

VIRGINIA:

**BEFORE THE THIRD DISTRICT, SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
MICHAEL BEN GUNLICKS**

VS B Docket No. 23-031-127969

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

On September 20, 2023, and October 6, 2023, meetings were held in this matter before a duly convened Third District, Section I Subcommittee consisting of Michael C. Moore, Esq., Subcommittee Chair; Alexandra M. Griffin, Esq., Subcommittee Member; and Gordon Hickey, Lay Member. During the meeting, the Subcommittee voted to approve an agreed disposition for a Public Reprimand without Terms pursuant to Part 6, § IV, ¶ 13-15.B.4. of the Rules of the Supreme Court of Virginia. The agreed disposition was entered into by the Virginia State Bar, by Bar Counsel Renu M. Brennan; Respondent Michael Ben Gunlicks (Respondent); and Respondent's co-counsel William Andrew Webb and Wayne Barry Montgomery.

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

I. FINDINGS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia in 1995. At all times relevant Respondent has been in good standing with the Virginia State Bar (VSB).
2. By retainer agreement entered into August 13 and 19, 2015, Respondent agreed to represent Complainant Rauseff M. Lambert on a contingency fee basis for injuries stemming from an April 24, 2014 car accident. The accident occurred in Chesterfield County. Lambert was struck by the passenger side rear view mirror of a car driven by a 14-year-old driver. He had intense pain in his right arm and shoulder, neck, and back necessitating physical therapy.

3. Nine months later, on April 25, 2016, the date of expiration of the statute of limitations, Respondent filed suit in Chesterfield County Circuit Court (Court) against the mother and underage driver.
4. Almost one year later, six days before his deadline to do so, Respondent, by letter dated April 19, 2017, requested the Clerk of Court prepare copies of the suit for service on the defendants.
5. On April 21, 2017, service of the suit was posted on the defendants, who did not respond to the suit.
6. On July 19, 2017, proof of service on the defendants was signed and notarized by the process server.
7. On July 20, 2017, Respondent filed the proofs of service with the court.
8. Respondent did not then file a certificate of mailing¹ of a copy of the process on defendants.
9. On November 16, 2017, Respondent filed a motion for default judgment. Hearing was set for January 9, 2018.
10. On January 9, 2018, Respondent filed with the Court a letter dated November 16, 2017 to the defendants stating that a process server had posted for service the summons and complaint, enclosed in Respondent's letter. Respondent advised that he scheduled a hearing January 9, 2018 seeking default judgment.
11. On January 9, 2018, the Court continued the hearing to January 24, 2018 because Respondent did not file a service member affidavit.
12. By email dated January 22, 2018, Respondent requested a continuance of the January 24, 2018 hearing.
13. On February 23, 2018, Respondent noticed the hearing on the motion for default judgment for March 8, 2018.
14. On March 8, 2018, Respondent filed the service member affidavit.
15. While Respondent did not submit any order, and none was therefore entered, as a result of the March 8, 2018 hearing, the Court's notes reflect that Respondent

¹ Pursuant to Va. Code § 8.01-296.2.b., process, for which no particular mode of service is prescribed, may be served upon natural persons by posting at the front door provided that not less than 10 days before judgment by default may be entered by the attorney for the party seeking default files with the Clerk of Court a certificate of mailing of the process on the party against whom default is to be entered.

requested, and was granted, leave to amend the lawsuit to add a claim of negligent entrustment. Respondent was to set a future hearing date after the amended suit was served on defendants.

16. Respondent took no action for the next three and one-half years. During the three and one-half years that Respondent took no action, he was hospitalized for an illness in 2018 and he had COVID twice. Respondent asserts that he met with Lambert once in the three and one-half years and that he corresponded with Lambert on various occasions. Lambert disputes this assertion and, as stated below, Lambert had to go to the Chesterfield Circuit Court because Respondent did not communicate with Lambert.
17. At no time did Respondent seek leave to withdraw as counsel.
18. On October 24, 2019, Lambert requested the Court “remove Attorney at law Mr. Michael Gunlicks as my counsel.” Among other reasons cited are Respondent’s failure to communicate with Lambert. There are significant gaps of communication, including from 2019 to August 2021 and thereafter.
19. By notice sent to Lambert and defendants on November 4, 2019, the Court set a motion hearing November 26, 2019 at which only Lambert appeared and requested that Respondent be removed. The Court’s notes reflect that Lambert did not understand why Respondent sought to amend the suit and did not seem to understand that there was no default judgment. The Court clarified that there was no default judgment and that Lambert had to re-notice the hearing for default judgment. The Court did not remove Respondent as Lambert’s counsel.
20. By letter filed April 28, 2020, Lambert advised the Court that he was incarcerated and requested a hearing on his motion for default judgment upon his release May 25, 2020. By Order entered May 1, 2020, the Court declined to hear Lambert’s motion because Respondent represented Lambert.
21. On August 16, 2021, Respondent filed a Motion to Amend the Complaint (which, per the Court’s notes was granted three years prior, although no order was entered). Respondent noticed the hearing for August 26, 2021. On August 26, 2021, the Court denied the motion to amend because there was no certificate of mailing of process on the defendants in the Court’s file.
22. The copy of the Court’s file obtained during the VSB investigation does contain a copy of the November 16, 2017 certificate of mailing filed January 9, 2018.
23. Respondent states that he contacted the law clerk, who indicated that the certificate of mailing was in the file.
24. Respondent did not move to reconsider or otherwise take action after the August 16, 2021 hearing.

