

VIRGINIA:

BEFORE THE FIFTH DISTRICT, SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
James Patrick Hodges

VSB Docket No. 22-053-125672

SUBCOMMITTEE DETERMINATION
(PUBLIC REPRIMAND WITH TERMS)

On March 3, 2023 a meeting was held in this matter before a duly convened Fifth District, Section III Subcommittee consisting of Dawn E. Boyce, Chair Presiding; Samuel A. Leven, Member; and Poonam H. Magar, 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 Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, and James Patrick Hodges, Respondent, *pro se*.

WHEREFORE, the Fifth District, Section III Subcommittee 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 1991. At all relevant times, Respondent was a member of the VSB.
2. Complainant Justin Park owned Custom Fairfax Tailors, LLC (“CFT”), which was involved in a lease dispute. Park began communicating with Respondent about the matter in October 2019.
3. On November 1, 2019, Respondent began working as in-house counsel for McLean Mortgage.
4. On November 4, 2019, Respondent sent CFT’s landlord a letter with a settlement offer. On November 6, 2019, the landlord rejected the offer and Respondent forwarded the rejection to Park.

5. On December 2, 2019, Respondent sent Park an engagement letter. The scope of the engagement was identified as “review the terms of the Lease, [] advise Custom Fairfax Tailors, and you personally, as to your respective obligations under the Lease, and [] negotiate the termination of the Lease.” Respondent said he would charge a discounted rate of \$250 per hour. Respondent said that he had already begun work on this matter and requested “a retainer in the amount of \$2,500.00 to continue our work on this matter. We will bill for our services against that retainer and we will request that you replenish the retainer as necessary throughout this engagement.”
6. Also on December 2, 2019, Respondent wrote to the landlord again to attempt to resolve the matter.
7. On December 16, 2019, Respondent said he had not yet received the signed engagement letter and check, and asked Park to “take care of that this week.” Park gave Respondent a check for the \$2,500 retainer, which Respondent kept in his desk. Respondent told VSB Investigator McCall that he had done enough work to earn the check prior to December 16, 2019, but Respondent did not keep any time records.
8. On February 21, 2020, Fairfax Company of Virginia, LLC sued CFT and others for breach of lease and breach of contract. Park was not named as an individual defendant, and therefore, according to Respondent, Park was not at risk of incurring personal liability in that action.
9. On March 25, 2020, Respondent filed an Answer on behalf of CFT.
10. On April 2, 2020, Respondent wrote to Park and said that he had not yet deposited the check he had received several months ago. He sought permission to do so. Park responded the same day and said that Respondent could deposit the check. Bank records reflect that the check was posted on April 7, 2020.
11. Park said that after this email exchange, he heard nothing from Respondent for approximately 20 months. For most of that 20-month time period, there was no activity in the action, which took place during the COVID-19 pandemic.
12. On August 26, 2021, the plaintiff filed a motion to nonsuit all defendants other than CFT because they could not be found. By the time the nonsuit motion was filed, CFT had ceased doing business and was identified as “inactive” in the Virginia State Corporation Commission records. The motion was served on Respondent, but Respondent did not notify Park of this development. On September 10, 2021, the Court entered the nonsuit order.
13. On November 29, 2021, Park received a summons from the court and called and texted Respondent about it. On November 30, Respondent texted Park that he would give him a call that day.
14. On December 1, 2021, Respondent told Park he would have to hire another lawyer because Respondent was no longer in private practice. Park said this was the first time Respondent told him this.

15. On December 16, 2021, opposing counsel Patrick Lee emailed Respondent, let him know that he had received a voicemail directly from Park and asked Respondent whether Lee could contact Park directly. Seven days later, on December 23, 2021, Respondent said “I am not representing Mr. Park in this matter so I have no objection to you responding to his voicemail.”
16. On December 27, 2021, Park went to court by himself for term day. Park told the court that he was having trouble contacting his attorney. The trial was set for August 30, 2022 and then continued to February 1, 2023.
17. On July 29, 2022, Respondent filed a motion to withdraw, which was granted on August 5, 2022.

II. NATURE OF MISCONDUCT

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

By failing to inform Park of the plaintiff’s motion for nonsuit of the other defendants and entry of the nonsuit order, and by entering an appearance but failing to tell Park until December 2021 that he could not represent him in the litigation, Respondent violated Rule 1.4(a).

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

By accepting an advanced legal fee from Park but failing to keep any time records reflecting how he alleged he earned it, Respondent violated Rule 1.15(b)(3).

RULE 1.15 Safekeeping Property

- (b) Specific Duties. A lawyer shall:

...

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them[.]

By constructively withdrawing from Park's representation in December 2021, failing to ensure that Park's interests were appropriately protected when he constructively withdrew, and then failing to file a motion to withdraw until July 2022, Respondent violated Rule 1.16(c) and (d).

RULE 1.16 Declining Or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

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:


Respondent will complete six hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent must certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed

Virginia MCLE Board Certification of Attendance form (Form 2) to bar counsel promptly following his attendance of each such CLE program(s).

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why a Certification for Sanction Determination should not be imposed. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed.

Pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

FIFTH DISTRICT, SECTION III
SUBCOMMITTEE
OF THE VIRGINIA STATE BAR



Dawn E. Boyce
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on March 9, 2023, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was emailed to jhodges@hodges-law.com, and sent by certified mail to James Patrick Hodges, Respondent, at 2314 NE 25th St., Lighthouse Point, FL 33064, Respondent's last address of record with the Virginia State Bar.



Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel

VIRGINIA:

BEFORE THE FIFTH DISTRICT, SECTION III SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES PATRICK HODGES

VSB Docket No. 22-053-125672

AGREED DISPOSITION
PUBLIC REPRIMAND WITH TERMS

Pursuant to the Rules of Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Elizabeth K. Shoenfeld, Senior Assistant Bar Counsel, and James Patrick Hodges, Respondent, *pro se*, hereby enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar (“VSB”) in 1991. At all relevant times, Respondent was a member of the VSB.
2. Complainant Justin Park owned Custom Fairfax Tailors, LLC (“CFT”), which was involved in a lease dispute. Park began communicating with Respondent about the matter in October 2019.
3. On November 1, 2019, Respondent began working as in-house counsel for McLean Mortgage.
4. On November 4, 2019, Respondent sent CFT’s landlord a letter with a settlement offer. On November 6, 2019, the landlord rejected the offer and Respondent forwarded the rejection to Park.
5. On December 2, 2019, Respondent sent Park an engagement letter. The scope of the engagement was identified as “review the terms of the Lease, [] advise Custom Fairfax Tailors, and you personally, as to your respective obligations under the Lease, and [] negotiate the termination of the Lease.” Respondent said he would charge a discounted rate of \$250 per hour. Respondent said that he had already begun work on this matter and requested “a retainer in the amount of \$2,500.00 to continue our work on this matter. We will bill for our services against that retainer and we will request that you replenish the retainer as necessary throughout this engagement.”

6. Also on December 2, 2019, Respondent wrote to the landlord again to attempt to resolve the matter.
7. On December 16, 2019, Respondent said he had not yet received the signed engagement letter and check, and asked Park to "take care of that this week." Park gave Respondent a check for the \$2,500 retainer, which Respondent kept in his desk. Respondent told VSB Investigator McCall that he had done enough work to earn the check prior to December 16, 2019, but Respondent did not keep any time records.
8. On February 21, 2020, Fairfax Company of Virginia, LLC sued CFT and others for breach of lease and breach of contract. Park was not named as an individual defendant.
9. On March 25, 2020, Respondent filed an Answer on behalf of CFT.
10. On April 2, 2020, Respondent wrote to Park and said that he had not yet deposited the check he had received several months ago. He sought permission to do so. Park responded the same day and said that Respondent could deposit the check. Bank records reflect that the check was posted on April 7, 2020.
11. Park said that after this email exchange, he heard nothing from Respondent for approximately 20 months.
12. On August 26, 2021, the plaintiff filed a motion to nonsuit all defendants other than CFT because they could not be found. The motion was served on Respondent, but Respondent did not notify Park of this development. On September 10, 2021, the Court entered the nonsuit order.
13. On November 29, 2021, Park received a summons from the court and called and texted Respondent about it. On November 30, Respondent texted Park that he would give him a call that day.
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16. On December 27, 2021, Park went to court by himself for term day. Park told the court that he was having trouble contacting his attorney. The trial was set for August 30, 2022 and then continued to February 1, 2023.
17. On July 29, 2022, Respondent filed a motion to withdraw, which was granted on August 5, 2022.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:¹

By failing to inform Park of the plaintiff's motion for nonsuit of the other defendants and entry of the nonsuit order, and by entering an appearance but failing to tell Park until December 2021 that he could not represent him in the litigation, Respondent violated Rule 1.4(a).

RULE 1.4 Communication

- (a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

By accepting an advanced legal fee from Park but failing to keep any time records reflecting how he alleged he earned it, Respondent violated Rule 1.15(b)(3).

RULE 1.15 Safekeeping Property

- (b) Specific Duties. A lawyer shall:

...

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them[.]

By constructively withdrawing from Park's representation in December 2021, failing to ensure that Park's interests were appropriately protected when he constructively withdrew, and then failing to file a motion to withdraw until July 2022, Respondent violated Rule 1.16(c) and (d).

¹ Italicized language is for explanatory purposes only.

RULE 1.16 Declining Or Terminating Representation

- (c) In any court proceeding, counsel of record shall not withdraw except by leave of court after compliance with notice requirements pursuant to applicable Rules of Court. In any other matter, a lawyer shall continue representation notwithstanding good cause for terminating the representation, when ordered to do so by a tribunal.
- (d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, refunding any advance payment of fee that has not been earned and handling records as indicated in paragraph (e).

III. PROPOSED DISPOSITION

Accordingly, bar counsel and Respondent tender to a subcommittee of the Fifth District, Section III Committee for its approval the agreed disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Fifth District, Section III Committee. The terms shall be met within six months of issuance of the Subcommittee Determination approving this agreed disposition and are as follows:

Respondent will complete six hours of continuing legal education credits by attending courses approved by the Virginia State Bar in the subject matter of legal ethics. Respondent's Continuing Legal Education attendance obligation set forth in this paragraph will not be applied toward his Mandatory Continuing Legal Education requirement in Virginia or any other jurisdictions in which Respondent may be licensed to practice law. Respondent must certify his compliance with the terms set forth in this paragraph by delivering a fully and properly executed Virginia MCLE Board Certification of Attendance form (Form 2) to bar counsel promptly following his attendance of each such CLE program(s).

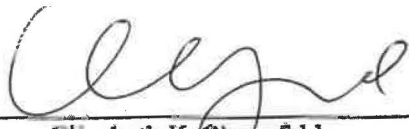
If any of the terms are not met by the date set forth above, Respondent agrees that the District Committee shall impose a Certification for Sanction Determination pursuant to Part 6, §

IV, ¶ 13-15.F of the Rules of Supreme Court of Virginia. Any proceeding initiated due to failure to comply with terms will be considered a new matter, and an administrative fee and costs will be assessed pursuant to ¶ 13-9.E of the Rules of Supreme Court of Virginia.

If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR



Elizabeth K. Shoenfeld
Senior Assistant Bar Counsel



James Patrick Hodges, Esquire
Respondent