

VIRGINIA:

BEFORE THE SECOND DISTRICT SECTION I SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF Andrew Robert Sebok

VSb Docket No. 20-021-118914

SUBCOMMITTEE DETERMINATION (PUBLIC REPRIMAND WITH TERMS)

Meetings were held on this matter on March 31, 2021 and August 10, 2021, before a duly convened Second District, Section I Subcommittee consisting of Constance Joy Vandervelde, Secretary, Gordon Carl Ufkes, Member, and Lonnie Dixon Leatherbury, Lay Member. During the meetings, 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. The agreed disposition was entered into by the Virginia State Bar, by Shelley L. Spalding, Assistant Bar Counsel, and Andrew Robert Sebok, Respondent, pro se.

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

I. FINDINGS OF FACT

- 1. Respondent Andrew Robert Sebok ("Respondent") was admitted to the Virginia State Bar ("VSB") in 1986. At all relevant times Respondent was a member of the VSB.
2. David Israel Russell, proceeding pro se, was convicted of Possession of a Controlled Substance and Possession of Ammunition by a Convicted Felon in the Norfolk Circuit Court. On May 30, 2017 he was sentenced to 20 months in jail and a \$2,500.00 fine, which was suspended. On June 7, 2017, Mr. Russell filed a pro se Notice of Appeal in the Norfolk Circuit Court, at which time Mr. Russell had no additional time to serve so long as his sentence remained suspended.
3. On January 19, 2018 Respondent was appointed by the Court to represent Mr. Russell in his appeal.

4. Respondent would testify that he sought to be relieved of his appointment to represent Mr. Russell as neither he nor the Circuit Court were able to get in touch with Mr. Russell.
5. On February 26, 2018 Respondent filed a Motion for an Extension of Time to file the Petition for Appeal, which was granted, giving Respondent until March 30, 2018 to file. The Court of Appeals' records indicate the Petition for Appeal was filed on April 3, 2018. Respondent would testify that he filed this Petition for Appeal in order to protect Mr. Russell's right to appeal. Respondent would further testify that the Petition for Appeal included all issues that Mr. Russell had preserved during his trial. On May 8, 2018, the appeal was dismissed for failure to timely file a Petition for Appeal.
6. Respondent explained that he had personally gone to the post office and mailed the petition asking that it be sent next day delivery. Respondent explained that he later learned that the method he used had not in fact next day delivery, but instead was second day delivery. Thus, the Petition for Appeal was late by one day.
7. Respondent ultimately was able to reach Mr. Russell and informed him that his appeal had been dismissed because it was filed one day late because Respondent had made a mistake in the manner of delivering it to the Court of Appeals.
8. Respondent represented that he admitted his error to Mr. Russell and explained how a delayed appeal would still be possible. Respondent also represented that he told Mr. Russell he would be happy to admit his mistake in a petition for delayed appeal. Respondent represented that Mr. Russell did not want Respondent to file a petition for a delayed appeal on his behalf because Mr. Russell had already served all of his sentence imposed, and if an appeal were granted it was possible that a new trial would yield a more severe sentence. Respondent represented that Mr. Russell instructed Respondent not to file a petition for a delayed appeal. Respondent represented he had not heard from Mr. Russell since that conversation.

II. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

(a) A lawyer shall act with reasonable diligence and promptness in representing a client.

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. The terms are:

1. **Counseling and Treatment.** Not later than August 15, 2021, Respondent shall participate in an evaluation conducted by Dr. Brian Wald, Psychological Consulting Resources, PLLC, One Columbus Center, Suite 600, Virginia Beach, Virginia 23462, Phone 757-333-7501, Fax: 757-490-7804, email: drbkw@cox.net and follow any treatment plan provided. For a period not to exceed one year, Respondent shall provide written reports addressing Respondent's participation in and progress with such treatment and counseling to the Office of Bar Counsel every 90 days. Failure to submit timely written reports shall be deemed a violation of this term.

Not later than August 15, 2021, Respondent shall certify in writing under oath that he has participated in the full evaluation and initiated the recommended treatment plan.

2. **No Further Misconduct.** Respondent is placed on probation for a period of three (3) years commencing upon the issuance of a final order approving this agreed disposition. 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 Respondent practices 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, Supreme Court of Virginia, or similar tribunal in another jurisdiction shall conclusively be deemed to be a violation of this Term.

If any of the terms are not met by the time specified, pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia, the District Committee shall certify this matter for a sanction determination by the Disciplinary Board pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia. 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.

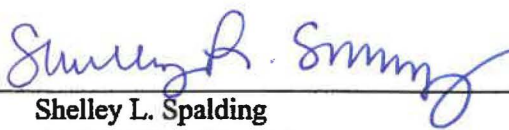
SECOND DISTRICT, SECTION I
SUBCOMMITTEE OF
THE VIRGINIA STATE BAR



Constance Joy Vandervelde
Subcommittee Chair

CERTIFICATE OF MAILING

I certify that on 8/11/2021, a true and complete copy of the Subcommittee Determination (Public Reprimand With Terms) was sent by certified mail to Andrew Robert Sebok, Respondent, at 1520 Holland Avenue, Norfolk, VA 23509, Respondent's last address of record with the Virginia State Bar.



