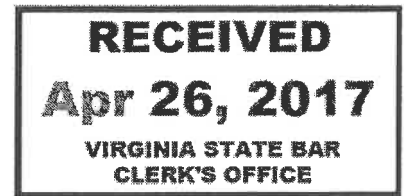


VIRGINIA:



IN THE CIRCUIT COURT FOR ARLINGTON COUNTY

VIRGINIA STATE BAR *EX REL*  
FOURTH DISTRICT COMMITTEE SECTION II

Complainant,

v.

Case No. CM1600-1771  
VSB Docket 14-042-097713

SETH ADAM ROBBINS, ESQUIRE

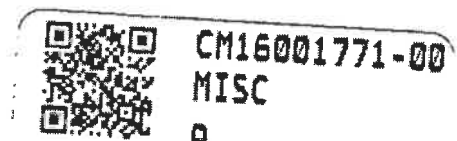
Respondent.

**MEMORANDUM ORDER**

On the 16<sup>th</sup> day of February, 2017, this matter came before the Three-Judge Court empaneled by the Supreme Court of Virginia by Order of the Supreme Court of Virginia entered on November 22, 2016, pursuant to §54.1-3935 Code of Virginia (1950 *as amended*) consisting of the Honorable J. Martin Bass, Retired Judge of the Fifteenth Judicial Circuit, the Honorable Harry T. Taliaferro, III, Retired Judge of the Fifteenth Judicial Circuit, and the Honorable Dennis Lee Hupp, Judge of the Twenty-Sixth Judicial Circuit and Chief Judge of the Three-Judge Court. The hearing was transcribed by Mark Mahoney, Anderson Court Reporting, 706 Duke Street, Alexandria, Virginia, 22314, telephone (703) 519-7180.

Kathleen M. Uston, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent, Seth Adam Robbins, Esquire, personally appeared represented by counsel, James N. Markels, Esquire, and Arthur D. Burger, Esquire appearing *pro hac vice*, Jackson & Campbell, P.C.

The Chief Judge administered an oath to the Court Reporter and polled the



members of the court to determine whether any member had a personal or financial interest that might affect or reasonably be perceived to affect his or her ability to be impartial in these matters. Each member, including the Chief Judge, verified they had no such interests.

**THIS MATTER CAME FURTHER UPON** the December 15, 2016, Order entered by the Three-Judge Court granting the parties' Joint Motion to Submit Misconduct Case on the Record, which record consisted of the evidentiary record developed during a two day hearing held on June 27 and 28, 2016, before Hearing Committee No. 1 of the District of Columbia Board on Professional Responsibility in *In the Matter of Seth Adam Robbins, Esq.*, Board Docket No. 15-BD-118, Bar Docket No. 2013-D431, arising out of the same alleged misconduct by Respondent. That record consisted of the transcript of that two day hearing, the exhibits introduced into evidence therein by both the Office of Disciplinary Counsel ("ODC") and Respondent, the Stipulations between ODC and Respondent, and the Report and Recommendation of D.C. Hearing Committee No. 1 that was issued on January 27, 2017. No further evidence was received.

**THIS MATTER CAME FURTHER UPON** The Three-Judge Court's receipt and review of that record.

**THIS MATTER CAME FURTHER UPON** oral argument from counsel for the parties received by the court on February 16, 2017, at which time that argument was considered and the case law cited by counsel was received.

**THIS MATTER CAME FURTHER UPON** the charges of misconduct alleged by the Virginia State Bar to have been violated by the Respondent herein, as set forth in

the Certification filed in this case, which was considered and analyzed by the Three-Judge Court under the Rules of Professional Conduct of the District of Columbia pursuant to the agreement of the parties and pursuant to Virginia Rule of Professional Conduct 8.5(b)(2).

**IT APPEARING TO THE THREE-JUDGE COURT** that the evidence presented to Hearing Committee #1 of the District of Columbia Board on Professional Responsibility was found by the Three-Judge Court to be insufficient to prove by clear and convincing evidence that an attorney-client relationship existed between Respondent and Mr. Gary Day and for that reason found that it was not proven that Respondent violated any of the Rules of Professional Conduct alleged to have been violated by Respondent herein. A transcript of the oral ruling is attached as Exhibit One and incorporated herein;

**IT IS THEREFORE ADJUDGED, ORDERED AND DECREED** that the Certification filed in this matter, and the Rule to Show Cause and Complaint subsequently entered by this Court, are hereby and shall be **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that upon entry of this Memorandum Order, this case shall be closed.

