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VIRGINIA:

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IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL  
SECOND DISTRICT COMMITTEE

VSB CLERK'S OFFICE

v.

Case No. CL09-2137

ANDREW ROBERT SEBOK

VSB Docket No. 08-021-074174

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NORFOLK  
COURT CLERK  
D.C.

FILED

MEMORANDUM ORDER

This cause came to be heard on June 26, 2009 before a Three-Judge Court duly impaneled pursuant to Section 54.1-3935 of the Code of Virginia, 1950, as amended, consisting of the Honorable James E. Kulp, retired Judge of the Fourteenth Judicial Circuit, the Honorable E. Preston Grissom, retired Judge of the First Judicial Circuit, and the Honorable Marjorie T. Arrington, Judge of the First Judicial Circuit, Chief Judge presiding. The Virginia State Bar appeared through Assistant Bar Counsel M. Brent Saunders, and the Respondent appeared in person *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Andrew Robert Sebok, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended, revoked, or why he should not otherwise be sanctioned by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Second District Committee of the Virginia State Bar.

The Three-Judge Court, after hearing argument of counsel, overruled the Virginia State Bar's

**Objections to Respondent's Exhibits.**

The Three-Judge Court accepted the Stipulation of Facts and Rule Violations entered into and filed by the parties, admitted the parties' respective timely-filed exhibits, and took Respondent's Motion to Supplement Respondent's Exhibits under advisement.

The Virginia State Bar presented its evidence, at the conclusion of which Respondent moved to strike the evidence as to violations of Rules 1.1 and 1.3(b) and (c) of the Virginia Rules of Professional Conduct. The Three-Judge Court took Respondent's motion to strike under advisement and proceeded to hear Respondent's evidence and arguments from the parties as to whether the evidence proved any violations of the Virginia Rules of Professional Conduct under the clear and convincing standard.

Following deliberation, the Three-Judge Court unanimously found by clear and convincing evidence the following facts:

1. Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia at all times relevant hereto.
2. On September 28, 2006, Timmy L. Hicks ("Mr. Hicks") was convicted in the Circuit Court for the City of Portsmouth of violating the terms of his probation and sentenced to serve three years and four months incarceration, the entire balance of a previously imposed prison sentence.
3. On March 2, 2007, the Respondent was appointed to represent Mr. Hicks on appeal.
4. The Respondent timely filed a petition for appeal with the Court of Appeals of Virginia (the "Court") on April 16, 2007 (Record No. 2531-06-1).
5. By a written opinion issued on October 12, 2007, the Court dismissed the appeal.

A copy of the opinion was mailed to the Respondent at his last known address.

6. When neither a demand for review by a three-judge panel nor a notice of appeal to the Supreme Court of Virginia was received prior to the respective deadlines for such filings, the Court certified its October 12, 2007 order dismissing the appeal and returned the record to the Circuit Court for the City of Portsmouth.

7. Mr. Hicks sent a letter to the Respondent dated December 17, 2007 in which he requested the Respondent to advise him regarding the status of his appeal. The Respondent did not respond to the letter.

8. When the Respondent failed to respond to him, Mr. Hicks wrote directly to the Court asking for the status of his appeal. By letter dated January 10, 2008, the Court advised Mr. Hicks of the dismissal of his appeal and provided him with a copy of its October 12, 2007 opinion. Prior to receiving the Court's January 10, 2008 correspondence, Mr. Hicks was unaware that his appeal had been dismissed.

9. The Respondent received a copy of the Court's January 10, 2008 letter, and in response sent a letter to Mr. Hicks dated January 14, 2008 in which he: 1) stated that he would call the Court to "find out what the options are;" 2) advised Mr. Hicks of his right to pursue a "delayed habeas" and that "we have a year to get it filed;" and 3) promised to visit Mr. Hicks at the prison where he was being held to review the Court's opinion and discuss Mr. Hicks' appeal rights.

10. The Respondent did not advise Mr. Hicks of his right to pursue a delayed appeal pursuant to §19.2-321.2 of the Code of Virginia, 1950, as amended, or of the six-month deadline for doing so.

11. The Respondent did not visit Mr. Hicks as promised or otherwise contact Mr. Hicks, and took no further action on behalf of Mr. Hicks, and thereby terminated his representation of Mr. Hicks without providing any notice thereof to Mr. Hicks or taking reasonable steps to protect Mr. Hicks' interests.

12. The Respondent's failure to timely notify Mr. Hicks of the dismissal of his appeal caused Mr. Hicks to suffer prejudice to his procedural rights in the form of forfeiting his rights to: 1) demand review by a three-judge panel pursuant to § 17.1-407(D) of the Code of Virginia, 1950, as amended, and Rule 5A:15A of the Rules of the Supreme Court of Virginia; and/or 2) appeal the dismissal to the Supreme Court of Virginia.

13. The Respondent's failure to fully and timely advise Mr. Hicks of his right to pursue a delayed appeal pursuant to §19.2-321.2 of the Code of Virginia, 1950, as amended, caused Mr. Hicks to suffer prejudice to his procedural rights in the form of forfeiting his right to pursue that statutory relief.