Shelley L. Spalding
Assistant Bar Counsel

VIRGINIA:

**BEFORE THE SECOND DISTRICT SECTION I SUBCOMMITTEE
OF THE VIRGINIA STATE BAR**

**IN THE MATTER OF
ANDREW ROBERT SEBOK**

VSB Docket No. 20-021-118914

**AGREED DISPOSITION
(PUBLIC REPRIMAND WITH TERMS)**

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, § IV, ¶ 13-15.B.4, the Virginia State Bar, by Shelley L. Spalding, Assistant Bar Counsel, and Andrew Robert Sebok, Respondent, *pro se*, hereby enter into the following agreed disposition arising out of the above-captioned matter.

I. STIPULATIONS OF FACT

1. Respondent Andrew Robert Sebok ("Respondent") was admitted to the Virginia State Bar ("VSB") in 1986. At all relevant times Respondent was a member of the VSB.
2. David Israel Russell, proceeding *pro se*, was convicted of Possession of a Controlled Substance and Possession of Ammunition by a Convicted Felon in the Norfolk Circuit Court. On May 30, 2017 he was sentenced to 20 months in jail and a \$2,500.00 fine, which was suspended. On June 7, 2017, Mr. Russell filed a *pro se* Notice of Appeal in the Norfolk Circuit Court, at which time Mr. Russell had no additional time to serve so long as his sentence remained suspended.
3. On January 19, 2018 Respondent was appointed by the Court to represent Mr. Russell in his appeal.
4. Respondent would testify that he sought to be relieved of his appointment to represent Mr. Russell as neither he nor the Circuit Court were able to get in touch with Mr. Russell.
5. On February 26, 2018 Respondent filed a Motion for an Extension of Time to file the Petition for Appeal, which was granted, giving Respondent until March 30, 2018 to file. The Court of Appeals' records indicate the Petition for Appeal was filed on April 3, 2018. Respondent would testify that he filed this Petition for Appeal in order to protect Mr. Russell's right to appeal. Respondent would further testify that the Petition for Appeal included all issues that Mr. Russell had preserved during his trial. On May 8, 2018, the appeal was dismissed for failure to timely file a Petition for Appeal.

6. Respondent explained that he had personally gone to the post office and mailed the petition asking that it be sent next day delivery. Respondent explained that he later learned that the method he used had not in fact next day delivery, but instead was second day delivery. Thus, the Petition for Appeal was late by one day.
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I. NATURE OF MISCONDUCT

Such conduct by Respondent constitutes misconduct in violation of the following provisions of the Rules of Professional Conduct:

RULE 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

RULE 1.3 Diligence

- (a) A lawyer shall act with reasonable diligence and promptness in representing a client.

II. PROPOSED DISPOSITION

Accordingly, Assistant Bar Counsel and Respondent tender to a subcommittee of the Second District Section I Committee for its approval the agreed disposition of a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by the Second District Section I Committee. The terms are as follows:

1. **Counseling and Treatment.** Not later than August 15, 2021, Respondent shall participate in an evaluation conducted by Dr. Brian Wald, Psychological Consulting Resources, PLLC, One Columbus Center, Suite 600, Virginia Beach, VA. 23462, Phone: 757-333-7501, Fax:757-490-7804, Email: drbkw@cox.net, <http://drbrianwald.com/>, and follow any treatment plan provided. For a period not to exceed one year, Respondent shall provide written reports addressing Respondent's participation in and progress with such treatment and counseling to the Office of Bar Counsel every 90 days. Failure to submit timely written reports shall be deemed a violation of this term.

Not later than August 15, 2021, Respondent shall certify in writing under oath that he has participated in the full preliminary evaluation required by Dr. Wald and initiated the recommended treatment plan.

2. **No Further Misconduct.** Respondent is placed on probation for a period of three (3) years commencing upon the issuance of a final order approving this agreed disposition. 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 Respondent practices 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, Supreme Court of Virginia, or similar tribunal in another jurisdiction shall conclusively be deemed to be a violation of this Term.

If any of the terms is not met by the deadlines set forth above, Respondent agrees that the District Committee shall certify this matter for a sanction determination by the Disciplinary Board pursuant to Part 6, § IV, ¶ 13-15.F of the Rules of the Supreme Court of Virginia. 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 ¶ 13-9.E of the Rules of the Supreme Court of Virginia.

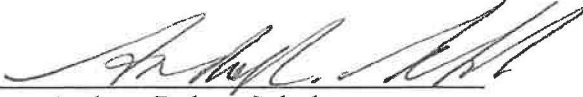
If the agreed disposition is approved, the Clerk of the Disciplinary System shall assess costs. If the agreed disposition is approved, it shall be non-appealable.

Pursuant to Part 6, § IV, ¶ 13-30.B of the Rules of the Supreme Court of Virginia, Respondent's prior disciplinary record shall be furnished to the subcommittee considering this agreed disposition.

THE VIRGINIA STATE BAR



Shelley L. Spalding
Assistant Bar Counsel



Andrew Robert Sebok
Respondent