

VIRGINIA:

BEFORE THE SECOND DISTRICT SUBCOMMITTEE OF THE VIRGINIA STATE BAR OCT 31 2012

IN THE MATTER OF  
MICHAEL LEON HOCKADAY

VS  
VS B Docket No. 12-021-090411

SUBCOMMITTEE DETERMINATION  
(PUBLIC REPRIMAND WITH TERMS)

On August 29, 2012 a meeting was held in this matter before a duly convened Second District Subcommittee consisting of Ellen C. Carlson, Chair, Bruce D. Jones, Jr., Member, and Nancy L. Bloom, 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. An agreed disposition was subsequently entered into by the Virginia State Bar, by M. Brent Saunders, Assistant Bar Counsel, and Michael Leon Hockaday, Respondent, and Allan D. Zaleski, Esq., Esquire, counsel for Respondent.

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

I. FINDINGS OF FACT

1. At all times relevant hereto, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent was court-appointed to represent the complainant, Christopher Lee Joyner, Jr. (“Joyner”) on multiple felony charges arising from a home invasion in Virginia Beach.
3. On March 12, 2010, Joyner was convicted by a jury in the Virginia Beach Circuit Court of robbery, abduction, armed statutory burglary, aggravated malicious wounding and four counts of use of a firearm in the commission of a felony. On September 29, 2010, Joyner was sentenced to a total of 83 years imprisonment.

4. Respondent was court-appointed to represent Joyner on appeal. Respondent filed a timely Notice of appeal on October 27, 2010. He also filed a timely petition for appeal and amended petition for appeal in which he asserted three errors, namely that the trial court erred in: 1) admitting into evidence a recorded police interview of Joynes; 2) allowing a witness to provide an in-court identification of Joyner as one of the perpetrators of the home invasion; and 3) refusing a jury instruction for a lesser included offense of abduction. By order entered on May 24, 2011, the Court of Appeals of Virginia denied the appeal.
5. Despite knowing that Joyner desired Respondent to pursue all available avenues of appeal, Respondent did not seek any further appellate review of the case on Joyner's behalf.
6. In September 2011, Joyner, unaware that Respondent had not pursued further appellate review of his case, sent Respondent letters asking for the status of his appeal to which Respondent did not respond.
7. Respondent never advised Joyner of his right to pursue a delayed appeal pursuant to §§ 19.2-321.1 and 19.2-321.2 of the Code of Virginia, 1950, as amended. Upon learning that Respondent had failed to seek further appellate review, Joyner filed a *pro se habeas* petition which was granted on August 2, 2012.

## 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.
- (b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

### 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.
- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### 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 and Respondent is hereby so reprimanded. The terms are:

1. Respondent shall enroll and attend six (6) hours of continuing legal education ("CLE") in the substantive area of criminal law that includes coverage of the topic of appeals, which hours shall not be credited toward Respondent's compliance with his annual mandatory CLE requirement. Upon completion of this term, Respondent shall so certify in writing to M. Brent Saunders, the Assistant Bar Counsel assigned to this case, no later than March 1, 2013. Respondent shall not commence representation of an individual in a criminal appeal until after he has provided said written certification.
2. Respondent is placed on probation for a period of three (3) years effective upon the issuance of this determination. During such probationary period, Respondent will not engage in professional misconduct as defined by the Virginia Rules of Professional Conduct or the disciplinary rules of any other jurisdiction in which the Respondent is admitted to practice law. Any final determination that Respondent engaged in professional misconduct during this probationary period made by a District Subcommittee, District Committee, the Disciplinary Board, a Three-Judge Panel or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.

If the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F and G of the Rules of the Supreme Court of Virginia, the District Committee shall hold a hearing and Respondent shall be required to show cause why the alternate sanction of the suspension of Respondent's license to practice law in the Commonwealth of Virginia for a period of 90 days 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 the Supreme Court of Virginia, the Clerk of the Disciplinary System shall assess costs.

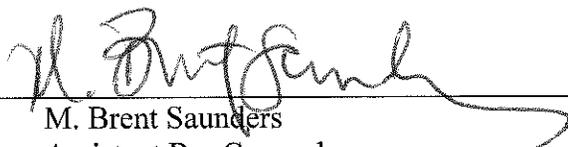
SECOND DISTRICT SUBCOMMITTEE  
OF THE VIRGINIA STATE BAR



Ellen C. Carlson  
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on OCTOBER 31, 2017, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Michael Leon Hockaday, Respondent, at 839 Maltby Crescent, Norfolk, VA 23504, Respondent's last address of record with the Virginia State Bar, and by first class mail, postage prepaid to Allan D. Zaleski, Esq., counsel for Respondent, at Protogyrou & Rigney, P.L.C., Ste. 1520, 500 Main St., Norfolk, VA 23514.



M. Brent Saunders  
Assistant Bar Counsel