

DEC 9 2013

VIRGINIA:

IN THE CIRCUIT COURT OF WILLIAMSBURG/JAMES CITY COUNTY

VIRGINIA STATE BAR, EX REL
SIXTH DISTRICT SUBCOMMITTEE

v.

Case No. 13-847

NATHAN ROBERT GREEN

MEMORANDUM ORDER
(PUBLIC ADMONITION WITHOUT TERMS)

This cause was heard on August 13, 2013 before a duly appointed Three-Judge Court consisting of the Honorable Frederick B. Lowe, the Honorable William R. Savage, III, and the Honorable Sarah L. Deneke, Chief Judge Designate, upon the Rule to Show Cause issued pursuant to Virginia Code §§54.1-3935 and 8.01-261(17) and the Rules of the Supreme Court of Virginia, Part 6, § IV, Paragraph 13.

Nathan Robert Green ("Respondent") appeared in person with his attorney, William W. Tunner, Esquire. Deputy Bar Counsel Kathryn R. Montgomery appeared on behalf of the Virginia State Bar. Upon the evidence presented, the factual stipulation received, and arguments of counsel, the Court finds that the Virginia State Bar proved by clear and convincing evidence the following facts:

1. At all times relevant, Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia. He was admitted to practice in Virginia on October 9, 1998.
2. Respondent is the Commonwealth's Attorney for the City of Williamsburg and James City County. He has held that position since 2007.
3. Stephen D. Harris was admitted to practice law in Virginia in 1967. Respondent knows Mr. Harris as a long-time practicing attorney in the Williamsburg area.

4. In 2007, Mr. Harris wrote a letter to the editor of the local newspaper supporting Respondent's candidacy when Respondent first ran for the office of Commonwealth's Attorney. Mr. Harris also contributed one hundred dollars (\$100) to Respondent's campaign.
5. On or about November 6, 2010, Mr. Harris was arrested and charged with 1) driving under the influence, 1st offense, a violation of Va. Code 18.2-266, 2) unlawful carrying of a concealed weapon while under the influence, Va. Code 18.2-308, 3) refusal of a blood/breath test, Va. Code 18.2-268.3, and 4) possessing an open container of alcohol while intoxicated, Va. Code 18.2-323.1.
6. On or about December 8, 2010, Chief Judge Killilea of the General District Court of Williamsburg/James City County entered an Order of Disqualification for the recusal of all of the judges of the Williamsburg/James City County General District Court. The basis for the recusal was that the defendant is a long-time practicing attorney in the area. The Supreme Court of Virginia subsequently appointed Judge Archer L. Yeatts, III, of Henrico County to hear the matter.
7. On or about January 10, 2011, Respondent made a motion in the Circuit Court for Williamsburg/James City County to disqualify himself from the prosecution of Stephen Harris pursuant to Section 19.2-155 of the Code of Virginia.
8. On or about January 10, 2011, Judge Samuel T. Powell, III, Chief Judge of the Circuit Court for Williamsburg/James City County, entered an order allowing Respondent to disqualify himself pursuant to Section 19.2-155 of the Code of Virginia. Judge Powell appointed Robert H. Tyler, Commonwealth's Attorney for the County of Charles City, to act in Respondent's place and stead. Respondent drafted the order.
9. On or about February 24, 2011, Mr. Harris appeared for trial with his counsel, Richard H. Rizk, before Judge Yeatts in the General District Court of Williamsburg/James City County. Special prosecutor Robert H. Tyler represented the Commonwealth. Mr. Harris pled not guilty to the open container charge. He pled not guilty to the refusal of a blood/breath test charge, but stipulated that the evidence was sufficient to convict on that count. Mr. Harris pled not guilty to the DUI and unlawful carrying of a concealed weapon charges. The matter proceeded to trial and Mr. Harris was found not guilty of the DUI and concealed weapon charges and guilty of the open container and refusal charges.
10. On or about February 24, 2011, Mr. Harris appealed the refusal and open container convictions to the Circuit Court. Respondent learned of the appeal through the docket provided to his office by the Circuit Court clerk's office.
11. Special prosecutor Robert H. Tyler was not notified of the appeal. Respondent did not advise Mr. Tyler of the appeal.