**IT IS FURTHER ORDERED**, that a copy *teste* of this Order shall be served by the Clerk of the Circuit Court for Arlington County upon Respondent, Seth Adam Robbins, Esquire, by certified mail, return receipt requested, at Robbins Law Group, PLLC, Suite 1010, 1100 North Glebe Road, Arlington, Virginia, 22201, his address of record with the Virginia State Bar, and by regular mail to his counsel, James N. Markels,

Esquire, at Jackson & Campbell, 1120 Twentieth Street, N.W., South Tower, Third Floor, Washington, D.C. 20036, and to Kathleen M. Uston, Assistant Bar Counsel, at Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia, 23219-0026, and to Barbara S. Lanier, Clerk of the Disciplinary System of the Virginia State Bar, at Virginia State Bar, 1111 East Main Street, Suite 700, Richmond, Virginia, 23219-0026.

FEB 28 2017


ENTERED: \_\_\_\_\_

CIRCUIT COURT FOR ARLINGTON COUNTY

By

  
Dennis Lee Hupp, Chief Judge

SEEN AND AGREED:

  
James N. Markels, Esquire  
VSB No. 68399  
Arthur D. Burger, Esquire, *pro hac vice*  
JACKSON & CAMPBELL, P.C.  
1120 20th Street, N.W.  
South Tower, Third Floor  
Washington, D.C. 20036  
(202) 457-1600  
jmarkels@jackscamp.com  
aburger@jackscamp.com

SEEN:



Kathleen Maureen Uston

VSB No. 33255

Assistant Bar Counsel

VIRGINIA STATE BAR

1111 East Main Street, Suite 700

Richmond, Virginia 23219-0026

uston@vsb.org

(804) 775-0547

# **EXHIBIT ONE**

V I R G I N I A:

ARLINGTON COUNTY CIRCUIT COURT

-----X  
VIRGINIA STATE BAR, :  
 :  
 Plaintiff, :  
 :  
 v. : No. CM16-1771  
 :  
 SETH ADAM ROBBINS, :  
 :  
 Defendant. :  
-----X

1425 North Courthouse Road  
Arlington, Virginia

Thursday, February 16, 2017

The JUDGE'S RULING in the above-entitled  
matter was convened at 3:04 p.m., pursuant to  
notice.

BEFORE:

JUDGE DENNIS LEE HUPP, Presiding

JUDGE J. MARTIN BASS

JUDGE HARRY T. TALIAFERRO, II

1 APPEARANCES:

2 On behalf of Complainant:

3 KATHLEEN M. USTON, ESQUIRE  
4 Assistant Bar Counsel  
5 Virginia State Bar  
6 1111 East Main Street, Suite 700  
7 Richmond, Virginia 22319-3565  
8 (804) 775-0547

9 On behalf of Respondent:

10 JAMES N. MARKELS, ESQUIRE  
11 ARTHUR D. BURGER, ESQUIRE  
12 Jackson & Campbell, P.C.  
13 1120 20th Street, NW., South Tower  
14 Washington, D.C. 20036-3437  
15 (202) 457-1600

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1 P R O C E E D I N G S

2 DEPUTY: All rise.

3 JUDGE HUPP: All right. I want to begin  
4 by expressing the appreciation of the entire Panel  
5 for the efforts made by counsel on both sides. We  
6 appreciate the ~~fair~~ <sup>thorough</sup> presentation. We also  
7 appreciate the manner in which this has been  
8 presented, that is the expedited way in which it  
9 was presented to us. It made a lot of sense and  
10 we appreciate the cooperation in making that  
11 happen.

12 The Rules of Professional Conduct are in  
13 place to protect the public and the reputation of  
14 the Bar. This imposes a solemn responsibility on  
15 this Panel and we are very much aware of it.  
16 Quite frankly, we do not like the decision we make  
17 today.

18 We find that it has not been proven by  
19 clear and convincing evidence that an  
20 attorney-client relationship existed between Gary  
21 Day and Seth Robbins. And for that reason we must  
22 find that it has not been proven that Mr. Robbins

1 violated the rules cited in this case.

2 Clear and convincing is the highest  
3 burden of proof in civil proceedings. If the  
4 burden had been something less than that, we would  
5 have reached a different result.

6 We have a lot of criticisms of Mr.  
7 Robbins' conduct and certain aspects of that  
8 conduct cause us substantial concern. However,  
9 after wrestling at length with that high burden of  
10 proof and carefully weighing the evidence in its  
11 light, we find that the evidence falls short, but  
12 barely so.

13 We ask Counsel for the Respondent to  
14 prepare the order.

15 MR. MARKELS: We will, Your Honor.

16 JUDGE HUPP: And we have these exhibit  
17 notebooks and transcripts with exhibit notebooks,  
18 and they will be in the hands of the Clerk. If  
19 you want them back, you can ask the Clerk for  
20 them. Otherwise, the Clerk will dispose of them.  
21 Okay.

22 MR. MARKELS: Well, you submitted

1 binders, remember, for your exhibits?

2 MS. USTON: Your Honor, if I may, while  
3 we're mulling that over, we do have some decision  
4 forms for you all to complete, if you don't mind.

