Inc.*, JCN VA00000649736, the undersigned Deputy Commissioner inquired into Mr. Geib's concurrent representation of both the claimant and medical provider in that matter and issued an Opinion on July 25, 2018, which in pertinent part, states:

According to Rule 1.7 (a)(2) of the Virginia Rules of Professional Conduct, a concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. In response to the Commission's inquiry, counsel has defined the pending dispute as one for the recovery of "underpaid billed charges." However, a review of the parties' written statements regarding the pending claims indicates the defendants have also disputed their liability to pay for any portion of the medical provider's charges related to Claimant's left hip and low back, body parts for which no medical award has been entered.

If counsel is unsuccessful in his prosecution of the pending claims on behalf of the medical provider for payment of medical treatment related to Claimant's left hip and lower back, a direct conflict between the claimant and the medical provider will then arise and place counsel in an untenable position. In the event those pending bills are determined to be unrelated to this work injury, the medical provider will then be free to pursue his available civil remedies against Claimant. In such a scenario, it is difficult to imagine how an attorney with a duty of loyalty to both clients can provide legal advice without conflict to both parties regarding their rights, responsibilities and recommended actions regarding the pending medical charges in the event they are no longer compensable under the Act.

In light of the significant risk that this potential conflict may arise at the conclusion of the pending dispute, and because the outcome of the pending

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

dispute will be the determining factor of whether the conflict arises, we hold that before moving forward with consideration of these determinative claims of the medical provider for payment of medical bills with Mr. Geib continuing to represent the interests of the medical provider, it must first be determined whether sufficient and timely actions were taken by counsel to appropriately waive the potential conflict as required by Rules of Professional Conduct.

While we find the concurrent conflict identified between the medical provider and Claimant in this matter to be concerning and necessitates further inquiry as set forth above, we are more troubled by counsel's actions in response to this ethical inquiry. In a stated effort "to promote judicial economy, and to alleviate repetitive pleadings," and an apparent attempt to eliminate the concurrent conflict, counsel exercised what can best be described as an act of double agency on behalf of both clients by moving to "substitute" Claimant, with the medical provider's "acquiescence," with the right to pursue the medical provider's interests in the billed charges at issue in this matter. Counsel's willingness to transfer rights between clients he concurrently represents in the interest of expediency is troubling. As demonstrated below, such a transfer of interests between clients by their shared counsel creates inherent pitfalls faced by counsel who concurrently represent clients with often similar, but sometimes competing interests.

The relationship between counsel, Claimant and the medical provider has been further complicated by counsel's July 16, 2018 Notice of Lien Asserted, which "advised that [he] no longer represent[s] the claimant" in this matter. Counsel now seeks from Claimant reimbursement of \$834.24 in advanced costs, *quantum meruit* consideration against any future settlement of Claimant's interests, and deductions from Claimant's ongoing future indemnity payments in order to satisfy previously awarded attorney's fees totaling \$3,650. Counsel's Notice of Lien and Request for Leave to Withdraw as counsel for Claimant in this matter is silent as to what affect this modification of the relationships between counsel, Claimant and the medical provider may have on the March 28, 2018 "substitution" of Claimant as the party to prosecute the medical provider's interests in the pending medical bills.

In regard to counsel's expressed intention to no longer represent Claimant in this matter, and in light of the recent adverse positions between Mr. Geib and Claimant regarding Mr. Geib's Notice of Lien, it is hereby **ORDERED** that Philip J. Geib, Esquire be **GRANTED LEAVE** to withdraw as Mr. Geib for the claimant in this matter.

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Claimant filed two July 17, 2018 responses to Mr. Geib's Notice of Lien, and on July 23, 2018, Mr. Geib filed a reply to Claimant's responses stating his "desire that the entirety of [his] accumulated previously awarded fees, as well as [his] expected costs, be paid now in full." In light of the dispute between Claimant and Mr. Geib regarding the claimed attorney's fees and costs, and there being uncertainty as to what interests of Claimant, if any, may have been affected, including any attribution of shared costs and fees between Claimant and the medical provider, both of whom were concurrently represented by Mr. Geib from October 11, 2017 until now, it is determined that an evidentiary hearing is necessary for further consideration of Mr. Geib's Notice of Lien. Accordingly, Mr. Geib's July 16, 2018 Notice of Lien, Claimant's two July 17, 2018 responses and Mr. Geib's July 23, 2018 reply are hereby **REFERRED** to the hearing docket for further consideration.

Similar to the circumstances in Richardson, we find counsel's actions in this matter raise serious concerns over simultaneous representation of clients with a significant risk of adverse interests and the exercise of his professional judgment on behalf of one client over another. Also similar to Richardson, there is no indication that any of the involved parties have completed any waivers, nor has counsel provided any legal or ethical authorities to substantiate his continued representation of the medical provider in this matter. In light of the above identified concerns, and the further uncertainty resulting from counsel's withdraw of representation from Claimant and assertion of a lien claim against Claimant's ongoing indemnity payments and future settlement of this matter, it is hereby **ORDERED** that all proceedings related to counsel's prosecution of the medical provider's claims for payment of bills in this matter are **STAYED** and **REMOVED** from the Commission's hearing docket pending counsel's submission of legal authority to continue such representation.

*Lister v. Management Consulting Inc.*, JCN VA00000649736 at 6-9 (Jul. 25, 2018 Dep. Comm. Op.); *interlocutory review denied and stay lifted* (Sept. 19, 2018).

Most recently, in *Been v. City of Norfolk*, JCN VA00000585787, another inquiry was performed regarding Mr. Geib's concurrent representation of a claimant and medical provider in that matter, resulting in the following Order:

This matter was referred to the Commission's hearing docket for consideration of the claimant's November 28, 2018 Request for Hearing, which demands full payment for medical treatment be made due to underpayment for treatment provided



JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

by the medical provider, Chesapeake Bay Pain Medicine, for the periods of April 19, 2012 through May 10, 2012.

On April 10, 2019, Mr. Geib for the claimant, Philip J. Geib, Esquire, filed a letter advising the matters had been resolved by the parties along with a proposed stipulated order for entry. After review of the proposed stipulated order, the Commission issued the following correspondence to the parties:

The Commission has received the proposed Stipulated Order submitted by the parties on April 10, 2019. Upon review of the proposed Stipulated Order, there appears to be ambiguity as to the affect this order should have on the interests of the medical provider, Chesapeake Bay Pain Medicine.

On the first paragraph of the second page, the agreement states “[p]ursuant to the Stipulated Agreement between the Claimant and/or the Defendant, the Carrier will pay 90% of the underpaid . . .” However, the third paragraph on the second page states “. . . payment is being made in full satisfaction of any medical expenses incurred with the Healthcare Provider and the Defendant shall have no additional payment responsibility to Chesapeake Bay Pain Medicine . . .”

On the last page of the agreement, Ms. Kirkpatrick signed the order on behalf of the Defendant and Mr. Geib signed the Order on behalf of the Claimant. As written, the language of the Stipulated Order appears to extinguish any ongoing claims for further payment that may be asserted by the medical provider; however, it does not appear the medical provider has agreed to the proposed Stipulated Order.

A review of the Commission’s file indicates that Mr. Geib also made an appearance in this matter as counsel on behalf of the medical provider, Chesapeake Bay Pain Medicine, when he filed a Medical Provider Application on August 31, 2018. On November 8, 2018, Mr. Geib, as counsel for the medical provider, filed a Motion to Withdraw the medical provider’s August 31, 2018 Application. The Commission issued a November 8, 2018 Order dismissing without prejudice the medical provider’s August 31, 2018 Application.

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Mr. Geib has not withdrawn as counsel of record for the medical provider in this matter; and therefore, it appears Phillip J. Geib, Esquire is concurrently representing the claimant and the medical provider, Chesapeake Bay Pain Medicine, in this matter.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); *accord Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is **ORDERED** to file a written response by May 7, 2019, which advises the Commission as to the impact of Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing this concurrent representation before the Workers' Compensation Commission.

The Commission will take no action on the proposed Stipulated Order until the appropriateness of the concurrent representation has been determined and the parties have provided clarification regarding the application of the proposed order to the interests of the medical provider, or if appropriate, a new stipulated order that provides such clarity.

(Emphasis in original.)

Mr. Geib filed a response to the Commission's April 24, 2019 correspondence on May 7, 2019. Additionally, on June 13, 2019, Mr. Geib filed a new copy of the proposed stipulated order signed by Mr. Geib as counsel for the claimant, by Ms. Kirkpatrick as counsel for the defendant, and by Marianne Mayer, the Office Manager for the medical provider, Chesapeake Bay Pain Medicine.

According to Rule 1.7 (a)(2) of the Virginia Rules of Professional Conduct, a concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. In his May 7, 2019 response to the Commission's inquiry, Mr. Geib asserts that both parties "have an absolute interest in having the medical expenses paid by the Carrier" and that either party he represents have "standing to go forward to seek payment of the unpaid and/or underpaid billed charges and there is no conflict of interest present . . ."

We agree with Mr. Geib that both of his clients have a joint interest in acquiring full payment of the medical provider's entire bill. However, as Mr. Geib

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

explained, in this circumstance, Mr. Geib, apparently acting only on behalf of one client, the claimant, entered into a settlement agreement that resulted in the reduction by 10% of the medical provider's pending claim for full payment. In his May 7, 2019 response to the Commission's inquiry, Mr. Geib stated:

I would also note that on April 10, 2019, the Defendants and Claimant's counsel reached an agreement with regards to the payment of the underpaid bill charges reflective of the medical treatment provided to the Claimant.

Based upon Mr. Geib's statement, it appears he only intended to represent the interests of the claimant when he negotiated the settlement agreement. In such a scenario, it is difficult to imagine how an attorney with a duty of loyalty to both clients can provide legal advice without conflict to both parties regarding their rights, responsibilities and recommended actions regarding settlement of the pending medical charges. On the record before us, it also appears the medical provider was not involved in the settlement negotiations or the decision to reduce its interests by 10% in order to compromise the pending dispute.

Comment No. 8 to Rule 1.7 of the Virginia Rules of Professional Conduct states "[l]oyalty to a client is also impaired when a lawyer cannot consider, recommend or carry out an appropriate course of action for the client because of the lawyer's other responsibility or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. . . ." Here, Mr. Geib's entry into the settlement on behalf of the claimant, resulted in a 10% reduction of the medical provider's claim; and therefore, resulted in a foreclosure of the medical provider's alternative option to pursue its full claim.

Mr. Geib's relationship with the medical provider is further complicated by his pursuit of the payment of the medical provider's medical bills on behalf of the claimant pursuant to Virginia Code § 65.2-714(B), a provision which in this instance also provides Mr. Geib with a statutory right to impose a fee for this service on the medical provider without providing the medical provider with legal representation. *See Strickley v. FF Acquisition, L.L.C.*, JCN VA00000783106 (2015)(stating "Virginia Code § 65.2-714(B) contemplates that attorneys who secure the payment of medical expenses should be compensated by the medical providers who directly benefit from those effects"); *see also* Rule 6.2 of the Rules of the Commission (establishing the process for attorneys to obtain fee awards against health care providers for sums recovered). This statutory right to pursue fees against the medical provider for any sums recovered on these bills further calls into question whether a medical provider can even make an informed decision to retain an attorney who is simultaneously representing a claimant in the same case.

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Mr. Geib relies on the fact that the medical provider has now acquiesced to the settlement deal he struck on behalf of the claimant as evidenced by the medical provider's signature and agreement to the re-submitted proposed Stipulated Order. Such acquiescence by the medical provider, when faced with the choice of whether or not to accept the negotiated settlement proceeds, is more tantamount to duress than an informed decision.

Similar to the circumstances in *Richardson*, we find counsel's actions in this matter raise serious concerns over simultaneous representation of clients with a significant risk of adverse interests and the exercise of his professional judgment on behalf of one client over another. We hold that before moving forward with consideration of these pending claims with Mr. Geib continuing to concurrently represent the interests of the claimant and the medical provider, it must first be determined whether sufficient and timely actions were taken by counsel to appropriately waive the potential conflict as required by the Rules of Professional Conduct. Also similar to *Richardson*, there is no indication that any of the involved parties have completed any waivers, nor has counsel provided any legal or ethical authorities to substantiate his continued representation of the claimant and medical provider in this matter. In light of the above identified concerns, it is hereby **ORDERED** that all proceedings related to Mr. Geib's representation of the claimant and the medical provider in this matter are **STAYED** and **REMOVED** from the Commission's hearing docket pending counsel's submission of legal authority to continue such concurrent representation.

*Been v. City of Norfolk*, JCN VA00000585787 (Dec. 18, 2019 Dep. Comm'r. Order)(emphasis in original). A review of the file in that matter indicates that on January 10, 2020, Mr. Geib filed a Request for Interlocutory Review of that decision. On January 22, 2020, the Commission issued an Order denying Mr. Geib's request for interlocutory review. Mr. Geib has taken no further action to respond to the ethical concerns raised in the December 18, 2019 Order, or otherwise requested that the stay be lifted.

Despite the fact that all proceedings related to Mr. Geib's representation of the claimant and the medical provider in that case were stayed, Mr. Geib continued to make representations

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

on behalf of the claimant in that matter. Mr. Geib filed a new Request for Hearing on behalf of the claimant on March 23, 2020 in that matter. This new Request for Hearing was identical to the previously pending November 28, 2018 Request for Hearing that was subject to the Commission's December 18, 2019 Order, which stayed Mr. Geib's continuing representation of the claimant and medical provider in that matter. On March 24, 2020, Mr. Geib filed a letter with the Commission objecting to referral of that matter to the alternative dispute resolution on behalf of the claimant. More concerning, on May 11, 2020, Mr. Geib filed a letter to Deputy Commissioner Wise stating "that the parties in the above referenced matter have resolved their issues to date. Therefore, the Claimant respectfully requests to withdraw the current claim, with prejudice, pending before the Commission." (Emphasis in original.) This same dispute over the payment of medical bills, in which Mr. Geib negotiated a 10% reduction of the medical provider's bill in order to settle the claimant's pending claim, was the conflicted action by Mr. Geib which gave rise to the stay issued by the Commission on December 18, 2019. In Mr. Geib's most recent representation to Deputy Commissioner Wise, no details are provided regarding the resolution of the issues.

There is also no indication in the Commission's file that either Mr. Geib or Emily Kirkpatrick, Esquire, counsel for the claim administrator in that dispute, advised Deputy Commissioner Wise that Mr. Geib's representation of the claimant and the medical provider in that matter had been stayed in regard to adjudication of that identical dispute. Relying upon Mr. Geib's representation, Deputy Commissioner Wise entered an Order on May 12, 2020 dismissing with prejudice the claimant's March 23, 2020 claim.

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Having reviewed the history of these inquiries, we now turn to the inquiry regarding Mr. Geib's concurrent representations of the medical provider, Sentara Healthcare, Inc. in the five instant matters and Mr. Geib's representation of claimants in 20 separate matters against the interests of Sentara Healthcare, Inc., the party Insurer in those 20 matters.

The Commission issued Orders to Mr. Geib in JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230.

Those orders stated the following:

This matter is before the Commission for consideration of the medical provider's claim[s]<sup>1</sup> filed by . . . on behalf of Sentara Healthcare, Inc. The Commission's records indicate that you are simultaneously representing the interests of claimants against Sentara Healthcare, Inc., the party insurer, in the following cases: VWC No. 2339146; VWC No. 2393253; JCN VA00001345357; JCN VA00001434730; JCN VA00001129625; JCN VA00001060444; JCN VA00000770893; JCN VA00000759173; JCN VA00000754651; JCN VA00000754691; JCN VA00000603208; JCN VA00000670300; JCN VA00000635036; JCN VA00000569147; JCN VA00000199245; JCN VA00000236685; JCN VA00000177751; JCN VA00000362084; JCN VA00000497567; and JCN VA00000549871.