The Three-Judge Court unanimously denied Respondent's Motion to Supplement Respondent's Exhibits previously taken under advisement on the basis that the proposed exhibits were irrelevant to whether the evidence proved any violations of the Virginia Rules of Professional Conduct.

The Three-Judge Court unanimously sustained Respondent's motion to strike the evidence as to Rules 1.1 and 1.3(b) and (c) of the Virginia Rules of Professional Conduct, and dismissed those charges accordingly. The Three-Judge Court unanimously found that the evidence failed to show violations of Rules 1.4(a) and (c), and dismissed those charges accordingly.

The Three-Judge Court unanimously found that the evidence established violations of the following provisions of the Virginia 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**

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

**RULE 1.16 Declining Or Terminating Representation**

(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).

**THEREAFTER**, the Virginia State Bar and Respondent presented evidence and argument regarding the sanction to be imposed upon Respondent, and the Three-Judge Court then retired to deliberate.

**AFTER DUE CONSIDERATION** of the evidence, including Respondent's disciplinary record, and the nature of the ethical misconduct committed by Respondent, the Three-Judge Court reached the unanimous decision that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for three (3) months, effective July 17, 2009. Therefore, it is hereby **ORDERED** that the license of the Respondent, Andrew Robert Sebok, to practice law in the Commonwealth of Virginia, be, and the same hereby is, **SUSPENDED** for a period of three (3) months, effective July 17, 2009.

It is further **ORDERED**, pursuant to the provisions of Part Six, Section IV, Paragraph 13-29 of the Rules of the Supreme Court of Virginia, that Respondent shall forthwith give notice, by certified mail, return receipt requested, of the suspension of his license to practice law in the

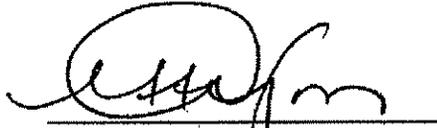
Commonwealth of Virginia to all clients for whom he is currently handling matters and to all opposing attorneys and presiding judges in pending litigation. The Respondent shall also make appropriate arrangements for the disposition of matters then in his care, in conformity with the wishes of his clients. The Respondent shall give such notice within 14 days of the effective date of the license suspension, and make such arrangements as are required herein within 45 days of this effective date of the license suspension. The Respondent shall furnish proof to the Bar within 60 days of the effective date of the license suspension that such notices have been timely given and such arrangements for the disposition of matters made. Issues concerning the adequacy of the notice and the arrangements required herein shall be determined by the Virginia State Bar Disciplinary Board, which may impose a sanction of revocation or suspension for failure to comply with these requirements.

Pursuant to Part Six, Section IV, Paragraph 13-9 of the Rules of the Supreme Court of Virginia, the Clerk of the Disciplinary System of the Virginia State Bar shall assess costs.

**ORDERED** that four (4) copies of this Order be certified by the Clerk of the Circuit Court of the City of Virginia Beach and mailed to the Clerk of the Disciplinary System of the Virginia State Bar at 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800, for further service upon the Respondent and Bar Counsel consistent with the rules and procedures governing the Virginia State Bar Disciplinary System.

These proceedings were recorded by Ronald Graham and Associates, Inc., 5344 Hickory Ridge, Virginia Beach, Virginia 23455-6680 (757) 490-1100.

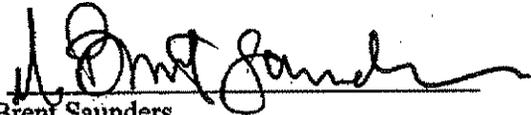
ENTERED this 22<sup>nd</sup> day of Oct., 2009.



Marjorie T. Arrington  
Chief Judge

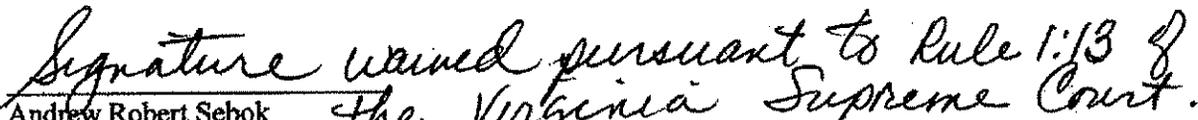
SEEN AND OBJECTED TO AS TO: i) THE OVERRULING OF THE VIRGINIA STATE BAR'S OBJECTIONS TO RESPONDENT'S EXHIBITS; ii) THE SUSTAINING OF RESPONDENT'S MOTION TO STRIKE THE EVIDENCE AS TO RULES 1.1 and 1.3(b) and (c); AND iii) THE DISMISSAL OF RULES 1.4(a) and (c):

VIRGINIA STATE BAR

By: 

M. Brent Saunders  
Assistant Bar Counsel

SEEN AND \_\_\_\_\_:

  
Andrew Robert Sebok  
Respondent, pro se

*the Virginia Supreme Court.*

COPY TESTE:  
GEORGE E. SCHAEFER, CLERK  
NORFOLK CIRCUIT COURT  
BY   
Tracey Staples, Deputy Clerk  
Authorized to sign on behalf  
of George E. Schaefer  
Date: NOV 05 2009