5 JUDGE HUPP: Okay.

6 MS. USTON: And this is a decision form  
7 and then a summary order. And you will note that  
8 it has the option of saying that it was dismissed.

9 JUDGE HUPP: So that summary order will  
10 take care of it then.

11 MS. USTON: Yes, sir.

12 JUDGE HUPP: Okay.

13 MS. USTON: The decision -- well, I  
14 suppose so, and then there's a summary order  
15 behind it. Thank you.

16 MR. MARKELS: Excuse me, Your Honor, one  
17 thing we would like the Court to consider is that  
18 there be -- we understand what the Court has said  
19 here today and we appreciate that, but that there  
20 be some findings in support of that because, as  
21 you know, the D.C. proceeding is still going on.  
22 And to the extent that we would like to make sure

1 that there's a preclusive effect of this order  
2 from -- in the event that D.C. continues on and  
3 they may very well come to a different conclusion,  
4 who knows, but then we would like to preclude the  
5 potential of there being the reciprocity  
6 possibility. That if some sort of suspension is  
7 entered in D.C., that it won't automatically come  
8 over here to Virginia, where Mr. Robbins has  
9 already been found -- as you said, has already had  
10 the charges against him dismissed on these  
11 matters.

12 And so I guess some sort of --

13 JUDGE HUPP: I think it's clear what the  
14 issues were. They were presented to the Court in  
15 both the transcripts, the exhibits, and your  
16 pretrial briefs. So I can't imagine there'd be  
17 any problem with showing any kind of res judicata  
18 or something like that that you're trying to show.

19 MS. USTON: Your Honor, if I may, I  
20 think that obviously, as we've discussed before,  
21 the D.C. proceedings take some time because now  
22 the Hearing Committee has to be reviewed by the

1 Board, which then has to be reviewed by the Court,  
2 so it could be two years or so before it's finally  
3 finished. And if that were to come over here,  
4 because of the fact that it's already been  
5 adjudicated, I don't think our Clerk's Office  
6 would even open it.

7 JUDGE HUPP: We talked about how much  
8 detail we should go into and we decided to do it  
9 in this fashion. And as far as I'm concerned,  
10 this really -- that's what we're going to do.

11 MR. MARKELS: All right. Well, I  
12 understand that we have the summary order and the  
13 decision form. Because we just don't know what's  
14 going to happen next, if Your Honor would  
15 appreciate it, you have asked us to submit an  
16 order. Can we just go ahead and do that anyway?

17 JUDGE HUPP: Okay, that's fine, do that.  
18 Of course, circulate it to Bar Counsel.

19 MR. MARKELS: Of course.

20 JUDGE HUPP: And then send it to me and  
21 then I'll circulate it to the other Panel members.

22 MR. MARKELS: All right.

1 MS. USTON: But, Your Honor, I'm sorry,  
2 I beg your pardon. For purposes of today, though,  
3 the Bar does need that to be completed, the  
4 decision form and the summary order.

5 JUDGE HUPP: Sure, we'll do that.

6 MS. USTON: And then subsequently, what  
7 Mr. Markels is envisioning is what we would  
8 typically call a memorandum order. So if this  
9 Court had made a finding of misconduct, then we  
10 would subsequently -- we would enter these today  
11 and then -- so that takes effect today, and then  
12 we would subsequently circulate a more detailed  
13 order, which is essentially what Mr. Markels is  
14 suggesting, which is fine.

15 JUDGE HUPP: All right. We'll fill out  
16 those forms right now.

17 MS. USTON: Thank you, sir.

18 MR. MARKELS: That's fine.

19 JUDGE HUPP: Okay. Thank you all very  
20 much.

21 MR. MARKELS: Thank you, Your Honor.

22 DEPUTY: All rise.

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(Whereupon, at 3:10 p.m., the  
HEARING was adjourned.)

\* \* \* \* \*

1 CERTIFICATE OF NOTARY PUBLIC  
2 COMMONWEALTH OF VIRGINIA  
3 I, Carleton J. Anderson, III, notary  
4 public in and for the Commonwealth of Virginia, do  
5 hereby certify that the forgoing PROCEEDING was  
6 duly recorded and thereafter reduced to print under  
7 my direction; that the witnesses were sworn to tell  
8 the truth under penalty of perjury; that said  
9 transcript is a true record of the testimony given  
10 by witnesses; that I am neither counsel for,  
11 related to, nor employed by any of the parties to  
12 the action in which this proceeding was called;  
13 and, furthermore, that I am not a relative or  
14 employee of any attorney or counsel employed by the  
15 parties hereto, nor financially or otherwise  
16 interested in the outcome of this action.

17  
18 (Signature and Seal on File)  
19 Notary Public, in and for the Commonwealth of  
20 Virginia  
21 My Commission Expires: November 30, 2020  
22 Notary Public Number 351998