Most concerning, it appears you are actively litigating in *Shumake v. Sentara Healthcare*, JCN VA00000754691, a claim on behalf of the claimant against Sentara Healthcare, Inc.'s interests. That matter is currently on the Commission's evidentiary docket and scheduled for a hearing on March 2, 2020 before Deputy Commissioner Wilder.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); accord *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is ORDERED to file a written response by<sup>2</sup> . . . which advises the Commission as to the impact of

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<sup>1</sup> Each Order separately identified the dates in which Counsel filed the pending medical provider claims on behalf of Sentara Healthcare, Inc.

<sup>2</sup> By subsequent Orders, Counsel was granted extensions for the filing of his responses.

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing these concurrent representations before the Workers' Compensation Commission.

(Emphasis in original).

In response to the Commission's inquiry, Mr. Geib filed a letter in JCN VA02000013845 stating he does not currently represent Sentara Healthcare in that matter, and that the pending claim for payment of medical bills was asserted only on behalf of the claimant. Upon further review of that file, we agree with Mr. Geib that he has not made an appearance on behalf of Sentara Healthcare, Inc. in that matter. Therefore, it is found that the notation in the Commission's file that Mr. Geib is counsel of record for Sentara Healthcare, Inc. is erroneous. Therefore, no further inquiry regarding concurrent representation is necessary in regard to the matter of JCN VA02000013845.

Additionally, in response to the Commission's inquiry, Mr. Geib filed identical letters in the matter of JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, asserting, among other things, "[t]here is no active, real or apparent concurrent conflicts of interest present or otherwise."

This issue before the Commission in JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, the only matters currently docketed before the undersigned Deputy Commissioner, is whether Mr. Geib should be allowed to continue representation of Sentara Healthcare, Inc. in light of his numerous identified concurrent representations of claimants against the interests of Sentara Healthcare, Inc.; which is the party insurer in those matters.

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

We first consider the most concerning identified concurrent representation of Janet Shumake, the claimant in *Shumake v. Sentara Healthcare*, JCN VA00000754691. In that case, Mr. Geib represents the claimant against the employer, Sentara Healthcare, and the insurer, Sentara Healthcare, Inc. Concurrently, Mr. Geib is also representing the interests of Sentara Healthcare, Inc. in medical provider applications seeking payment of medical bills in the four matters (JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230) pending on the undersigned Deputy Commissioner's docket.

Specific to the concern over his representation of the claimant in *Shumake*, against the interests of Sentara Healthcare, Inc. (his client in the four matters on the undersigned Deputy Commissioner's docket), Mr. Geib states:

- JCN: VA00000754691; Janet Shumake v. Sentara Healthcare. This is a claim assigned to another Deputy Commissioner for adjudication and is not subject to the jurisdiction of the present Deputy Commissioner. That claim is expected to be resolved shortly, as the employer has agreed to the claimant's providers recommendations.

With regards to the matter referenced in your January 22, 2020 Order involving the claim *Shumake* (JCN VA00000754691) that claimant last had a Stipulated Award entered in 2015.

The present claim, to be heard by Deputy Commissioner Wilder referenced above, results from a prescription written by the claimant's healthcare provider and neurosurgeon Dr. Partington who prescribed a mattress/bed for the claimant.

The claimant remains under a medical Award that was entered and that Award was Final some time ago whereas the carrier remains responsible to pay for and be responsible for the reasonable, necessary and related medical expenses and or medical treatment which includes the responsibility to pay for a prescribed bed.

That medical Award, fixing responsibility of the employer and/or carrier of Ms. Shumake was fixed in place in 2015.



JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

The employer and/or carrier and/or third-party administrator PMA has not indicated they would not comply with the previous Awards of the Commission and otherwise provide the bed prescribed. In fact, the employer has agreed to provide the prescribed bed and that hearing request scheduled with another Deputy, will be withdrawn. The current representation of Sentara Healthcare is therefore not directly adverse to the other client and vice versa. There is no risk that the representation of either client will be materially limited or otherwise affect the responsibilities to the other client giving the complete disparate relationship between the claims and in light of the Award of ongoing medical benefits. The employer and/or carrier and third-party administrator PMA have not indicated they are not going to comply with the previous Award of the Commission and contest or otherwise not comply with an Award of medical benefits entered into and made final in 2015. There is no impact affecting the Professional Rules of Conduct regarding my past or present representation in that case.

...

Nevertheless, it is my intent to withdraw from the Shumake claim. That claimant is now in a position to try to settle her case, given her current clinical condition, and if that occurs that would likely present a conflict of interest.

(Emphasis in original.)

In his response to the Commission's inquiry, Mr. Geib appears to argue that a pending settlement of the claim he is pursuing against Sentara Healthcare, Inc. and the fact that Sentara Healthcare, Inc. never told him it did not intend to pay for the treatment claimed by the claimant, Shumake, somehow absolves the impermissible conflict he created by filing a claim against Sentara Healthcare, Inc.—an entity which is also his client in the four matters pending on the undersigned Deputy Commissioner's docket. We hold that it does not.

A review of the *Shumake* file indicates that contrary to Mr. Geib's assertion, as of today, the parties have not settled that matter, and Mr. Geib continues to represent the interests of the claimant against his client, Sentara Healthcare, Inc. On July 2, 2020, Mr. Geib filed a request to

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

cancel the pending On-The-Record proceeding and have the parties' dispute transferred to the Commission's Mediation Docket for the parties to participate in full and final mediation. It now appears Mr. Geib intends to participate in a full and final mediation on behalf of the claimant, Shumake, against the interests of Sentara Healthcare, Inc., his client in the five pending matters on the undersigned Deputy Commissioner's docket.

In his responsive letters to the Commission's inquiry, Mr. Geib even acknowledged that attempting to settle the claimant's case in *Shumake* would likely cause a conflict. And despite his representation that he intended to withdraw from representation of the claimant due to this likely conflict, Mr. Geib continues to represent the claimant and even now seeks to participate in a full and final mediation to settle that case.

Rule 1.7 addresses the general rule regarding a conflict of interest as follows:

- (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - (1) the representation of one client will be directly adverse to another client; or
  - (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- (b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if each affected client consents after consultation, and:
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

(4) the consent from the client is memorialized in writing.

Mr. Geib's concurrent conflict present in these matters does not fall within the exception provided under Rule 1.7(b) as there is no indication Sentara Healthcare, Inc. and the claimant, Janet Shumake, have consented to the conflict, there is no indication that such consent has been memorialized in writing, and most importantly, Rule 1.7(b)(3) applies as Mr. Geib is asserting a claim by his client, Karen Shumake, against his other client, Sentara Healthcare, Inc., both of whom he represents in different proceedings before the same tribunal.

Mr. Geib has provided no indication that the parties waived this conflict prior to his entering the concurrent representation, and Mr. Geib has not provided any authority to support an argument that his concurrent representation of a claim against Sentara Healthcare, Inc. falls within some exception to Rule 1.7 of the Rules of Professional Conduct. For these reasons, we hold that Mr. Geib's simultaneous representations of and against Sentara Healthcare, Inc. in these matters has created an impermissible conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct. Just at the Commission stated in *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), here, we again find Mr. Geib's "actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another."

In similar prior matters in which Mr. Geib has not provided a satisfactory response to the Commission's inquires, the Commission has stayed proceedings to afford Mr. Geib the opportunity to submit authority or otherwise to demonstrate how such concurrent representations should be allowed in accordance with the Rules of Professional Conduct. For example, the

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Commission's July 9, 2018 Order stayed the proceedings in *Richardson*, JCN VA01002422994. Mr. Geib has taken no action to address the Commission's concerns since that matter was stayed, and the interests of his client in that matter remain undetermined.

Even more troubling than Mr. Geib's lack of action in response to the Commission's staying of the proceedings in *Richardson* are the actions taken by Mr. Geib in *Been*, JCN VA00000585787, following the stay placed on those proceedings by Order issued on December 18, 2019. Despite the stay placed on his representation of the claimant and medical provider in that matter, and after the Commission's denial of his Request for Interlocutory Review of that Stay Order, Mr. Geib continued representing the interests of the claimant by re-filing an identical claim and obtaining a dismissal of the claimant's claim with prejudice from a newly assigned Deputy Commissioner. We therefore hold the impermissible conflict of interest created by Mr. Geib's representation of the claimant, Karen Shumake, against Sentara Healthcare, Inc. in JCN VA00000754691 necessitates removal of Mr. Geib from further representation of Sentara Healthcare, Inc.'s interests in the matters pending before the undersigned Deputy Commissioner. Because Mr. Geib is being disqualified from these matters, it is unnecessary to further determine whether Mr. Geib's ongoing representation of the claimants in the other 19 matters against the interests of Sentara Healthcare, Inc. have also created impermissible conflicts of interest.

For these reasons, it is hereby **ORDERED** that Philip J. Geib, Esquire be **REMOVED** as counsel of record for Sentara Healthcare, Inc., the medical provider, in the following matters: JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230.

Mr. Geib correctly states that the undersigned Deputy Commissioner has no jurisdiction

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

over his representation of the claimant in *Shumake*, JCN VA00000754691 because that dispute is pending on the docket of a different Deputy Commissioner. Because the undersigned has no jurisdiction to address the appropriateness of Mr. Geib's actions before Deputy Commissioner Wilder, and in light of Mr. Geib's continued representation of the claimant, Janet Shumake, against the interests of Sentara Healthcare, Inc. in JCN VA00000754691 in violation of Rule 1.7 of the Rules of Professional Conduct, a copy of this Order SHALL be forwarded to Deputy Commissioner Lee Wilder in *Shumake v. Sentara Healthcare*, JCN VA00000754691 and to the Intake Office, Office of Bar Counsel, Virginia State Bar, 1111 East Main, Suite 700, Richmond, Virginia 23219-0026 regarding Mr. Geib's violation of Rule 1.7 of the Rules of Professional Conduct and any further consideration they deem necessary in connection with Mr. Geib's continued representation of the claimant, Janet Shumake, against the interests of Sentara Healthcare, Inc. in *Shumake v. Sentara Healthcare*, JCN VA00000754691.

Additionally, the undersigned Deputy Commissioner has no jurisdiction over Mr. Geib's representation of the claimant in *Been v. City of Norfolk*, JCN VA00000585787 before Deputy Commissioner Wise. Because the undersigned has no jurisdiction to address the appropriateness of Mr. Geib's actions before Deputy Commissioner Wise, a copy of this Order SHALL be forwarded to Deputy Commissioner D. Edward Wise, Jr. in *Been v. City of Norfolk*, JCN VA00000585787 for any further consideration the Deputy Commissioner may deem necessary regarding Mr. Geib's continued representation of the claimant before the Commission, resulting in the issuance of an Order dismissing the claimant's claim with prejudice on May 12, 2020, without advising the Deputy Commissioner that his further representation of the claimant in that

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

matter was stayed effective December 18, 2019.

In light of the removal of Mr. Geib from the representation of Sentara Healthcare, Inc., the insurer in the matters of JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, the following disposition shall apply to each matter specifically, as follows:

1) *Pruitt v. Gutter Works, Solutions*, JCN VA00000109473

This matter is pending on the hearing docket for consideration of the Medical Provider's Application filed on November 7, 2019. On January 30, 2020, Mr. Geib filed a letter on behalf of Sentara Healthcare, Inc. seeking to withdraw the pending application without prejudice. The Commission hereby **DIRECTS** Sentara Healthcare, Inc. to provide written clarification as to whether it still wishes to withdraw its November 7, 2019 Application. If the medical provider does not advise the Commission regarding its position within the next thirty (30) days, then the pending Medical Provider Application will be scheduled for an evidentiary hearing in the normal course.

2) *Flores v. Lowe's Home Centers, Inc.*, JCN VA00000165031

This matter is on the hearing docket for consideration of the Medical Provider's Application filed on October 25, 2019. On February 21, 2020, Mr. Geib filed a Stipulated Order and requested its entry on behalf of the medical provider, Sentara Healthcare, Inc. The Commission hereby **ADVISES** Sentara Healthcare, Inc. that it will take no action on the proposed Stipulated Order until the medical provider advises in writing whether it still agrees to entry of the Stipulated Order submitted by Mr. Geib. If the medical provider does not advise the

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

Commission regarding its position on the proposed Stipulated Order within the next thirty (30) days, then the pending Medical Provider Application will be scheduled for an evidentiary hearing in the normal course.

3) *Payne v. Broad Bay Country Club*, JCN VA00000930861

This matter is pending on the hearing docket for consideration of the Medical Provider's Application filed on October 30, 2019, and this matter shall be scheduled for an evidentiary hearing in the normal course.

4) *Cooper v. City of Virginia Beach*, JCN VA00000360230

This matter is pending on the hearing docket for consideration of the Medical Provider's Application filed on November 5, 2019. On January 27, 2020, Mr. Geib filed a request on behalf of Sentara Healthcare, Inc. requesting to withdraw the pending Application without prejudice. The Commission hereby **DIRECTS** Sentara Healthcare, Inc. to provide written clarification as to whether it still wishes to withdraw its November 5, 2019 Application. If the medical provider does not advise the Commission regarding its position within the next thirty (30) days, then the pending Medical Provider Application will be scheduled for an evidentiary hearing in the normal course.

Additionally, on January 6, 2020, the defendants filed a proposed Protective Order for entry, which was signed by Mr. Geib on behalf of Sentara Healthcare, Inc. The parties are **ADVISED** that the Commission will take no action on the proposed Protective Order until Sentara Healthcare, Inc. advises in writing whether it still agrees to entry of the Protective Order.

Any party may appeal this decision to the Commission by filing a Request for Review

JCN VA00000109473; JCN VA00000165031;

JCN VA00000930861; JCN VA02000013845; and JCN VA00000360230

with the Commission within thirty (30) days of the date of this Order.

Entered this 4th day of September, 2020.

VIRGINIA WORKERS' COMPENSATION COMMISSION



Terry L. Jenkins  
Deputy Commissioner

cc:

The Hon. Lee Wilder

Deputy Commissioner

Via Webfile in *Shumake v. Sentara Healthcare*, JCN VA00000754691

The Hon. D. Edward Wise, Jr.

Deputy Commissioner

Via Webfile in *Been v. City of Norfolk*, JCN VA00000585787

Intake Office  
Office of Bar Counsel  
Virginia State Bar  
1111 East Main, Suite 700  
Richmond, Virginia 23219-0026



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**Additional Parties**

**Sentara Healthcare**  
535 Independence Pkwy Ste 600  
Chesapeake, VA 23320-5181

**Neurosurgical Associates**  
301 Riverview Ave Ste 400  
Norfolk, VA 23510-1065

**ROBERT COOPER**  
1785 River Rock Arch  
Virginia Beach, VA 23456-6155

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**Interested Parties**

Employer:

CITY OF VIRGINIA BEACH  
2400 Courthouse Dr  
Virginia Beach, VA 23456-9130

Insurance Carrier:

VIRGINIA BEACH CITY OF  
Jeffrey Rodarmel Risk Management Administrator  
2400 Courthouse Dr., Bldg 22  
Virginia Beach, VA 23456

Philip J. Geib  
4360 Shore Dr Ste 103  
Virginia Beach, VA 23455-2994

Claim Administrator:

CorVel Enterprise Comp  
4820 Lake Brook Dr Ste 150  
Glen Allen, VA 23060-9251

Claim Administrator Attorney:

Sean R. Mackin  
Paperless

Injured Worker:

ROBERT COOPER  
1785 River Rock Arch  
Virginia Beach, VA 23456-6155

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by the  
COMMISSION

Dec. 30, 2020

ANGELA FLORES v. LOWE'S HOME CENTERS, INC.  
SENTARA HEALTHCARE, INC., Medical Provider<sup>1</sup>  
LOWE'S HOME CENTERS, INC., Insurance Carrier  
SEDGWICK CLAIMS MANAGEMENT SERVICES, INC, Claim Administrator  
Jurisdiction Claim No. VA00000165031  
Claim Administrator File No. 0362503007000101625  
Date of Injury: September 30, 2009

Ros R. Willis, Esquire  
For the Claimant.

