

VIRGINIA:
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by the
COMMISSION

Dec. 30, 2020

DAVID PRUITT v. GUTTER WORKS, SOLUTIONS
SENTARA HEALTHCARE, Medical Provider¹
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.²

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.

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

² 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.³

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.”

³ 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.⁴ 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:

⁴ 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.⁵ 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,

⁵ 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.