25. While there was the above hearing in August 2021, by Order entered March 23, 2023, pursuant to Va. Code § 8.01-335(B), the Court removed the lawsuit because there was no activity for three years.
26. Respondent advised the bar investigator that his plan is to move to reinstate the case before March 23, 2024 and then to seek leave to withdraw as counsel. Complainant has filed, pro se, but not served, a malpractice suit against Respondent.

II. NATURE OF MISCONDUCT

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

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

RULE 1.4 Communication

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

RULE 1.16 Declining Or Terminating Representation

- (a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

- (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client; or

- (3) the lawyer is discharged.

III. PUBLIC REPRIMAND WITHOUT TERMS

Accordingly, having approved the agreed disposition, it is the decision of the Subcommittee to impose a Public Reprimand Without Terms and Respondent is hereby so reprimanded. Pursuant to Part 6, § IV, ¶ 13-9.E of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

THIRD DISTRICT, SECTION I
SUBCOMMITTEE OF THE
VIRGINIA STATE BAR

Michael C. Moore

Michael C. Moore
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on October 10, 2023, a true and complete copy of the Subcommittee Determination (Public Reprimand without Terms) was sent by certified mail to Michael B. Gunlicks, Respondent, at Gunlicks Law, LC, 604 N Arthur Ashe Blvd., Richmond, Virginia 23220, his last address of record with the Virginia State Bar, and emailed to michael@gunlickslaw.com; and mailed to Michael Andrew Webb, Respondent's Co-Counsel, at William Andrew Webb, at Kalbaugh Pfund & Messersmith, 901 Moorefield Park Dr., Ste 200, Richmond, VA 23236 and emailed to andy.webb@kpmlaw.com; and mailed to Wayne Barry Montgomery, Respondent's Co-Counsel, at Kalbaugh, Pfund & Messersmith, P.C., 901 Moorefield Park Dr., Ste 200, Richmond, VA 23236 and emailed to barry.montgomery@kpmlaw.com

Renu M. Brennan

Renu M. Brennan
Bar Counsel

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VS **Docket No. 23-031-127969**

AGREED DISPOSITION
PUBLIC REPRIMAND

Pursuant to the Rules of Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Renu M. Brennan, Bar Counsel, Michael Ben Gunlicks, Respondent, and William Andrew Webb and Wayne Barry Montgomery, Co-Counsel for Respondent, enter into the following agreed disposition arising out of this matter.

I. STIPULATIONS OF FACT

1. Respondent was licensed to practice law in the Commonwealth of Virginia in 1995. At all times relevant Respondent has been in good standing with the Virginia State Bar (VSB).
2. By retainer agreement entered into August 13 and 19, 2015, Respondent agreed to represent Complainant Rauseff M. Lambert on a contingency fee basis for injuries stemming from an April 24, 2014 car accident. The accident occurred in Chesterfield County. Lambert was struck by the passenger side rear view mirror of a car driven by a 14-year-old driver. He had intense pain in his right arm and shoulder, neck, and back necessitating physical therapy.
3. Nine months later, on April 25, 2016, the date of expiration of the statute of limitations, Respondent filed suit in Chesterfield County Circuit Court (Court) against the mother and underage driver.
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III. PROPOSED DISPOSITION

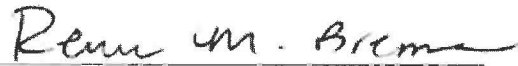
Accordingly, Bar Counsel and Respondent tender to a subcommittee of the Third District, Section I Committee for its approval the agreed disposition of a PUBLIC Reprimand as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Third District, Section I Committee.

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



Renu M. Brennan
Bar Counsel



Michael Ben Gumlicks
Respondent



William Andrew Webb
Co-Counsel for Respondent



Wayne Barry Montgomery
Co-Counsel for Respondent