No appearance by or on behalf of  
the self-insured Employer.

Philip J. Geib, Esquire  
For the Medical Provider.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and  
Commissioner Rapaport at Richmond, Virginia.

This matter is before the Commission on Attorney Philip J. Geib's October 5, 2020 Request  
for Review of Deputy Commissioner Jenkins' September 4, 2020 Corrected Order and Attorney  
Geib's October 22, 2020 Request for Review of Deputy Commissioner Jenkins' October 5, 2020  
correspondence. We AFFIRM the decision below.

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<sup>1</sup> Sentara, Sentara Healthcare, and Sentara Healthcare, Inc., as referenced in this opinion, refer to the same  
entity.



**I. Material Proceedings**

Attorney Geib, representing the medical provider, Sentara Healthcare Inc., filed an application on October 25, 2019 seeking an evidentiary hearing. Attorney Geib alleged that the medical provider was owed an underpayment of \$2,391.10 for services provided in June 2010.

Pertinently, in *Been v. City of Norfolk*, JCN VA00000585787, an inquiry arose regarding Attorney Geib's concurrent representation of a claimant and a medical provider, Chesapeake Bay Pain Management. In *Been*, on December 18, 2019, Deputy Commissioner Jenkins stayed and removed from the hearing docket "all proceedings related to Mr. Geib's representation of the claimant and the medical provider in this matter . . . pending counsel's submission of legal authority to continue such concurrent representation."

On January 7, 2020, the Commission advised that the Alternative Dispute Resolution Department determined that the matter was unresolved and ripe for a hearing. On the same date, the medical provider filed a Motion to Compel responses to its discovery requests as propounded upon the employer and carrier in October 2019.

The Commission denied interlocutory review of the *Been* Order on January 22, 2020. Attorney Geib did not respond nor request that the stay be lifted. The Commission file reflects that Attorney Geib continued to act upon the *Been* case, such as filing a Request for Hearing on March 23, 2020, albeit upon the docket of Deputy Commissioner Wise.

On January 22, 2020, the Deputy Commissioner advised the following:

This matter is before the Commission for consideration of the medical provider's claim filed by you on October 25, 2019 on behalf of Sentara Healthcare, Inc. The Commission's records indicate that you are simultaneously representing the interests of claimants against Sentara Healthcare, Inc., the party insurer, in the following cases: VWC No. 2339146; VWC No. 2393253; JCN VA00001345357; JCN VA00001434730; JCN VA00001129625; JCN VA00001060444; JCN

VA00000770893; JCN VA00000759173; JCN VA00000754651; JCN  
VA00000754691; JCN VA00000603208; JCN VA00000670300; JCN  
VA00000635036; JCN VA00000569147; JCN VA00000199245; JCN  
VA00000236685; JCN VA00000177751; JCN VA00000362084; JCN  
VA00000497567; and JCN VA00000549871.

Most concerning, it appears you are actively litigating in *Shumake v. Sentara Healthcare*, JCN VA00000754691, a claim on behalf of the claimant against Sentara Healthcare, Inc.'s interests. That matter is currently on the Commission's evidentiary docket and scheduled for a hearing on March 2, 2020 before Deputy Commissioner Wilder.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); accord *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is **ORDERED** to file a written response by **February 5, 2020** which advises the Commission as to the impact of Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing these concurrent representations before the Workers' Compensation Commission.

(Emphasis in original.)

Attorney Geib responded on February 17, 2020 regarding Deputy Commissioner Jenkins' January 22, 2020 letter. He maintained that the claimant underwent surgery, the medical provider was underpaid, and hence it filed the pending application. Attorney Geib continued:

My representation of the present provider Sentara Healthcare would not result in any information or disclosures of confidential material that in any way may be protected by the attorney-client privilege, or any other information or act to be detrimental to any client invoking Rule 1.6.

....

I would further note that the circumstances of each claimant claim, listed in the first paragraph of your January 20, 2020 Order, are unique to those claims. In the past two decades, if hypothetically I have represented claimants against Sentara Healthcare in matters before the Commission, and that is not necessarily a conflict or even a potential conflict of interest. The present claim for the provider Sentara in the above referenced matter, is a dispute over the amounts of the payment due from the workers compensation insurance carrier as a result of treatment provided to other injured workers subject to the Act.

The claims listed in the first paragraph of your January 22, 2020 Order involved varying matters and varying circumstances in the present matter doesn't involve anything that in any way that is materially adverse to the interests of the former clients or the clients where I am still listed as counsel of record.

The facts, likewise, in the referenced claims are in no way similar and the issues between the present claim and the claims listed, are in no way the same, similar and are in fact opposite.

The present application on behalf of the provider Sentara Healthcare in no way will affect any of the interests of the listed present or past clients and there is no risk that representation of the present provider client will be affected or limited or will reciprocally affect the interests of the past and present claimant's [sic]. There is no active, real or apparent concurrent conflicts of interest present or otherwise.

....

The present matter does not represent any conflicts of interest affecting the, or otherwise invoking, the Professional Rules as listed in your January 22, 2020 Order (as outlined above) and there are no implications involving Rule 1.10.

On February 21, 2020, the parties submitted a Stipulated Order to Deputy Commissioner Jenkins for review and approval.

On September 4, 2020, Deputy Commissioner Jenkins issued a Corrected Order concerning numerous cases. Pertinent to the matter before us, he ordered Attorney Geib to be removed as counsel of record for Sentara Healthcare, Inc., the medical provider, in proceedings before him concerning JCN VA00000109473, JCN VA00000165031, JCN VA00000930861, and JCN VA00000360230. He explained:

This issue before the Commission in JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, the only matters currently docketed before the undersigned Deputy Commissioner, is whether Mr. Geib should be allowed to continue representation of Sentara Healthcare, Inc. in light of his numerous identified concurrent representations of claimants against the interests of Sentara Healthcare, Inc., which is the party insurer in those matters.

We first consider the most concerning identified concurrent representation of Janet Shumake, the claimant in *Shumake v. Sentara Healthcare*, JCN VA00000754691. In that case, Mr. Geib represents the claimant against the employer, Sentara Healthcare, and the insurer, Sentara Healthcare, Inc. Concurrently, Mr. Geib is also representing the interests of Sentara Healthcare, Inc. in medical provider applications seeking payment of medical bills in the four matters (JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230) pending on the undersigned Deputy Commissioner's docket.

....

In his response to the Commission's inquiry, Mr. Geib appears to argue that a pending settlement of the claim he is pursuing against Sentara Healthcare, Inc. and the fact that Sentara Healthcare, Inc. never told him it did not intend to pay for the treatment claimed by the claimant, Shumake, somehow absolves the impermissible conflict he created by filing a claim against Sentara Healthcare, Inc.—an entity which is also his client in the four matters pending on the undersigned Deputy Commissioner's docket. We hold that it does not.

A review of the Shumake file indicates that contrary to Mr. Geib's assertion, as of today, the parties have not settled that matter, and Mr. Geib continues to represent the interests of the claimant against his client, Sentara Healthcare, Inc. On July 2, 2020, Mr. Geib filed a request to cancel the pending On-The-Record proceeding and have the parties' dispute transferred to the Commission's Mediation Docket for the parties to participate in full and final mediation. It now appears Mr. Geib intends to participate in a full and final mediation on behalf of the claimant, Shumake, against the interests of Sentara Healthcare, Inc., his client in the five pending matters on the undersigned Deputy Commissioner's docket.

In his responsive letters to the Commission's inquiry, Mr. Geib even acknowledged that attempting to settle the claimant's case in *Shumake* would likely cause a conflict. And despite his representation that he intended to withdraw from representation of the claimant due to this likely conflict, Mr. Geib continues to represent the claimant and even now seeks to participate in a full and final mediation to settle that case.

.....

Mr. Geib's concurrent conflict present in these matters does not fall within the exception provided under Rule 1.7(b) as there is no indication Sentara [Healthcare], Inc. and the claimant, Janet Shumake, have consented to the conflict, there is no indication that such consent has been memorialized in writing, and most importantly, Rule 1.7(b)(3) applies as Mr. Geib is asserting a claim by his client,

[Janet] Shumake, against his other client, Sentara Healthcare, Inc., both of whom he represents in different proceedings before the same tribunal.

Mr. Geib has provided no indication that the parties waived this conflict prior to his entering the concurrent representation, and Mr. Geib has not provided any authority to support an argument that his concurrent representation of a claim against Sentara Healthcare, Inc. falls within some exception to Rule 1.7 of the Rules of Professional Conduct. For these reasons, we hold that Mr. Geib's simultaneous representations of and against Sentara Healthcare, Inc. in these matters has created an impermissible conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct. Just at the Commission stated in *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), here, we again find Mr. Geib's "actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another."

In similar prior matters in which Mr. Geib has not provided a satisfactory response to the Commission's inquires, the Commission has stayed proceedings to afford Mr. Geib the opportunity to submit authority or otherwise to demonstrate how such concurrent representations should be allowed in accordance with the Rules of Professional Conduct.

....

We therefore hold the impermissible conflict of interest created by Mr. Geib's representation of the claimant, [Janet] Shumake, against Sentara Healthcare, Inc. in JCN VA00000754691 necessitates removal of Mr. Geib from further representation of Sentara Healthcare, Inc.'s interests in the matters pending before the undersigned Deputy Commissioner. Because Mr. Geib is being disqualified from these matters, it is unnecessary to further determine whether Mr. Geib's ongoing representation of the claimants in the other 19 matters against the interests of Sentara Healthcare, Inc. have also created impermissible conflicts of interest.

Thereafter, Deputy Commissioner Jenkins directed how each case was to proceed on pending matters in light of the removal of Attorney Geib as representing Sentara Healthcare, Inc. Regarding JCN VA00000165031, the Deputy Commissioner instructed the medical provider that no action would be taken on the proposed Stipulated Order until the medical provider advised in writing whether it still agreed to entry of the Stipulated Order submitted by Attorney Geib.



Regarding the *Shumake* case, Deputy Commissioner Jenkins noted that the current dispute was pending on the docket of another Deputy Commissioner. He forwarded a copy of the order to Deputy Commissioner Wilder and the Office of Bar Counsel “regarding Mr. Geib’s violation of Rule 1.7 of the Rules of Professional Conduct and any further consideration they deem necessary in connection with Mr. Geib’s continued representation of the claimant, Janet Shumake, against the interests of Sentara Healthcare, Inc.” in *Shumake* (JCN VA00000754691). Deputy Commissioner Wilder entered an Order on September 16, 2020 allowing Attorney Geib to withdraw as legal counsel in *Shumake*.

Similarly, Deputy Commissioner Jenkins forwarded the Order to Deputy Commissioner Wise for his consideration in *Been* (JCN VA00000585787) as the matter was pending on his docket. On September 11, 2020, Deputy Commissioner Wise vacated the Order he entered on May 12, 2020 regarding *Been* matters.<sup>2</sup>

On September 25, 2020 and October 2, 2020, Attorney Geib sought clarification of the order. He maintained that the Deputy Commissioner had found “no present conflict of interests in any representation of the Provider Sentara Healthcare” in the cases of JCN VA0000968307, JCN 2265315 and JCN 2302645. Regarding JCN VA00000165031, Attorney Geib stated that a Stipulated Order was submitted conforming with the parties’ agreement to resolve and settle the claim.

Deputy Commissioner Jenkins responded on October 5, 2020 and declined any reconsideration. He emphasized that the Commission had not found in any case that there were no

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<sup>2</sup> On October 19, 2020, the Commission denied Attorney Geib’s request for interlocutory review of Deputy Commissioner Wise’s September 11, 2020, Order.

present conflicts of interest regarding Attorney Geib's representation of Sentara Healthcare, Inc. and various claimants.

Attorney Geib timely requested interlocutory review of the September 4, 2020 Order.<sup>3</sup> He objected to his removal as legal counsel and maintained that there were no conflicts of interest in any involved matter which would require his removal.

On October 22, 2020, Attorney Geib responded to the October 5, 2020 correspondence from Deputy Commissioner Jenkins. He contended:

To the extent that your October 5, 2020 is yet another finding and/or Order of the Commission that your dispositions in the Pruitt, Flores, Payne and Cooper claims are final Orders and/or Dispositions by the Deputy, continuing to remove me as Counsel for the Provider in those matters, the claimant Appeals those Final Orders and/or that Final Dispositions of the Deputy Commissioner.

The Commission accepted this as a Request for Review.

## **II. Findings of Fact and Rulings of Law**

We begin by addressing Attorney Geib's correspondence of October 22, 2020 that the Commission accepted as a review request. We do not find that the Deputy Commissioner's October 5, 2020 denial of reconsideration of the September 4, 2020 Order made any additional dispositive findings regarding the cases at issue for which a review request was necessary or pertinent. Deputy Commissioner Jenkins issued the September 4, 2020 Corrected Order which: (1) forwarded two cases to other Deputy Commissioners and the Bar, and (2) removed Attorney Geib as counsel of record for four cases before him. Attorney Geib timely appealed. The

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<sup>3</sup> Attorney Geib appealed any finding by the Deputy Commissioner that "I cannot represent the interest of Sentara Healthcare in any matters pending before the Commission or which permits me to file claims as counsel for Sentara Healthcare before the Commission." We do not find that the September 4, 2020 Order made this determination.

Corrected Order was the final disposition and the pertinent inquiry on review. Attorney Geib's letter of October 22, 2020 was unnecessary given the procedural posture presented. Accordingly, we DENY the Request for Review of the October 5, 2020 denial of reconsideration.

We address Attorney Geib's Request for Review of the September 4, 2020 Order. Initially, we note that the removal of Attorney Geib was a determinative action with obvious conclusory outcomes. Accordingly, our decision regarding the removal as counsel is not interlocutory in nature.

Regardless, the referral of the two cases to other Deputy Commissioners was interlocutory in nature and those cases have been addressed and processed accordingly. Nonetheless, we find the referrals made by Deputy Commissioner Jenkins were appropriate as those cases were pending on the dockets of other Deputy Commissioners. Furthermore, the consideration of the referrals is moot at this juncture based upon the actions of the respective Deputy Commissioners discussed above.<sup>4</sup> In *Been*, Deputy Commissioner Wise vacated his May 2020 Order, and we denied interlocutory review. In *Shumake*, Deputy Commissioner Wilder allowed Attorney Geib to withdraw as counsel.

Next, we turn to the merits of Deputy Commissioner Jenkins' removal of Attorney Geib as counsel for the four cases before him. In December 2019, Deputy Commissioner Jenkins stayed the *Been* case in which Attorney Geib concurrently represented the health care provider, Chesapeake Bay Pain Management, and the claimant. This directive went completely unheeded. Contrary to Attorney Geib's assertions, his withdrawal from a case or other activity, or an attempt

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<sup>4</sup> Attorney Geib's Request for Review stated, "I would appeal to the Full Commission the Deputy Commissioner's Order with regards to the Frances Been matter."

to do so, was not the equivalent of complying with the initial Order. Rather, it absurdly flew in the face of an unequivocal judicial directive. Attorney Geib's continued participation in attempts to resolve any conflict does not address the prior existence of the conflict. Most significantly, none of these efforts comported with the mandate issued on December 19, 2019.

An attorney with a pending conflict of interest cannot settle the case in which the conflict exists and then maintain that the conflict is moot. To accept such a proposition would allow an attorney engaged in unethical behavior to subvert the Rules of Professional Conduct and absolve himself or herself by effecting a compromise.