12. After he learned of the appeal, Respondent spoke with Mr. Harris' counsel, Mr. Rizk. Mr. Rizk told Respondent that he intended to plead guilty to both charges in circuit court and argue for a merciful sanction.
13. At a docket call, the matter of the appeal was read by the Circuit Court clerk. Respondent informed Judge Powell that the Mr. Harris named in the appeal was the long-time local practicing attorney, and that Mr. Harris intended to plead guilty. Judge Powell acknowledged the same and said he would hear the case.
14. On or about June 13, 2011, Mr. Harris appeared in the Circuit Court of Williamsburg/James City County for trial. Mr. Harris was represented by Mr. Rizk. Respondent appeared and represented the Commonwealth. Mr. Harris pleaded guilty. At the court's request, Respondent summarized the evidence. Judge Powell then merged the open container charge with the refusal charge and found Mr. Harris guilty of the refusal charge. Judge Powell then deferred disposition until October 2013.
15. At no time was the January 10, 2011 order appointing Mr. Tyler as special prosecutor vacated or modified in any way.
16. On or about June 14, 2011, Judge Powell entered an order finding facts sufficient to find guilt on the refusal charge, but deferring disposition to December 21, 2011. Judge Powell also entered an order on June 14, 2011 merging the open container charge with the refusal charge.
17. Special prosecutor Tyler did not know about Mr. Harris's Circuit Court trial until after it had occurred. Mr. Tyler found the dispositions on the Court's website.
18. On or about August 9, 2011, Judge Powell recused himself from the case. Judge Theodore J. Markow of the Circuit Court of Richmond was subsequently appointed by the Supreme Court of Virginia to preside.
19. On or about September 20, 2011, Mr. Tyler filed a Motion for Hearing to Determine Status of Case and to Set for Trial. A hearing was held before Judge Markow.
20. On or about October 11, 2011, based on the allegations of misconduct made in Mr. Tyler's Motion for Hearing to Determine Status of Case and to Set for Trial, Respondent submitted an Inquiry Form to the Virginia State Bar to report his actions and inquire whether his conduct was unethical.
21. On or about October 31, 2011, Judge Markow entered an order finding that the special prosecutor's appointment included appearances on the appeal to the Circuit Court and further finding that the hearings resulting in the orders were not invalidated by the trial judge's later recusal.
22. On or about January 20, 2012, Judge Markow entered a final order suspending Mr. Harris's driver's license for one year based on the refusal charge. Mr. Tyler

represented the Commonwealth.

Upon the evidence presented and arguments of counsel, the Court finds that the Virginia State Bar proved by clear and convincing evidence a violation of Rule 3.4(d) of the Virginia Rules of Professional Conduct. The Court did not find a violation of Rule 1.7(a)(2), which was charged and prosecuted by the bar. Therefore, the Rule 1.7(a)(2) charge is dismissed with prejudice.

Evidence was presented and arguments by counsel were made on the issue of an appropriate sanction. A certification of Respondent's prior disciplinary record was presented by the bar, which indicated no prior record. Respondent presented character witnesses and testified on his own behalf.

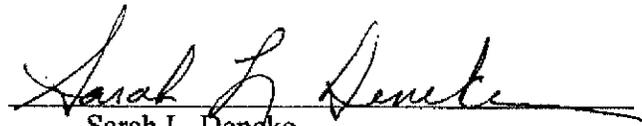
Having considered the facts found in this case, the absence of a prior disciplinary record, and the testimony of Respondent and various character witnesses,

IT IS ORDERED that Respondent receive an Admonition without terms, and he is so admonished.

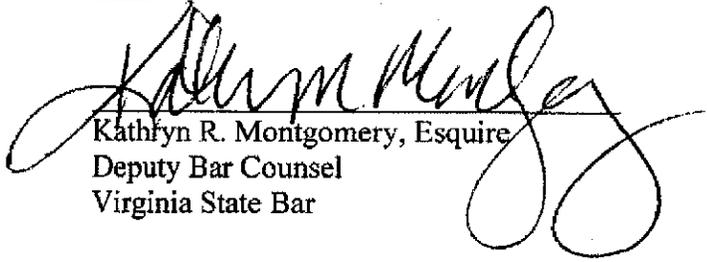
IT IS FURTHER ORDERED that costs shall be assessed by the Clerk of the Disciplinary System pursuant to Rules of Court, Part Six, §IV, Paragraph 13-9.E.

IT IS FURTHER ORDERED that certified copies of this order shall be mailed by the Clerk of the Circuit Court to the Respondent, to all counsel of record, and to the Clerk of the Disciplinary System, at 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED: November 26, 2013


Sarah L. Denke
Chief Judge Designate

SEEN:


Kathryn R. Montgomery, Esquire
Deputy Bar Counsel
Virginia State Bar

SEEN AND AGREED AS TO RULE 1.7(a)(2); OBJECTED TO AS TO RULE 3.4(d):


William W. Tunner, Esquire
Respondent's counsel

I CERTIFY THAT THE DOCUMENT TO WHICH THIS AUTHENTICATION IS AFFIXED IS A TRUE COPY OF A RECORD IN THE CIRCUIT COURT OF THE CITY OF WILLIAMSBURG AND COUNTY OF JAMES CITY, VA AND I AM CUSTODIAN OF THAT RECORD.
BETSY B. WOOLRIDGE, CLERK

BY: Natalie C. Cradic D.C.