In January 2020, Deputy Commissioner Jenkins continued this concern regarding four cases before him in which Attorney Geib was counsel for Sentara Healthcare. Again, he instructed Attorney Geib to clarify the lack of conflicts with his representations of Sentara Healthcare in various cases meanwhile also representing claimants against Sentara Healthcare in other cases. Regardless, Attorney Geib maintained his concurrent representation in *Shumake*. Additionally, he proceeded with the *Been* case which had been stayed, before different Deputy Commissioners. Moreover, Attorney Geib continued representation of Sentara Healthcare in the four cases before Deputy Commissioner Jenkins. Attorney Geib proposes that since those cases are resolved or in the process of resolving that therefore, no conflict exists. We disagree with this illogical rationale. **The post ad hoc resolution of a case does not mean that an impermissible conflict never existed.** Most crucially, the facts remain that Attorney Geib did not present to the Commission any client waivers or documentation to demonstrate compliance with the Commission's repeated requests and the Rules of Professional Conduct. While it was not a necessary dispositive finding,

we summarily adopt and incorporate by reference the reasoning of Deputy Commissioner Jenkins on October 5, 2020 as it relates to the September 4, 2020 Corrected Order:

The Commission is not responsible for performing conflicts of interest checks for your practice, and to the extent the Commission determines it does not need to conduct further inquiry in any particular case, you should likewise not consider such a determination to be a finding that your ongoing representation of any particular client is appropriate. It is your ongoing responsibility as an attorney who is regularly representing multiple parties in various litigated matters to monitor for conflicts of interest and take appropriate action when they arise. Rule of Prof. Conduct 1.7, Comment Nos. 3 and 9.

For these reasons, we affirm the decision below.

### **III. Conclusion**

The Deputy Commissioner's September 4, 2020 Order concerning JCN VA00000165031 is **AFFIRMED**.

This matter is hereby removed from the review docket.

### **APPEAL**

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by the  
COMMISSION

Dec. 30, 2020

TIMOTHY PAYNE v. BROAD BAY COUNTRY CLUB  
SENTARA HEALTHCARE, Medical Provider<sup>1</sup>  
FEDERAL INSURANCE COMPANY, Insurance Carrier  
GALLAGHER BASSETT SERVICES INC, Claim Administrator  
Jurisdiction Claim No. VA00000930861  
Claim Administrator File No. 005524000037WC01  
Date of Injury: May 13, 2014

Timothy L. Payne, Sr.  
Claimant, pro se.

Katharina K. Alcorn, Esquire  
For the Defendants.

Philip J. Geib, Esquire  
For the Medical Provider.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Commissioner Rapaport at Richmond, Virginia.

This matter is before the Commission on Attorney Philip J. Geib's October 5, 2020 Request for Review of Deputy Commissioner Jenkins' September 4, 2020 Corrected Order and on Attorney Geib's October 22, 2020 Request for Review of Deputy Commissioner Jenkins' October 5, 2020 correspondence. We AFFIRM the decision below.

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<sup>1</sup> Sentara, Sentara Healthcare, and Sentara Healthcare, Inc., as referenced in this opinion, refer to the same entity.



**I. Material Proceedings**

Attorney Geib, representing the medical provider, Sentara Healthcare, filed an application on October 30, 2019 seeking an evidentiary hearing. Attorney Geib alleged that the medical provider was owed an underpayment of \$47,142.97 for services rendered in May 2014.

Pertinently, in *Been v. City of Norfolk*, JCN VA00000585787, an inquiry arose regarding Attorney Geib's concurrent representation of a claimant and a medical provider, Chesapeake Bay Pain Management. In *Been*, on December 18, 2019, Deputy Commissioner Jenkins stayed and removed from the hearing docket "all proceedings related to Mr. Geib's representation of the claimant and the medical provider in this matter . . . pending counsel's submission of legal authority to continue such concurrent representation." The Commission denied interlocutory review of this Order on January 22, 2020. Attorney Geib did not respond nor request that the stay be lifted. The Commission file reflects that Attorney Geib continued to act upon the *Been* case, such as filing a Request for Hearing on March 23, 2020, albeit upon the docket of Deputy Commissioner Wise.

In the instant case, on December 30, 2019, the Commission issued a Notice of Alternative Dispute Resolution Certificate certifying that the medical provider application was unresolved and ripe for adjudication by hearing. On January 3, 2020, the medical provider filed a Motion to Compel responses to its discovery requests as propounded upon the employer and carrier in November 2019.

On January 22, 2020, the Deputy Commissioner advised the following

This matter is before the Commission for consideration of the medical provider's claim filed by you on October 30, 2019 on behalf of Sentara Healthcare, Inc. The Commission's records indicate that you are simultaneously representing the interests of claimants against Sentara Healthcare, Inc., the party insurer, in the

following cases: VWC No. 2339146; VWC No. 2393253; JCN VA00001345357; JCN VA00001434730; JCN VA00001129625; JCN VA00001060444; JCN VA00000770893; JCN VA00000759173; JCN VA00000754651; JCN VA00000754691; JCN VA00000603208; JCN VA00000670300; JCN VA00000635036; JCN VA00000569147; JCN VA00000199245; JCN VA00000236685; JCN VA00000177751; JCN VA00000362084; JCN VA00000497567; and JCN VA00000549871.

Most concerning, it appears you are actively litigating in *Shumake v. Sentara Healthcare*, JCN VA00000754691, a claim on behalf of the claimant against Sentara Healthcare, Inc.'s interests. That matter is currently on the Commission's evidentiary docket and scheduled for a hearing on March 2, 2020 before Deputy Commissioner Wilder.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); accord *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is **ORDERED** to file a written response by **February 5, 2020** which advises the Commission as to the impact of Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing these concurrent representations before the Workers' Compensation Commission.

(Emphasis in original.)

Attorney Geib responded on February 17, 2020 regarding Deputy Commissioner Jenkins' January 22, 2020 letter. He maintained that he was retained by the medical provider regarding the claimant's operation of May 14, 2014 "and the provider Sentara Healthcare was not paid by the workers compensation insurance carrier resulting in the present pending application." Attorney Geib continued:

My representation of the present provider Sentara Healthcare would not result in any information or disclosures of confidential material that in any way may be protected by the attorney-client privilege, or any other information or act to be detrimental to any client invoking Rule 1.6.

....

I would further note that the circumstances of each claimant claim, listed in the first paragraph of your January 20, 2020 Order, are unique to those claims. In



the past two decades, if hypothetically I have represented claimants against Sentara Healthcare in matters before the Commission, and that is not necessarily a conflict or even a potential conflict of interest. The present claim for the provider Sentara in the above referenced matter, is a dispute over the amounts of the payment due from the workers compensation insurance carrier as a result of treatment provided to other injured workers subject to the Act.

The claims listed in the first paragraph of your January 22, 2020 Order involved varying matters and varying circumstances in the present matter doesn't involve anything that in any way that is materially adverse to the interests of the former clients or the clients where I am still listed as counsel of record.

The facts, likewise, in the referenced claims are in no way similar and the issues between the present claim and the claims listed, are in no way the same, similar and are in fact opposite.

The present application on behalf of the provider Sentara Healthcare in no way will affect any of the interests of the listed present or past clients and there is no risk that representation of the present provider client will be affected or limited or will reciprocally affect the interests of the past and present claimant's [sic]. There is no active, real or apparent concurrent conflicts of interest present or otherwise.

....

The present matter does not represent any conflicts of interest affecting the, or otherwise invoking, the Professional Rules as listed in your January 22, 2020 Order (as outlined above) and there are no implications involving Rule 1.10.

On September 4, 2020, Deputy Commissioner Jenkins issued a Corrected Order concerning numerous cases. Pertinent to the matter before us, he ordered Attorney Geib to be removed as counsel of record for Sentara Healthcare, Inc., the medical provider, in proceedings before him concerning JCN VA00000109473, JCN VA00000165031, JCN VA00000930861, and JCN VA00000360230. He explained:

This issue before the Commission in JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, the only matters currently docketed before the undersigned Deputy Commissioner, is whether Mr. Geib should be allowed to continue representation of Sentara Healthcare, Inc. in light of his numerous identified concurrent representations of

claimants against the interests of Sentara Healthcare, Inc., which is the party insurer in those matters.

We first consider the most concerning identified concurrent representation of Janet Shumake, the claimant in *Shumake v. Sentara Healthcare*, JCN VA00000754691. In that case, Mr. Geib represents the claimant against the employer, Sentara Healthcare, and the insurer, Sentara Healthcare, Inc. Concurrently, Mr. Geib is also representing the interests of Sentara Healthcare, Inc. in medical provider applications seeking payment of medical bills in the four matters (JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230) pending on the undersigned Deputy Commissioner's docket.

....

In his response to the Commission's inquiry, Mr. Geib appears to argue that a pending settlement of the claim he is pursuing against Sentara Healthcare, Inc. and the fact that Sentara Healthcare, Inc. never told him it did not intend to pay for the treatment claimed by the claimant, Shumake, somehow absolves the impermissible conflict he created by filing a claim against Sentara Healthcare, Inc[.]—an entity which is also his client in the four matters pending on the undersigned Deputy Commissioner's docket. We hold that it does not.

A review of the *Shumake* file indicates that contrary to Mr. Geib's assertion, as of today, the parties have not settled that matter, and Mr. Geib continues to represent the interests of the claimant against his client, Sentara Healthcare, Inc. On July 2, 2020, Mr. Geib filed a request to cancel the pending On-The-Record proceeding and have the parties' dispute transferred to the Commission's Mediation Docket for the parties to participate in full and final mediation. It now appears Mr. Geib intends to participate in a full and final mediation on behalf of the claimant, Shumake, against the interests of Sentara Healthcare, Inc., his client in the five pending matters on the undersigned Deputy Commissioner's docket.

In his responsive letters to the Commission's inquiry, Mr. Geib even acknowledged that attempting to settle the claimant's case in *Shumake* would likely cause a conflict. And despite his representation that he intended to withdraw from representation of the claimant due to this likely conflict, Mr. Geib continues to represent the claimant and even now seeks to participate in a full and final mediation to settle that case.

....

Mr. Geib's concurrent conflict present in these matters does not fall within the exception provided under Rule 1.7(b) as there is no indication Sentara

[Healthcare], Inc. and the claimant, Janet Shumake, have consented to the conflict, there is no indication that such consent has been memorialized in writing, and most importantly, Rule 1.7(b)(3) applies as Mr. Geib is asserting a claim by his client, [Janet] Shumake, against his other client, Sentara Healthcare, Inc., both of whom he represents in different proceedings before the same tribunal.

Mr. Geib has provided no indication that the parties waived this conflict prior to his entering the concurrent representation, and Mr. Geib has not provided any authority to support an argument that his concurrent representation of a claim against Sentara Healthcare, Inc. falls within some exception to Rule 1.7 of the Rules of Professional Conduct. For these reasons, we hold that Mr. Geib's simultaneous representations of and against Sentara Healthcare, Inc. in these matters has created an impermissible conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct. Just at the Commission stated in *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), here, we again find Mr. Geib's "actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another."

In similar prior matters in which Mr. Geib has not provided a satisfactory response to the Commission's inquires, the Commission has stayed proceedings to afford Mr. Geib the opportunity to submit authority or otherwise to demonstrate how such concurrent representations should be allowed in accordance with the Rules of Professional Conduct.

....

We therefore hold the impermissible conflict of interest created by Mr. Geib's representation of the claimant, [Janet] Shumake, against Sentara Healthcare, Inc. in JCN VA00000754691 necessitates removal of Mr. Geib from further representation of Sentara Healthcare, Inc.'s interests in the matters pending before the undersigned Deputy Commissioner. Because Mr. Geib is being disqualified from these matters, it is unnecessary to further determine whether Mr. Geib's ongoing representation of the claimants in the other 19 matters against the interests of Sentara Healthcare, Inc. have also created impermissible conflicts of interest.

Thereafter, Deputy Commissioner Jenkins directed how each case was to proceed on pending matters in light of the removal of Attorney Geib as representing Sentara Healthcare, Inc. Regarding JCN VA00000930861, the Deputy Commissioner noted that a claim was pending and would be scheduled for a hearing.

Regarding the *Shumake* case, Deputy Commissioner Jenkins noted that the current dispute was pending on the docket of another Deputy Commissioner. He forwarded a copy of the order to Deputy Commissioner Wilder and the Office of Bar Counsel “regarding Mr. Geib’s violation of Rule 1.7 of the Rules of Professional Conduct and any further consideration they deem necessary in connection with Mr. Geib’s continued representation of the claimant, Janet Shumake, against the interests of Sentara Healthcare, Inc.” in *Shumake* (JCN VA00000754691). Deputy Commissioner Wilder entered an Order on September 16, 2020 allowing Attorney Geib to withdraw as legal counsel in *Shumake*.

Similarly, Deputy Commissioner Jenkins forwarded the Order to Deputy Commissioner Wise for his consideration in *Been* (JCN VA00000585787) as the matter was pending on his docket. On September 11, 2020, Deputy Commissioner Wise vacated the Order he entered on May 12, 2020 regarding *Been* matters.<sup>2</sup>

On September 15, 2020, the Commission scheduled a hearing to be conducted on December 2, 2020 for JCN VA00000930861.

On September 25, 2020 and October 5, 2020, Attorney Geib sought clarification of the order. He maintained that the Deputy Commissioner had found “no present conflict of interests in any representation of the Provider Sentara Healthcare” in the cases of JCN VA00000968307, JCN 2265315 and JCN 2302645. Regarding JCN VA00000930861, Attorney Geib stated that the medical provider maintained its agreement to have the matter scheduled for an evidentiary hearing.

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<sup>2</sup> On October 19, 2020, the Commission denied Attorney Geib’s request for interlocutory review of Deputy Commissioner Wise’s September 11, 2020, Order.

Deputy Commissioner Jenkins responded on October 5, 2020 and declined any reconsideration. He emphasized that the Commission had not found in any case that there were no present conflicts of interest regarding Attorney Geib's representation of Sentara Healthcare, Inc. and various claimants.

Attorney Geib timely requested interlocutory review of the September 4, 2020 Order.<sup>3</sup> He objected to his removal as legal counsel and maintained that there were no conflicts of interest in any involved matter which would require his removal.

On October 22, 2020, Attorney Geib responded to the October 5, 2020 correspondence from Deputy Commissioner Jenkins. He contended:

To the extent that your October 5, 2020 is yet another finding and/or Order of the Commission that your dispositions in the Pruitt, Flores, Payne and Cooper claims are final Orders and/or Dispositions by the Deputy, continuing to remove me as Counsel for the Provider in those matters, the claimant Appeals those Final Orders and/or that Final Dispositions of the Deputy Commissioner.

The Commission accepted this as a Request for Review.

## **II. Findings of Fact and Rulings of Law**

We begin by addressing Attorney Geib's correspondence of October 22, 2020 that the Commission accepted as a review request. We do not find that the Deputy Commissioner's October 5, 2020 denial of reconsideration of the September 4, 2020 Order made any additional dispositive findings regarding the cases at issue for which a review request was necessary or pertinent. Deputy Commissioner Jenkins issued the September 4, 2020 Corrected Order which:

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<sup>3</sup> Attorney Geib appealed any finding by the Deputy Commissioner that "I cannot represent the interest of Sentara Healthcare in any matters pending before the Commission or which permits me to file claims as counsel for Sentara Healthcare before the Commission." We do not find that the September 4, 2020 Order made this determination.

(1) forwarded two cases to other Deputy Commissioners and the Bar, and (2) removed Attorney Geib as counsel of record for four cases before him. Attorney Geib timely appealed. The Corrected Order was the final disposition and the pertinent inquiry on review. Attorney Geib's letter of October 22, 2020 was unnecessary given the procedural posture presented. Accordingly, we DENY the Request for Review of the October 5, 2020 denial of reconsideration.

We address Attorney Geib's Request for Review of the September 4, 2020 Order. Initially, we note the removal of Attorney Geib was a determinative action with obvious conclusory outcomes. Accordingly, our decision regarding the removal as counsel is not interlocutory in nature.

Regardless, the referral of the two cases to other Deputy Commissioners was interlocutory in nature, and those cases have been addressed and processed accordingly. Nonetheless, we find the referrals made by Deputy Commissioner Jenkins were appropriate as those cases were pending on the dockets of other Deputy Commissioners. Furthermore, the consideration of the referrals is moot at this juncture based upon the actions of the respective Deputy Commissioners discussed above.<sup>4</sup> In *Been*, Deputy Commissioner Wise vacated his May 2020 Order, and we denied interlocutory review. In *Shumake*, Deputy Commissioner Wilder allowed Attorney Geib to withdraw as counsel.

Next, we turn to the merits of Deputy Commissioner Jenkins' removal of Attorney Geib as counsel for the four cases before him. In December 2019, Deputy Commissioner Jenkins stayed the *Been* case in which Attorney Geib concurrently represented the health care provider,

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<sup>4</sup> Attorney Geib's Request for Review stated, "I would appeal to the Full Commission the Deputy Commissioner's Order with regards to the Frances Been matter."

Chesapeake Bay Pain Management, and the claimant. This directive went completely unheeded. Contrary to Attorney Geib's assertions, his withdrawal from a case or other activity, or an attempt to do so, was not the equivalent of complying with the initial Order. Rather, it absurdly flew in the face of an unequivocal judicial directive. Attorney Geib's continued participation in attempts to resolve any conflict does not address the prior existence of the conflict. Most significantly, none of these efforts comported with the mandate issued on December 19, 2019.

An attorney with a pending conflict of interest cannot settle the case in which the conflict exists and then maintain that the conflict is moot. To accept such a proposition would allow an attorney engaged in unethical behavior to subvert the Rules of Professional Conduct and absolve himself or herself by effecting a compromise.

In January 2020, Deputy Commissioner Jenkins continued his concern regarding four cases before him in which Attorney Geib was counsel for Sentara Healthcare. Again, he instructed Attorney Geib to clarify the lack of conflicts with his representations of Sentara Healthcare in various cases meanwhile also representing claimants against Sentara Healthcare in other cases. Regardless, Attorney Geib maintained his concurrent representation in *Shumake*. Additionally, he proceeded with the *Been* case, which had been stayed, before different Deputy Commissioners. Moreover, Attorney Geib continued representation of Sentara Healthcare in the four cases before Deputy Commissioner Jenkins. Attorney Geib proposes that since those cases are resolved or in the process of resolving that therefore, no conflict exists. We disagree with this illogical rationale. **The post ad hoc resolution of a case does not mean that an impermissible conflict never existed.** Most crucially, the facts remain that Attorney Geib did not present to the Commission any client waivers or documentation to demonstrate compliance with the Commission's repeated

requests and the Rules of Professional Conduct. While it was not a necessary dispositive finding, we summarily adopt and incorporate by reference the reasoning of Deputy Commissioner Jenkins on October 5, 2020 as it relates to the September 4, 2020 Corrected Order:

The Commission is not responsible for performing conflicts of interest checks for your practice, and to the extent the Commission determines it does not need to conduct further inquiry in any particular case, you should likewise not consider such a determination to be a finding that your ongoing representation of any particular client is appropriate. It is your ongoing responsibility as an attorney who is regularly representing multiple parties in various litigated matters to monitor for conflicts of interest and take appropriate action when they arise. Rule of Prof. Conduct 1.7, Comment Nos. 3 and 9.

For these reasons, we affirm the decision below.

### **III. Conclusion**

The Deputy Commissioner's September 4, 2020 Order concerning JCN VA00000930861 is **AFFIRMED**.

This matter is hereby removed from the review docket.

### **APPEAL**

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.



**VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION**

**Opinion by the  
COMMISSION**

**Dec. 30, 2020**

**ROBERT COOPER v. CITY OF VIRGINIA BEACH  
SENTARA HEALTHCARE, Medical Provider<sup>1</sup>  
VIRGINIA BEACH CITY OF, Insurance Carrier  
CORVEL ENTERPRISE COMP, Claim Administrator  
Jurisdiction Claim No. VA00000360230  
Claim Administrator File No. VA-11-500357  
Date of Injury: October 6, 2010**

**Robert Cooper  
Claimant, pro se.**

**Tenley Carroll Seli, Esquire  
For the Defendant.**

**Philip J. Geib, Esquire  
For the Medical Provider.**

**REVIEW on the record by Commissioner Marshall, Commissioner Newman, and  
Commissioner Rapaport at Richmond, Virginia.**

**This matter is before the Commission on Attorney Philip J. Geib's October 5, 2020 request  
for review of Deputy Commissioner Jenkin's September 4, 2020 Corrected Order and on Attorney  
Geib's October 22, 2020 request for review of Deputy Commissioner Jenkins' October 5, 2020  
correspondence. We AFFIRM the decision below.**

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<sup>1</sup> Sentara, Sentara Healthcare, and Sentara Healthcare, Inc., as referenced in this opinion, refer to the same entity.



**L. Material Proceedings**

Attorney Geib, representing the medical provider, Sentara Healthcare, filed an application on November 5, 2019 seeking an evidentiary hearing. Attorney Geib alleged that the medical provider was owed an underpayment of \$8,223.49 for services provided in January 2014. On December 10, 2019, the Commission advised that the Alternative Dispute Resolution Department determined that the matter was unresolved and ripe for a hearing. On January 6, 2020, the medical provider and the claim administrator (CorVel Corporation) submitted an executed Protective Order for review and entry by Deputy Commissioner Jenkins.

Pertinently, in *Been v. City of Norfolk*, JCN VA00000585787, an inquiry arose regarding Attorney Geib's concurrent representation of a claimant and a medical provider, Chesapeake Bay Pain Management. In *Been*, on December 18, 2019, Deputy Commissioner Jenkins stayed and removed from the hearing docket "all proceedings related to Mr. Geib's representation of the claimant and the medical provider in this matter . . . pending counsel's submission of legal authority to continue such concurrent representation." The Commission denied interlocutory review of this Order on January 22, 2020. Attorney Geib did not respond nor request that the stay be lifted. The Commission file reflects that Attorney Geib continued to act upon the *Been* case, such as filing a Request for Hearing on March 23, 2020, albeit upon the docket of Deputy Commissioner Wise.

On January 22, 2020, Deputy Commissioner Jenkins advised the following:

This matter is before the Commission for consideration of the medical provider's claim filed by you on November 5, 2019 on behalf of Sentara Healthcare, Inc. The Commission's records indicate that you are simultaneously representing the interests of claimants against Sentara Healthcare, Inc., the party insurer, in the following cases: VWC No. 2339146; VWC No. 2393253; JCN VA00001345357; JCN VA00001434730; JCN VA00001129625; JCN VA00001060444; JCN

VA00000770893; JCN VA00000759173; JCN VA00000754651; JCN  
VA00000754691; JCN VA00000603208; JCN VA00000670300; JCN  
VA00000635036; JCN VA00000569147; JCN VA00000199245; JCN  
VA00000236685; JCN VA00000177751; JCN VA00000362084; JCN  
VA00000497567; and JCN VA00000549871.

Most concerning, it appears you are actively litigating in *Shumake v. Sentara Healthcare*, JCN VA00000754691, a claim on behalf of the claimant against Sentara Healthcare, Inc.'s interests. That matter is currently on the Commission's evidentiary docket and scheduled for a hearing on March 2, 2020 before Deputy Commissioner Wilder.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); accord *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is **ORDERED** to file a written response by February 5, 2020 which advises the Commission as to the impact of Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing these concurrent representations before the Workers' Compensation Commission.

(Emphasis in original.)

On January 27, 2020, Attorney Geib requested to withdraw without prejudice the medical provider's pending application.

Attorney Geib responded to Deputy Commissioner Jenkins' Order on February 17, 2020. He maintained that JCN VA00000360230 was withdrawn on January 27, 2020, and no other applications were pending. Attorney Geib continued:

My representation of the present provider Sentara Healthcare would not result in any information or disclosures of confidential material that in any way may be protected by the attorney-client privilege, or any other information or act to be detrimental to any client invoking Rule 1.6.

I would further note that the circumstances of each claimant claim, listed in the first paragraph of your January 20, 2020 Order, are unique to those claims. In the past two decades, if hypothetically I have represented claimants against Sentara Healthcare in matters before the Commission, and that is not necessarily a conflict

or even a potential conflict of interest. The present claim for the provider Sentara in the above referenced matter, is a dispute over the amounts of the payment due from the workers compensation insurance carrier as a result of treatment provided to other injured workers subject to the Act.

The claims listed in the first paragraph of your January 22, 2020 Order involved varying matters and varying circumstances in the present matter doesn't involve anything that in any way that is materially adverse to the interests of the former clients or the clients where I am still listed as counsel of record.

The facts, likewise, in the referenced claims are in no way similar and the issues between the present claim and the claims listed, are in no way the same, similar and are in fact opposite.

The present application on behalf of the provider Sentara Healthcare in no way will affect any of the interests of the listed present or past clients and there is no risk that representation of the present provider client will be affected or limited or will reciprocally affect the interests of the past and present claimant's [sic]. There is no active, real or apparent concurrent conflicts of interest present or otherwise.

....

The present matter does not represent any conflicts of interest affecting the, or otherwise invoking, the Professional Rules as listed in your January 22, 2020 Order (as outlined above) and there are no implications involving Rule 1.10.

On September 4, 2020, Deputy Commissioner Jenkins issued a Corrected Order concerning numerous cases. Pertinent to the matter before us, he ordered Attorney Geib to be removed as counsel of record for Sentara Healthcare, Inc., the medical provider, in proceedings before him concerning JCN VA00000109473, JCN VA00000165031, JCN VA00000930861, and JCN VA00000360230. He explained:

This issue before the Commission in JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, the only matters currently docketed before the undersigned Deputy Commissioner, is whether Mr. Geib should be allowed to continue representation of Sentara Healthcare, Inc. in light of his numerous identified concurrent representations of claimants against the interests of Sentara Healthcare, Inc., which is the party insurer in those matters.

We first consider the most concerning identified concurrent representation of Janet Shumake, the claimant in *Shumake v. Sentara Healthcare*, JCN VA00000754691. In that case, Mr. Geib represents the claimant against the employer, Sentara Healthcare, and the insurer, Sentara Healthcare, Inc. Concurrently, Mr. Geib is also representing the interests of Sentara Healthcare, Inc. in medical provider applications seeking payment of medical bills in the four matters (JCN VA00000109473; JCN VA00000165031; JCN VA000000930861; and JCN VA00000360230) pending on the undersigned Deputy Commissioner's docket.

....

In his response to the Commission's inquiry, Mr. Geib appears to argue that a pending settlement of the claim he is pursuing against Sentara Healthcare, Inc. and the fact that Sentara Healthcare, Inc. never told him it did not intend to pay for the treatment claimed by the claimant, Shumake, somehow absolves the impermissible conflict he created by filing a claim against Sentara Healthcare, Inc.]—an entity which is also his client in the four matters pending on the undersigned Deputy Commissioner's docket. We hold that it does not.

A review of the Shumake file indicates that contrary to Mr. Geib's assertion, as of today, the parties have not settled that matter, and Mr. Geib continues to represent the interests of the claimant against his client, Sentara Healthcare, Inc. On July 2, 2020, Mr. Geib filed a request to cancel the pending On-The-Record proceeding and have the parties' dispute transferred to the Commission's Mediation Docket for the parties to participate in full and final mediation. It now appears Mr. Geib intends to participate in a full and final mediation on behalf of the claimant, Shumake, against the interests of Sentara Healthcare, Inc., his client in the five pending matters on the undersigned Deputy Commissioner's docket.

In his responsive letters to the Commission's inquiry, Mr. Geib even acknowledged that attempting to settle the claimant's case in *Shumake* would likely cause a conflict. And despite his representation that he intended to withdraw from representation of the claimant due to this likely conflict, Mr. Geib continues to represent the claimant and even now seeks to participate in a full and final mediation to settle that case.

....

Mr. Geib's concurrent conflict present in these matters does not fall within the exception provided under Rule 1.7(b) as there is no indication Sentara [Healthcare], Inc. and the claimant, Janet Shumake, have consented to the conflict, there is no indication that such consent has been memorialized in writing, and most importantly, Rule 1.7(b)(3) applies as Mr. Geib is asserting a claim by his client,

[Janet] Shumake, against his other client, Sentara Healthcare, Inc., both of whom he represents in different proceedings before the same tribunal.

Mr. Geib has provided no indication that the parties waived this conflict prior to his entering the concurrent representation, and Mr. Geib has not provided any authority to support an argument that his concurrent representation of a claim against Sentara Healthcare, Inc. falls within some exception to Rule 1.7 of the Rules of Professional Conduct. For these reasons, we hold that Mr. Geib's simultaneous representations of and against Sentara Healthcare, Inc. in these matters has created an impermissible conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct. Just at the Commission stated in *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), here, we again find Mr. Geib's "actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another."

In similar prior matters in which Mr. Geib has not provided a satisfactory response to the Commission's inquires, the Commission has stayed proceedings to afford Mr. Geib the opportunity to submit authority or otherwise to demonstrate how such concurrent representations should be allowed in accordance with the Rules of Professional Conduct.

.....

We therefore hold the impermissible conflict of interest created by Mr. Geib's representation of the claimant, [Janet] Shumake, against Sentara Healthcare, Inc. in JCN VA00000754691 necessitates removal of Mr. Geib from further representation of Sentara Healthcare, Inc.'s interests in the matters pending before the undersigned Deputy Commissioner. Because Mr. Geib is being disqualified from these matters, it is unnecessary to further determine whether Mr. Geib's ongoing representation of the claimants in the other 19 matters against the interests of Sentara Healthcare, Inc. have also created impermissible conflicts of interest.

Thereafter, Deputy Commissioner Jenkins directed how each case was to proceed on pending matters in light of the removal of Attorney Geib as representing Sentara Healthcare, Inc. Regarding JCN VA00000360230, the Deputy Commissioner directed the medical provider to provide written clarification as to whether it still wished to withdraw its application of November 5, 2019, or scheduled for a hearing, and whether the medical provider still agreed to the entry of a proposed Protective Order.

Regarding the *Shumake* case, Deputy Commissioner Jenkins noted that a current dispute was pending on the docket of another Deputy Commissioner. He forwarded a copy of the order to Deputy Commissioner Wilder and the Office of Bar Counsel "regarding Mr. Geib's violation of Rule 1.7 of the Rules of Professional Conduct and any further consideration they deem necessary in connection with Mr. Geib's continued representation of the claimant, Janet Shumake, against the interests of Sentara Healthcare, Inc." in *Shumake* (JCN VA00000754691). Deputy Commissioner Wilder entered an Order on September 16, 2020 allowing Attorney Geib to withdraw as legal counsel in *Shumake*.

Similarly, Deputy Commissioner Jenkins forwarded the Order to Deputy Commissioner Wise for his consideration in *Been* (JCN VA00000585787) as the matter was pending on his docket. On September 11, 2020, Deputy Commissioner Wise vacated the Order he entered on May 12, 2020 regarding *Been* matters.<sup>2</sup>

On September 25, 2020 and October 5, 2020, Attorney Geib sought clarification of the order. He maintained that the Deputy Commissioner had found "no present conflict of interests in any representation of the Provider Sentara Healthcare" in the cases of JCN VA0000968307, JCN 2265315, and JCN 2302645. Regarding JCN VA00000360230, Attorney Geib stated that the medical provider sought to withdraw the pending application.

Deputy Commissioner Jenkins responded on October 5, 2020 and declined any reconsideration. He emphasized that the Commission had not found in any case that there were no

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<sup>2</sup> On October 19, 2020, the Commission denied Attorney Geib's request for interlocutory review of Deputy Commissioner Wise's September 11, 2020, Order.

present conflicts of interest regarding Attorney Geib's representation of Sentara Healthcare, Inc. and various claimants.

Attorney Geib timely requested interlocutory review of the September 4, 2020 Order.<sup>3</sup> He objected to his removal as legal counsel and maintained that there were no conflicts of interest in any involved matter which would require his removal.

On October 22, 2020, Attorney Geib responded to the October 5, 2020 correspondence from Deputy Commissioner Jenkins. He contended:

To the extent that your October 5, 2020 is yet another finding and/or Order of the Commission that your dispositions in the Pruitt, Flores, Payne and Cooper claims are final Orders and/or Dispositions by the Deputy, continuing to remove me as Counsel for the Provider in those matters, the claimant Appeals those Final Orders and/or that Final Dispositions of the Deputy Commissioner.

The Commission accepted this as a Request for Review.

## II. Findings of Fact and Rulings of Law

We begin by addressing Attorney Geib's correspondence of October 22, 2020 that the Commission accepted as a review request. We do not find that the Deputy Commissioner's October 5, 2020 denial of reconsideration of the September 4, 2020 Order made any additional dispositive findings regarding the cases at issue for which a review request was necessary or pertinent. Deputy Commissioner Jenkins issued the September 4, 2020 Corrected Order which: (1) forwarded two cases to other Deputy Commissioners and the Bar, and (2) removed Attorney Geib as counsel of record for four cases before him. Attorney Geib timely appealed. The

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<sup>3</sup> Attorney Geib appealed any finding by the Deputy Commissioner that "I cannot represent the interest of Sentara Healthcare in any matters pending before the Commission or which permits me to file claims as counsel for Sentara Healthcare before the Commission." We do not find that the September 4, 2020 Order made this determination.



Corrected Order was the final disposition and the pertinent inquiry on review. Attorney Geib's letter of October 22, 2020 was unnecessary given the procedural posture presented. Accordingly, we DENY the Request for Review of the October 5, 2020 denial of reconsideration.

We address Attorney Geib's Request for Review of the September 4, 2020 Order. Initially, we note the removal of Attorney Geib was a determinative action with obvious conclusory outcomes. Accordingly, our decision regarding the removal as counsel is not interlocutory in nature.

Regardless, the referral of the two cases to other Deputy Commissioners was interlocutory in nature, and those cases have been addressed and processed accordingly. Nonetheless, we find the referrals made by Deputy Commissioner Jenkins were appropriate as those cases were pending on the dockets of other Deputy Commissioners. Furthermore, the consideration of the referrals is moot at this juncture based upon the actions of the respective Deputy Commissioners as discussed above.<sup>4</sup> In *Been*, Deputy Commissioner Wise vacated his May 2020 Order, and we denied interlocutory review. In *Shumake*, Deputy Commissioner Wilder allowed Attorney Geib to withdraw as counsel.

Next, we turn to the merits of Deputy Commissioner Jenkins' removal of Attorney Geib as counsel for the four cases before him. In December 2019, Deputy Commissioner Jenkins stayed the *Been* case in which Attorney Geib concurrently represented the health care provider, Chesapeake Bay Pain Management, and the claimant. This directive went completely unheeded. Contrary to Attorney Geib's assertions, his withdrawal from a case or other activity, or an attempt

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<sup>4</sup> Attorney Geib's Request for Review stated, "I would appeal to the Full Commission the Deputy Commissioner's Order with regards to the Frances Been matter."

to do so, was not the equivalent of complying with the initial Order. Rather, it absurdly flew in the face of an unequivocal judicial directive. Attorney Geib's continued participation in attempts to resolve any conflict does not address the prior existence of the conflict. Most significantly, none of these efforts comported with the mandate issued on December 19, 2019.

An attorney with a pending conflict of interest cannot settle the case in which the conflict exists and then maintain that the conflict is moot. To accept such a proposition would allow an attorney engaged in unethical behavior to subvert the Rules of Professional Conduct and absolve himself or herself by effecting a compromise.

In January 2020, Deputy Commissioner Jenkins continued his concern regarding four cases before him in which Attorney Geib was counsel for Sentara Healthcare. Again, he instructed Attorney Geib to clarify the lack of conflicts with his representations of Sentara Healthcare in various cases meanwhile also representing claimants against Sentara Healthcare in other cases. Regardless, Attorney Geib maintained his concurrent representation in *Shumake*. Additionally, he proceeded with the *Been* case which had been stayed, before different Deputy Commissioners. Moreover, Attorney Geib continued representation of Sentara Healthcare in the four cases before Deputy Commissioner Jenkins. Attorney Geib proposes that since those cases are resolved or in the process of resolving that, therefore, no conflict exists. We disagree with this illogical rationale. The post ad hoc resolution of a case does not mean that an impermissible conflict never existed. Most crucially, the facts remain that Attorney Geib did not present to the Commission any client waivers or documentation to demonstrate compliance with the Commission's repeated requests and the Rules of Professional Conduct. While it was not a necessary dispositive finding,

we summarily adopt and incorporate by reference the reasoning of Deputy Commissioner Jenkins on October 5, 2020 as it relates to the September 4, 2020 Corrected Order:

The Commission is not responsible for performing conflicts of interest checks for your practice, and to the extent the Commission determines it does not need to conduct further inquiry in any particular case, you should likewise not consider such a determination to be a finding that your ongoing representation of any particular client is appropriate. It is your ongoing responsibility as an attorney who is regularly representing multiple parties in various litigated matters to monitor for conflicts of interest and take appropriate action when they arise. Rule of Prof. Conduct 1.7, Comment Nos. 3 and 9.

For these reasons, we affirm the decision below.

### III. Conclusion

The Deputy Commissioner's September 4, 2020 Order concerning JCN VA00000360230 is AFFIRMED.

This matter is hereby removed from the review docket.

### APPEAL

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by the  
COMMISSION

Dec. 30, 2020

DAVID PRUITT v. GUTTER WORKS, SOLUTIONS  
SENTARA HEALTHCARE, Medical Provider<sup>1</sup>  
BUILDING INDUSTRY INSURANCE ASSOCIATION, Insurance Carrier  
METIS, Claim Administrator  
Jurisdiction Claim No. VA00000109473  
Claim Administrator File No. 20090024937  
Date of Injury: June 18, 2009

Judd B. Mendelson, Esquire  
For the Claimant.

Marilyn N. Harvey, Esquire  
Katharina Alcorn, Esquire  
For the Defendants.

Philip J. Geib, Esquire  
For Sentara Healthcare.

REVIEW on the record by Commissioner Marshall, Commissioner Newman, and Chief Deputy Commissioner Szablewicz at Richmond, Virginia.<sup>2</sup>

This matter is before the Commission on Attorney Philip J. Geib's October 5, 2020 request for review of Deputy Commissioner Jenkin's September 4, 2020 Corrected Order and on Attorney Geib's October 22, 2020 request for review of Deputy Commissioner Jenkins' October 5, 2020 correspondence. We AFFIRM the decision below.

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<sup>1</sup> Sentara, Sentara Healthcare, and Sentara Healthcare, Inc., as referenced in this opinion, refer to the same entity.

<sup>2</sup> Pursuant to Virginia Code § 65.2-705(D), the Chief Deputy Commissioner participated on this review panel by designation of the Chairman upon Commissioner Rapaport's recusal due to a conflict of interest.



**I. Material Proceedings**

Attorney Geib, representing the medical provider, Sentara Healthcare, filed a claim on November 7, 2019, seeking an evidentiary hearing. Attorney Geib alleged that the medical provider was owed an underpayment of \$8,159.22 for services provided in October 2013. On January 2, 2020, the Commission advised that the Alternative Dispute Resolution Department determined that the matter was unresolved and ripe for a hearing.

Pertinently, in *Been v. City of Norfolk*, JCN VA00000585787, an inquiry arose regarding Attorney Geib's concurrent representation of a claimant and a medical provider, Chesapeake Bay Pain Management. In *Been*, on December 18, 2019, Deputy Commissioner Jenkins stayed and removed from the hearing docket "all proceedings related to Mr. Geib's representation of the claimant and the medical provider in this matter . . . pending counsel's submission of legal authority to continue such concurrent representation." The Commission denied interlocutory review of this Order on January 22, 2020. Attorney Geib did not respond nor request that the stay be lifted. The Commission file reflects that Attorney Geib continued to act upon the *Been* case, such as filing a Request for Hearing on March 23, 2020, albeit upon the docket of Deputy Commissioner Wise.

With regard to the present matter in JCN VA00000109173, on January 29, 2020, the Commission scheduled a hearing for March 30, 2020. On January 30, 2020, Attorney Geib filed a Motion to withdraw the pending claim.

By letter dated January 30, 2020, Deputy Commissioner Jenkins advised:

This matter is before the Commission for consideration of the medical provider's claim filed by you on November 7, 2019 on behalf of Sentara Healthcare, Inc. The Commission's records indicate that you are simultaneously representing the interests of claimants against Sentara Healthcare, Inc., the party insurer, in the

following cases: VWC No. 2339146; VWC No. 2393253; JCN VA00001345357; JCN VA00001434730; JCN VA00001129625; JCN VA00001060444; JCN VA00000770893; JCN VA00000759173; JCN VA00000754651; JCN VA00000754691; JCN VA00000603208; JCN VA00000670300; JCN VA00000635036; JCN VA00000569147; JCN VA00000199245; JCN VA00000236685; JCN VA00000177751; JCN VA00000362084; JCN VA00000497567; and JCN VA00000549871.

Most concerning, it appears you are actively litigating in *Shumake v. Sentara Healthcare*, JCN VA00000754691, a claim on behalf of the claimant against Sentara Healthcare, Inc.'s interests. That matter is currently on the Commission's evidentiary docket and scheduled for a hearing on March 2, 2020 before Deputy Commissioner Wilder.

Pursuant to *Fetty v. City of Chesapeake*, JCN VA00000688079 (Sep. 20, 2016); accord *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), it is necessary to determine the appropriateness of this ongoing concurrent representation in this matter. Therefore, Mr. Geib is **ORDERED** to file a written response by **February 10, 2020** which advises the Commission as to the impact of Rules 1.6, 1.7, 1.8, 1.9 and 1.10 of the Virginia Rules of Professional Conduct in regard to allowing these concurrent representations before the Workers' Compensation Commission.

(Emphasis in original.)

Attorney Geib responded on February 17, 2020. He maintained that he was retained by the medical provider to seek unpaid expenses, filed an application, and that the application was withdrawn on January 30, 2020. Attorney Geib continued:

My representation of the present provider Sentara Healthcare would not result in any information or disclosures of confidential material that in any way may be protected by the attorney-client privilege, or any other information or act to be detrimental to any client invoking Rule 1.6.

....

I would further note that the circumstances of each claimant claim, listed in the first paragraph of your January 20, 2020 Order, are unique to those claims. In the past two decades, if hypothetically I have represented claimants against Sentara Healthcare in matters before the Commission, and that is not necessarily a conflict or even a potential conflict of interest. The present claim for the provider Sentara in the above referenced matter, is a dispute over the amounts of the payment due

from the workers compensation insurance carrier as a result of treatment provided to other injured workers subject to the Act.

The claims listed in the first paragraph of your January 22, 2020 Order involved varying matters and varying circumstances in the present matter doesn't involve anything that in any way that is materially adverse to the interests of the former clients or the clients where I am still listed as counsel of record.

The facts, likewise, in the referenced claims are in no way similar and the issues between the present claim and the claims listed, are in no way the same, similar and are in fact opposite.

The present application on behalf of the provider Sentara Healthcare in no way will affect any of the interests of the listed present or past clients and there is no risk that representation of the present provider client will be affected or limited or will reciprocally affect the interests of the past and present claimant's [sic]. There is no active, real or apparent concurrent conflicts of interest present or otherwise.

....

The present matter does not represent any conflicts of interest affecting the, or otherwise invoking, the Professional Rules as listed in your January 22, 2020 Order (as outlined above) and there are no implications involving Rule 1.10.

On March 16, 2020, the Commission issued a Notice of Continuance. The new hearing date was to be determined.

On September 4, 2020, Deputy Commissioner Jenkins issued a Corrected Order concerning numerous cases. Pertinent to the matter before us, he ordered Attorney Geib to be removed as counsel of record for Sentara Healthcare, Inc., the medical provider, in proceedings before him concerning JCN VA00000109473, JCN VA00000165031, JCN VA00000930861, and JCN VA00000360230. He explained:

This issue before the Commission in JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230, the only matters currently docketed before the undersigned Deputy Commissioner, is whether Mr. Geib should be allowed to continue representation of Sentara Healthcare, Inc. in light of his numerous identified concurrent representations of

claimants against the interests of Sentara Healthcare, Inc., which is the party insurer in those matters.

We first consider the most concerning identified concurrent representation of Janet Shumake, the claimant in *Shumake v. Sentara Healthcare*, JCN VA00000754691. In that case, Mr. Geib represents the claimant against the employer, Sentara Healthcare, and the insurer, Sentara Healthcare, Inc. Concurrently, Mr. Geib is also representing the interests of Sentara Healthcare, Inc. in medical provider applications seeking payment of medical bills in the four matters (JCN VA00000109473; JCN VA00000165031; JCN VA00000930861; and JCN VA00000360230) pending on the undersigned Deputy Commissioner's docket.

....

In his response to the Commission's inquiry, Mr. Geib appears to argue that a pending settlement of the claim he is pursuing against Sentara Healthcare, Inc. and the fact that Sentara Healthcare, Inc. never told him it did not intend to pay for the treatment claimed by the claimant, Shumake, somehow absolves the impermissible conflict he created by filing a claim against Sentara Healthcare, Inc.—an entity which is also his client in the four matters pending on the undersigned Deputy Commissioner's docket. We hold that it does not.

A review of the *Shumake* file indicates that contrary to Mr. Geib's assertion, as of today, the parties have not settled that matter, and Mr. Geib continues to represent the interests of the claimant against his client, Sentara Healthcare, Inc. On July 2, 2020, Mr. Geib filed a request to cancel the pending On-The-Record proceeding and have the parties' dispute transferred to the Commission's Mediation Docket for the parties to participate in full and final mediation. It now appears Mr. Geib intends to participate in a full and final mediation on behalf of the claimant, Shumake, against the interests of Sentara Healthcare, Inc., his client in the five pending matters on the undersigned Deputy Commissioner's docket.

In his responsive letters to the Commission's inquiry, Mr. Geib even acknowledged that attempting to settle the claimant's case in *Shumake* would likely cause a conflict. And despite his representation that he intended to withdraw from representation of the claimant due to this likely conflict, Mr. Geib continues to represent the claimant and even now seeks to participate in a full and final mediation to settle that case.

....

Mr. Geib's concurrent conflict present in these matters does not fall within the exception provided under Rule 1.7(b) as there is no indication Sentara



[Healthcare], Inc. and the claimant, Janet Shumake, have consented to the conflict, there is no indication that such consent has been memorialized in writing, and most importantly, Rule 1.7(b)(3) applies as Mr. Geib is asserting a claim by his client, [Janet] Shumake, against his other client, Sentara Healthcare, Inc., both of whom he represents in different proceedings before the same tribunal.

Mr. Geib has provided no indication that the parties waived this conflict prior to his entering the concurrent representation, and Mr. Geib has not provided any authority to support an argument that his concurrent representation of a claim against Sentara Healthcare, Inc. falls within some exception to Rule 1.7 of the Rules of Professional Conduct. For these reasons, we hold that Mr. Geib's simultaneous representations of and against Sentara Healthcare, Inc. in these matters has created an impermissible conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct. Just [as] the Commission stated in *Richardson v. Maryview Medical Center*, JCN VA01002422994 (Jul. 9, 2018), here, we again find Mr. Geib's "actions raise serious concerns over loyalty to his clients, simultaneous representation of adverse clients, and the exercise of his professional judgment on behalf of one client over another."

In similar prior matters in which Mr. Geib has not provided a satisfactory response to the Commission's inquires, the Commission has stayed proceedings to afford Mr. Geib the opportunity to submit authority or otherwise to demonstrate how such concurrent representations should be allowed in accordance with the Rules of Professional Conduct.

....

We therefore hold the impermissible conflict of interest created by Mr. Geib's representation of the claimant, [Janet] Shumake, against Sentara Healthcare, Inc. in JCN VA00000754691 necessitates removal of Mr. Geib from further representation of Sentara Healthcare, Inc.'s interests in the matters pending before the undersigned Deputy Commissioner. Because Mr. Geib is being disqualified from these matters, it is unnecessary to further determine whether Mr. Geib's ongoing representation of the claimants in the other 19 matters against the interests of Sentara Healthcare, Inc. have also created impermissible conflicts of interest.

Thereafter, Deputy Commissioner Jenkins instructed each case as how to proceed on pending matters in light of the removal of Attorney Geib as representing Sentara Healthcare, Inc. Regarding JCN VA00000109473, the Deputy Commissioner directed the medical provider to

provide written clarification as to whether it still wished to withdraw its November 7, 2019 Application or the pending application would be scheduled for a hearing

Regarding the *Shumake* case, Deputy Commissioner Jenkins noted that the current dispute was pending on the docket of another Deputy Commissioner. He forwarded a copy of the order to Deputy Commissioner Wilder and the Office of Bar Counsel “regarding Mr. Geib’s violation of Rule 1.7 of the Rules of Professional Conduct and any further consideration they deem necessary in connection with Mr. Geib’s continued representation of the claimant, Janet Shumake, against the interests of Sentara Healthcare, Inc.” in *Shumake* (JCN VA00000754691). Deputy Commissioner Wilder entered an Order on September 16, 2020 allowing Attorney Geib to withdraw as legal counsel in *Shumake*.

Similarly, Deputy Commissioner Jenkins forwarded the Order to Deputy Commissioner Wise for his consideration in *Been* (JCN VA00000585787) as the matter was pending on his docket. On September 11, 2020, Deputy Commissioner Wise vacated the Order he entered on May 12, 2020 regarding the *Been* matters.<sup>3</sup>

On September 25, 2020 and October 5, 2020, Attorney Geib sought clarification of the order. He maintained that the Deputy Commissioner had found “no present conflict of interests in any representation of the Provider Sentara Healthcare” in the cases of JCN VA0000968307, JCN 2265315, and JCN 2302645. Regarding JCN VA00000109473, Attorney Geib stated that the medical provider “had previously noticed to the Commission it was intending to withdraw its November 7, 2019 application.”

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<sup>3</sup> On October 19, 2020, the Commission denied Attorney Geib’s request for interlocutory review of Deputy Commissioner Wise’s September 11, 2020, Order.

Deputy Commissioner Jenkins responded on October 5, 2020 and declined any reconsideration. He emphasized that the Commission had not found in any case that there were no present conflicts of interest regarding Attorney Geib's representation of Sentara Healthcare, Inc. and various claimants.

Attorney Geib timely requested interlocutory review of the September 4, 2020 Order.<sup>4</sup> Most pertinently, he objected to his removal as legal counsel and maintained that there were no conflicts of interest in any involved matter which would require his removal.

On October 22, 2020, Attorney Geib responded to the October 5, 2020 correspondence from Deputy Commissioner Jenkins. He contended:

To the extent that your October 5, 2020 is yet another finding and/or Order of the Commission that your dispositions in the *Pruitt, Flores, Payne* and *Cooper* claims are final Orders and/or Dispositions by the Deputy, continuing to remove me as Counsel for the Provider in those matters, the claimant Appeals those Final Orders and/or that Final Dispositions of the Deputy Commissioner.

The Commission accepted this as a Request for Review.

## **II. Findings of Fact and Rulings of Law**

We begin by addressing Attorney Geib's correspondence of October 22, 2020 that the Commission accepted as a review request. We do not find that the Deputy Commissioner's October 5, 2020 denial of reconsideration of the September 4, 2020 Order made any additional dispositive findings regarding the cases at issue for which a review request was necessary or pertinent. Deputy Commissioner Jenkins issued the September 4, 2020 Corrected Order which:

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<sup>4</sup> Attorney Geib appealed any finding by the Deputy Commissioner that "I cannot represent the interest of Sentara Healthcare in any matters pending before the Commission or which permits me to file claims as counsel for Sentara Healthcare before the Commission." We do not find that the September 4, 2020 Order made this determination.

(1) forwarded two cases to other Deputy Commissioners and the Bar, and (2) removed Attorney Geib as counsel of record for four cases before him. Attorney Geib timely appealed. The Corrected Order was the final disposition and the pertinent inquiry on review. Attorney Geib's letter of October 22, 2020 was unnecessary given the procedural posture presented. Accordingly, we REMOVE the October 22, 2020 letter from the review docket.

We address Attorney Geib's request for review of the September 4, 2020 Order. Initially, we note the removal of Attorney Geib was a determinative action with obvious conclusory outcomes. Accordingly, our decision regarding the removal as counsel is not interlocutory in nature.

Regardless, the referral of the two cases to other Deputy Commissioners was interlocutory in nature, and those cases have been addressed and processed accordingly. Nonetheless, we find the referrals made by Deputy Commissioner Jenkins were appropriate as those cases were pending on the dockets of other Deputy Commissioners. Furthermore, the consideration of the referrals is moot at this juncture based upon the actions of the respective Deputy Commissioners discussed above.<sup>5</sup> In *Been*, Deputy Commissioner Wise vacated his May 2020 Order, and we denied interlocutory review. In *Shumake*, Deputy Commissioner Wilder allowed Attorney Geib to withdraw as counsel.

Next, we turn to the merits of Deputy Commissioner Jenkins' removal of Attorney Geib as counsel for the four cases before him. In December 2019, Deputy Commissioner Jenkins stayed the *Been* case in which Attorney Geib concurrently represented the health care provider,

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<sup>5</sup> Attorney Geib's request for review stated, "I would appeal to the Full Commission the Deputy Commissioner's Order with regards to the Frances Been matter."

Chesapeake Bay Pain Management, and the claimant. This directive went completely unheeded. Contrary to Attorney Geib's assertions, his withdrawal from a case or other activity, or an attempt to do so, was not the equivalent of complying with the initial Order. Rather, it absurdly flew in the face of an unequivocal judicial directive. Attorney Geib's continued participation in attempts to resolve any conflict does not address the prior existence of the prior conflict. Most significantly, none of these efforts comported with the mandate issued on December 19, 2019.

In January 2020, Deputy Commissioner Jenkins continued his concern regarding four cases before him in which Attorney Geib was the legal counsel for Sentara Healthcare. Again, he instructed Attorney Geib to clarify the lack of conflicts with his representations of Sentara Healthcare in various cases meanwhile also representing claimants against Sentara Healthcare in other cases. Regardless, Attorney Geib maintained his concurrent representation in *Shumake*. Additionally, he proceeded with the *Been* case, which had been stayed, before different Deputy Commissioners. Moreover, Attorney Geib continued representation of Sentara Healthcare in the four cases before Deputy Commissioner Jenkins. Attorney Geib proposes that since those cases are resolved or in the process of resolving that, therefore, no conflict exists. We disagree with this illogical rationale. **The post ad hoc resolution of a case does not mean that an impermissible conflict never existed.** Most crucially, the facts remain that Attorney Geib did not present to the Commission any client waivers or other documentation to show compliance with the Commission's repeated requests and the Rules of Professional Conduct. While it was not a dispositive ruling, we summarily adopt and incorporate by reference the reasoning rendered by Deputy Commissioner Jenkins on October 5, 2020 as it relates to the September 4, 2020 Corrected Order:

The Commission is not responsible for performing conflicts of interest checks for your practice, and to the extent the Commission determines it does not need to conduct further inquiry in any particular case, you should likewise not consider such a determination to be a finding that your ongoing representation of any particular client is appropriate. It is your ongoing responsibility as an attorney who is regularly representing multiple parties in various litigated matters to monitor for conflicts of interest and take appropriate action when they arise. Rule of Prof. Conduct 1.7, Comment Nos. 3 and 9.

For these reasons, we affirm the decision below.

### **III. Conclusion**

The Deputy Commissioner's September 4, 2020 Order concerning JCN VA00000109473 is AFFIRMED.

This matter is hereby removed from the review docket.

### **APPEAL**

You may appeal this decision to the Court of Appeals of Virginia by filing a Notice of Appeal with the Commission and a copy of the Notice of Appeal with the Court of Appeals of Virginia within thirty (30) days of the date of this Opinion. You may obtain additional information concerning appeal requirements from the Clerks' Offices of the Commission and the Court of Appeals of Virginia.

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by WILLIAMS  
Commissioner

Jan. 9, 2015

JULIE FARR v. LINCOLN PROPERTY CO  
TRAVELERS INDEMNITY CO OF AMERICA, Insurance Carrier  
Jurisdiction Claim No. VA02000002128  
Date of Injury: October 15, 2009

Philip J. Geib, Esquire  
For the Claimant.

Chanda W. Stepney, Esquire  
For the Defendants.

Gershon Pain Specialists  
Medical provider.

REVIEW on the record by Commissioner Williams, Commissioner Marshall and Commissioner Newman at Richmond, Virginia.

The claimant requests review of the Deputy Commissioner's October 24, 2014 Order removing Philip J. Geib, Esquire, as counsel for medical provider Gershon Pain Specialists. We AFFIRM.

**I. Material Proceedings**

On October 15, 2009, the claimant sustained injuries to both legs which the defendants accepted as compensable. A Medical Only Award Order was entered on November 12, 2010. The claimant's injuries gave rise to a third party action, and she recovered a total of \$90,000 from the third party on November 20, 2012. On February 4, 2013, a Third Party Order was entered that included the following provisions:

Pursuant to §65.2-313, Code of Virginia, the employer/carrier is entitled to a credit in the amount of \$54,275.58 against its liability for additional compensation



payments and medical expenses, after which its responsibility to make such payments shall resume.

The injured Worker remains entitled to a reimbursement of attorney fees and expenses at the rate of 48% of any additional compensation and/or medical entitlements as they are incurred. Such reimbursements shall be paid by the carrier/employer directly to the Injured Worker on a quarterly basis from the date of this award. The Injured Worker must provide the carrier/employer with medical bills when a pro rata reimbursement is sought.

Attorney Philip J. Geib represented the claimant at the time the Third Party Order was entered and continues to do so at the present time. The Order was not appealed and became final on March 6, 2013.

On July 18, 2014, the claimant filed a request for a hearing seeking authorization and payment of medical treatment provided by Gershon Pain Specialists. On September 5, 2014, Mr. Geib filed a letter noting he also represented Gershon Pain Specialists and indicating he wished to address the issue of alleged unpaid medical expenses. The Deputy Commissioner subsequently scheduled a telephone conference to discuss "the Commission's concern over a possible conflict of interest between the claimant and the medical provider in regard to the parties' dispute over the effect of the Commission's February [4], 2013 Third Party Order." On October 16, 2014, counsel for the claimant also submitted a brief arguing the following:

I am obtaining the written consent from both clients to represent them in the matters before the Commission given the perceived conflict and in comport with the rules.

In the case at bar, I have previously noted to the Commission that the issue pending, with regard to the claimant, is the claimant is simply seeking, among other things, to have her current medical treatment bound to be the responsibility of the insurance carrier and/or employer. The employer and/or carrier has refused to authorize and pay for the need for ongoing medical treatment. The carrier and/or employer has taken the position that the claimant's current condition, and need for medical treatment, does not arise from the industrial accident. The



claimant's health care provider, Dr. Gershon, has indicated the claimant's treatment and need for medical treatment and does in fact continue to arise from the industrial accident.

The claimant further seeks that her medical expenses be paid, either by the carrier and/or employer. The claimant agrees that she may be subject to the Stipulated Order related to the third-party settlement. However, the language of the ORDER is clear. The claimant need only present her bills to the employer and/or carrier and the employer and/or carrier SHALL pay unto the claimant their portion of the expense. The employer and/or carrier though are taking the position that the claimant must expend or pay such bill and provide only receipts for the bill in order to receive any payment pursuant to the offset ORDER. The language of the Third-Party ORDER is absolutely clear. Again though, the employer is taking the position that the claimant's current condition, and need for medical treatment, resulting in the medical expense, does not arise from the industrial accident.

The health care provider's position, which I have argued previously, is that the health care provider is entitled to payment of the outstanding medical expenses in full. The health care provider has a separate right of recovery, as set forth in the Act, and is not directly subject to the third-party settlement. The health care provider is not a party to the third-party settlement nor did they necessarily agree or take the position that they were subject to the settlement ORDER. A health care provider cannot engage in collections outside the jurisdiction of the Virginia Workers' Compensation Commission. The health care provider is not making a claim against the claimant; they are only seeking that the outstanding medical expenses be paid by the carrier either in full or in part that the Deputy Commissioner may determine that they are entitled to payment via the third-party settlement and/or ORDER. The health care providers are not seeking any contribution from the claimant in the matter pending before the Commission. Therefore, per the Rules of Professional Responsibility, I am quite able to represent both the health care provider, as well as the claimant in this matter. The rights of both parties need to be joined together in litigation so that both parties are informed as to their individual rights of recovery vis a vis the carrier and/or employer. By the way, I am not acting, and am representing both parties as an advocate not against the claimant nor against the health care provider adverse to the others interests in the current claims before the Commission.

In an Order dated October 24, 2014, the Deputy Commissioner made the following findings of fact and rulings of law:

Upon consideration of the arguments set forth by Mr. Geib, it is found that a concurrent conflict of interest exists between the claimant and the medical provider as a result of the medical provider's asserted claim against payments due the claimant via the Third Party Order. Because that Order compels the defendants to make pro rata reimbursement payments directly to the claimant, it is found that the medical provider's claim against those expected payments creates a conflict between the interests of the claimant and the medical provider. Therefore, we hold that Mr. Geib may not represent both the claimant and the medical provider in this matter. Accordingly, it is hereby ORDERED that Philip J. Geib, Esquire be REMOVED as counsel of record for Gershon Pain Specialists, the medical provider in this matter. (footnotes omitted.)

Mr. Geib filed a Request for Reconsideration on November 3, 2014, arguing that he had obtained written conflict of interest waivers from both the claimant and the medical provider and arguing, "[t]here is nothing before the Commission that provides for any claim with a medical provider seeking anything potentially against the interests of the claimant. Both the claimant and health care provider seek an OPINION vis-à-vis the employer/carrier which will define each parties responsibilities as to present and future medical expenses." In the event the request for reconsideration was denied, Mr. Geib sought review by the full Commission. The Deputy Commissioner denied the request and the matter was referred to the review docket.

On November 13, 2014, Mr. Geib submitted written waivers of potential conflict of interest from both the claimant and the medical provider.

## II. Findings of Fact and Rulings of Law

The Rules of Supreme Court of Virginia provide, in pertinent part:

Part 6, Rule 1.7, Conflict of Interest: General Rule.

(a) . . . A concurrent conflict of interest exists if: . . .

- (2) there is significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person . . .

- (b) Notwithstanding the existence of a concurrent conflict of interest . . . , a lawyer may represent a client if each affected client consents after consultation, and:
- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - (2) the representation is not prohibited by law;
  - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and
  - (4) the consent from the client is memorialized in writing.

Va. Sup. Ct. R. Pt. 6, § II, R. 1.7.

Mr. Geib is well-known and respected by this Commission, and he has obtained written consent from both the claimant and the medical provider and avers he may represent both in the present matter.

If the credit provided to the insurance carrier in the Third Party Order was exhausted, we could reasonably conclude there was a community of interest between the claimant and medical provider and Mr. Geib could represent both parties. However, since the settlement proceeds have not been exhausted, the provider's claim is a claim against the interests of the claimant, as a review of the history of Va. Code § 65.2-313 will demonstrate.

An employee's right to prosecute a personal injury claim against the third party responsible for the compensable accident is subject to the employee's obligation to reimburse the employer for compensation payments out of any recovery. See Va. Code § 65.2-309. Apportioned between the employer and employee "as their respective interests may appear" are

“reasonable expenses and reasonable attorney’s fees” incurred by the employee in the prosecution of the claim against the third party. Va. Code § 65.2-311(A).

The enactment of Va. Code § 65.2-313 resolved inequities inherent in the procedures employed for apportioning fees between employees and employers. Prior to the enactment of this section, the calculation of the employers’ pro rata share of attorney’s fees and costs was premised solely upon compensation benefits paid through the date of recovery. The employer was thereafter released from the obligation to pay compensation until the employee exhausted his or her net settlement proceeds in the payment of accident-related medical expenses and disability.

Compensation the employer would have paid but for the third party recovery was traditionally excluded from the calculation of the employer’s pro rata share of fees. This unfairly saddled the employee with all the attorney’s fees and expenses attributable to those post-settlement entitlements, an inequity addressed by the Virginia Supreme Court in Circuit City Stores v. Bower, 243 Va. 183, 413 S.E.2d 55 (1992). In Bower, the Court considered whether the apportionment of the employer’s share of fees should include future benefits the employer was relieved from paying by virtue of the recovery. The employer contested consideration of such benefits, arguing a trial court would rarely be able to accurately calculate future compensation benefits an employer would be obligated to pay over the life of a claim. Therefore, the employer argued, apportioning fees should be based upon those benefits actually paid, not prospective entitlements which would necessarily require the trial court to indulge in gross speculation. Id. at 186-87, 413 S.E.2d at 56-57.

The Court rejected the employer's argument reasoning that the third-party recovery benefited the employer by both the recovery of compensation previously paid and the release of the obligation to pay future benefits. The Court found "no rational distinction between the benefit an employer enjoys from being reimbursed for compensation payments already made and the benefit of being released from the obligation to make future compensation payments." *Id.* at 187, 413 S.E.2d at 57 (quoting *Sheris v. Travelers Ins. Co.*, 491 F.2d 603, 606 (4<sup>th</sup> Cir. 1974)). The Court held that the calculation of the employer's pro rata share of fees should take into account the sum of pre-recovery payments actually made and post-recovery payments the employer would have made but for the recovery.

Virginia Code § 65.2-313, enacted the year following *Bower*, balanced the interests of both employers and employees as to the payment of fees on post-recovery entitlements.<sup>1</sup> The prescribed formula serves dual purposes: addressing the inequity of pro rating fees solely on pre-recovery payments and relieving the trial court from the burden of divining future compensation payments the employer was released from paying.<sup>2</sup> While § 65.2-313 does not relieve employees of the obligation to pay post-recovery entitlements out of their net settlement proceeds, it obligates employers to pay employees the proportionate share of attorney's fees and costs attributable to each such entitlement. As a consequence, employees are not saddled with fees for a recovery which ultimately benefits the employer, and the employer is only obligated to pay fees on actual entitlements the employer is relieved from paying due to the settlement.

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<sup>1</sup> Va. Code § 65.2-313 is entitled, "Method of determining employer's offset in event of recovery under § 65.2-309 or § 65.2-310."

<sup>2</sup> Va. Code § 65.2-313 references "further entitlement" defined as "compensation and expenses for medical, surgical and hospital attention and funeral expenses to which the claimant is entitled under the provisions of this title, which entitlements are related to the injury for which the third-party recovery was effected."

An employer's obligation to pay an employee is triggered by the employee incurring any specific "further entitlement" set out in Va. Code § 65.2-313. As to medical expenses, § 65.2-313 inexorably ties the employer's obligation to reimburse an employee to those injury-related bills the employee actually pays. For as long as an employee retains the settlement proceeds, his or her interests are aligned with those of the employer in minimizing medical payments, thus preserving settlement proceeds and reducing fee reimbursements. However, the employee's interests are in inherent conflict with the health care provider, whose interest is to receive payment in full.

Since Gershon Pain Specialists is asserting a claim against the interests of the claimant, we agree with the Deputy Commissioner that Mr. Geib cannot represent the medical provider.

**III. Conclusion**

The Deputy Commissioner's October 24, 2014 Order is AFFIRMED.

This matter is hereby removed from the review docket.

APPEAL

Because this is an interlocutory issue, there is no right of appeal to the Court of Appeals of Virginia until the Commission has issued a final decision in this case.

VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by NEWMAN  
Commissioner

Sept. 20, 2016

DARREN FETTY v. CITY OF CHESAPEAKE VIRGINIA  
WARDELL ORTHOPAEDICS, P.C., Medical Provider  
CITY OF CHESAPEAKE, Insurance Carrier  
PMA MANAGEMENT CORP, TPA, Claim Administrator  
Jurisdiction Claim No. VA00000688079  
Claim Administrator File No. 0006W25259  
Date of Injury: November 1, 2012  
Docket ID VA00000688079-03

Philip J. Geib, Esquire  
For the Claimant.

No appearance by or on behalf of the Defendants.

REVIEW by Commissioner Marshall, Commissioner Newman, and Deputy Commissioner Burkholder at Richmond, Virginia.<sup>1</sup>

Claimant's counsel requests interlocutory review of the Deputy Commissioner's January 21, 2016 Order directing counsel's law firm to disclose concurrent representation by its attorneys of claimants and Wardell Orthopedics P.C. Counsel seeks dismissal of the Order and entry of a writ of prohibition. We VACATE the Order and DENY the request for a writ.

**I. Material Proceedings**

The claimant sustained an injury to his left shoulder on November 1, 2012, when he fell off a ladder while responding to a fire. The defendants accepted the injury as compensable. On

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<sup>1</sup> Pursuant to Va. Code § 65.2-705(D), the Deputy Commissioner participated on this review panel by designation of the Chairman.



February 13, 2013, an Award Order was entered providing for temporary total disability benefits and medical benefits for the “left shoulder including acromioclavicular joint and rotator cuff tear.” The claimant filed an additional claim on March 2, 2014, while acting pro se.

On July 21, 2014, Attorney Philip J. Geib filed a Notice of Representation with the Commission. Claims filed on July 22, August 27, September 30, and December 10, 2014, clarified the relief sought. The claims were adjudicated by an on-the-record hearing, and an Opinion was issued on May 13, 2015. The claimant subsequently filed a permanency claim, which was resolved by the mutual agreement of the parties. On October 13, 2015, the Commission entered an Award Order providing for permanent partial disability benefits and temporary partial disability benefits beginning August 14, 2014.

On April 17, 2015, counsel for the claimant filed notice that he was representing Wardell Orthopaedics, PC (the “medical provider”), alleging that only partial payment had been received for services rendered to the claimant, and seeking payment in full. On June 26, 2015, the defendants submitted a written statement indicating the contested medical bills were “paid pursuant to payment recommendation[s] received from Coventry” and “in accordance with the provider’s Physician Group Agreement.”

The medical provider claim was docketed for a hearing on January 21, 2016.<sup>2</sup> At the outset of the hearing, the Deputy Commissioner confirmed that counsel’s law firm (the “Firm”) was representing both the claimant and the medical provider, and asked counsel to discuss the firm’s concurrent representation. The Deputy Commissioner stated that because “we don’t know today that the parties may decide to talk settlement in the future” which presented “the potential

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<sup>2</sup> Adam B. Shall, Esquire, who formerly practiced law with Mr. Geib, represented the medical provider at the evidentiary hearing.



for a risk” of an impermissible conflict, and asked counsel to “address how there can be an assurance that in the future, in any claimant’s situation, there’s not going to be a discussion of settlement.” (Tr. 3, 4.) Counsel responded that the only issue presently before the Commission was payment for services already rendered, there was not going to be a discussion of settlement at the evidentiary hearing, and asked the Deputy Commissioner to limit the discussion regarding concurrent representation to the present claim.

The Deputy Commissioner ultimately decided not to allow the evidentiary hearing to go forward, citing his concerns that:

[Y]ou’re representing . . . numerous claimants out there who are treating with Dr. Wardell . . . . And so what about those concurrent representations? It doesn’t matter if it’s not in the same case. You may have differing interests between Dr. Wardell and those claimants in all your other cases that cause conflicts.

(Tr. 9.)

After the hearing was closed, the Deputy Commissioner issued an Order on January 21, 2016 directing the firm to disclose all cases where it represented claimants who were receiving or had received treatment from the medical provider. The firm was also required to “specify for each such concurrent representation any known or potential conflicts between these claimants and Wardell Orthopaedics, PC as well as any argument the Firm may have as to why it should be allowed to continue in these concurrent representations.” Lastly, the Deputy Commissioner ordered the firm to address the concerns raised at the hearing regarding the impact of the Virginia Rules of Professional Conduct and public policy concerns.

Counsel filed a Request for Reconsideration on February 3, 2016, and asked that in the alternative it be considered a request for interlocutory review. Counsel also requested a stay of

the January 21, 2016 Order, entry of a writ of prohibition against the Deputy Commissioner, and that the Deputy Commissioner recuse himself from further cases involving the firm until the issue of concurrent representation of medical providers and claimants was settled. Counsel argued that the claimant and medical provider were being represented in separate and distinct matters, the Order was not relevant to the issues to be addressed at the evidentiary hearing, the Deputy Commissioner erred by finding concurrent representation created an unwaivable conflict of interest, and that the firm would recognize if an impermissible conflict arose and take the correct action. In addition, counsel argued the Order was unduly burdensome and that the firm could not “ascertain ‘potential’ future conflicts in each and every file . . . simply because a claimant may have treated with any particular healthcare provider.”

The Deputy Commissioner declined to recuse himself from the case, but granted the Request for Reconsideration and allowed for written statements to be filed. In a responsive written statement dated February 24, 2016, counsel stated the only issue in the present medical provider claim was payment of underpaid medical bills, which did not implicate or present any risk to the claimant. In addition, he contended the Order improperly addressed future scenarios that had not yet occurred, that the Order was unduly burdensome and exceeded the Deputy Commissioner’s jurisdiction. On March 4, 2016, the Deputy Commissioner issued an Order staying the proceedings pending interlocutory review by the full Commission. The full Commission heard oral argument on April 29, 2016.<sup>3</sup>

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<sup>3</sup> At oral argument, counsel stated he was no longer seeking an order recusing the Deputy Commissioner from adjudicating future claims in which representation of a medical provider was implicated, and conceded the Deputy Commissioner was not exceeding his authority or jurisdiction by seeking more information about concurrent representation in the present matter.

## II. Findings of Fact and Rulings of Law

The Virginia Rules of Professional Conduct adopted by the Virginia State Bar prohibit concurrent representation of clients if their interests are directly adverse. Concurrent representation is also prohibited if “there is a significant risk that the representation of one or more clients will be materially limited by the lawyer’s responsibility to another client, a former client or a third person or by a personal interest of the lawyer.” Va. Sup. Ct. R., Pt. 6, § II, R. 1.7(a)(2). However, if the attorney’s clients are advised about the possibility of a concurrent conflict of interest, and consent is memorialized in writing, the lawyer may represent both clients if:

- (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) the representation is not prohibited by law; [and]
- (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

Id. at R. 1.7(b)(1),(2),(3).

With regards to former clients, a lawyer “shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client” unless both clients consent after consultation. Id. at R. 1.9(a). A subsequent claim or case will be considered the same ‘matter’ if it involves similar facts. The matter will be deemed substantially related if the issues raised are “‘identical’ or ‘essentially the same.’” Neuharth v. Quinn, 23 Va. Cir. 252, 256 (1991) (citation omitted).

The Virginia Rules of Professional Responsibility do not contain an explicit procedure for disqualification of an attorney or for determining if an impermissible conflict of interest is present. If the issue is raised, however, a tribunal “has an independent duty to resolve the matter.” Id. at 257. However, “anxiety or subjective judgement . . . are not the basis for which [a tribunal] can grant disqualification.” Brookside Dev. LLC v. Fauquier Water & Sanitation Auth., 68 Va. Cir. 76, 77 (2005). The Court must examine the specific circumstances of each case. “[D]isqualification is a serious matter which cannot be based on imagined scenarios of conflict,” and doing so requires a high standard of proof. Id.

In Samuels v. Commonwealth, No. 2849-09-3 (Va. Ct. App. Nov. 30, 2010), the Court of Appeals of Virginia held that if the issue of a conflict was raised, it had a duty to determine if “there was an actual conflict of interest” and if that conflict adversely affected the interests of the attorney’s clients. “[A] potential conflict of interest does not amount to an actual conflict of interest unless there is a ‘significant risk that the representation of one or more clients will be materially limited.’” Id. (quoting Va. Sup. Ct. R. Pt. 6, § II, R. 1.7(a)(2)). If the clients’ “interests are not directly adverse and there is no significant risk that the representation . . . will be materially limited . . . there is no concurrent conflict of interest.” Wright v. Kincheloe, 81 Va. Cir. 277, 281 (2010).

We address first that portion of the Deputy Commissioner’s Order directing the Firm to disclose all cases where its clients were or had received treatment from the medical provider. We agree with counsel that these provisions of the Order were overbroad. While a tribunal has a duty to investigate the issue if it believes a concurrent conflict of interest has arisen in a case being adjudicated, this must be done on a case-by-case basis.

The Deputy Commissioner expressed concern that prior representation of a claimant or the medical provider could lead to a significant risk that representation of other clients in the future would be materially limited. However, the fact that one claimant sought treatment from the medical provider is not sufficient to render a claim filed by a subsequent claimant the same “matter.” Although the medical provider in this case may provide similar treatment, the circumstances of each claimant’s accident and injury are separate. The mere fact that a client received medical treatment from the provider does not make the parties adverse.

There are many circumstances where an impermissible conflict could develop due to the Firm’s representation of both the medical provider and a claimant. See Farr v. Lincoln Property Co., JCN VA02000002128 (Jan. 9, 2015) (holding the existence of a third-party settlement created an impermissible conflict of interest between the claimant and medical provider). However, mere “imagined scenarios of conflict” are not sufficient to create a concurrent conflict of interest. Requiring the Firm to disclose all cases where a claimant sought treatment from the medical provider, as well as what conflicts could *potentially* develop, would not aid the Deputy Commissioner in determining if a conflict is actually present and if recusal by counsel was required. It is the circumstances of each case, at the time the claim is being adjudicated, that must be analyzed.

The Deputy Commissioner does, however, have the right and the obligation to investigate if a conflict is present in the current matter. There was no error in requiring counsel to address issues raised by its’ representation of both the claimant and the medical provider in this case—specifically if such representation would create a substantial risk that such representation would be limited. The Commission has previously determined that the claimant sustained compensable

injuries and is entitled to medical and indemnity benefits. The claim filed by the medical provider involves a dispute over the amount of payment due, and the potential implications of an alleged contract between the provider and the insurer. Neither the provider nor the insurer claim the treatment is the responsibility of the claimant. Although this is the same 'matter,' the issues raised are neither identical or substantially the same. We do not find that there is presently a concurrent conflict of interest so as to limit counsel's representation of the medical provider or the claimant.

The Deputy Commissioner also expressed concern that if the defendants and the claimant were to settle the case, the interests of the medical provider could be implicated. At present, settlement negotiations are an "imagined scenario or conflict" and it would be improper to opine as to whether concurrent representation can continue. Settlement negotiations can take many forms, and the issues will be different in each case. We simply cannot determine if future, unknown circumstances will cause a conflict until such circumstances arise.

We find the portion of the Deputy Commissioner's Order requiring the Firm to disclose all clients who have treated with the medical provider overbroad. In addition, we find counsel has provided sufficient explanation regarding why his representation of both the claimant and the medical provider in the present dispute sufficient to demonstrate there is no concurrent conflict of interest. The evidentiary hearing on the medical provider claim may proceed.

### **III. Conclusion**

The Order below is VACATED. Counsel is not required to disclose to the Deputy Commissioner all claimants it is presently representing who have received treatment from the medical provider. We also find no concurrent conflict of interest has been created by counsel's

representation of both the medical provider and the claimant. The evidentiary hearing may proceed. However, the Deputy Commissioner did not act outside his jurisdiction in ordering counsel to disclose and discuss the implications of dual representation with regards to this specific case. Accordingly, the request for a writ of prohibition is DENIED.

This matter is hereby removed from the review docket.

Because this is an interlocutory matter, no right of appeal to the Court of Appeals of Virginia will exist until the Commission issues a final decision in this case.