

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR  
DISCIPLINARY BOARD

IN THE MATTER OF HENRY ST JOHN FITZGERALD  
VSB DOCKET NO. 13-000-095268

ORDER OF SUSPENSION

This matter came to be heard on May 17, 2013 before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Paul M. Black, Chair Designate, James L. Banks, Jr., Bruce T. Clark, David R. Schultz and V. Max Beard, Lay member. The Virginia State Bar was represented by Renu M. Brennan, Assistant Bar Counsel. The Respondent, Henry St John FitzGerald, appeared in person and represented himself. Teresa L. McLean, court reporter, Chandler and Halasz, Inc., P.O. Box 9439, Richmond, Virginia 23227 (804)-730-1222, after having been duly sworn, reported the hearing and transcribed the proceeding. The Chair polled members of the Panel as to whether any of them was aware of any personal or financial interest they might have which would preclude them from fairly hearing the matter before them. Each member, including the Chair, responded in the negative.

FINDING OF THE FACT

The facts in this matter are not disputed. On December 19, 2012 the Respondent appeared before the Board on matters then pending, (Virginia State Bar Docket Number 11-041-087804) at which time the Board approved an agreed disposition which included a four year suspension of the Respondent's license to practice law effective as of December 19, 2012. As a portion of both the Summary Order and Memorandum Order entered in the matter, the Respondent was required to comply with Part Six, Section IV,

Paragraph 13-29 of the Rules of the Court. Under this Rule, the Respondent was required to (1) give written notice of his suspension to all clients, opposing counsel and presiding judges in pending litigation within fourteen days of the effective date of the suspension; (2) make appropriate arrangements for the disposition of the matters then in his care in conformity with his clients' wishes within forty five days of the effective date of the suspension and (3) to furnish proof to the Bar, within sixty days of the effective date of the suspension that he timely notified his clients, opposing counsel, and presiding judges in writing and that he timely made appropriate arrangements for the disposition of his cases.

By certified letter dated December 27, 2012, Barbara S. Lanier, Clerk of the Disciplinary Board, forwarded to the Respondent a copy of the Agreed Disposition Summary Order and the Paragraph 13-29 Compliance Affidavit; said letter being addressed to the Respondent's address of record filed with the bar. In such letter the Clerk directed the Respondent to certify his compliance with his notice obligations on or before February 25, 2013.

By certified letter sent to Respondent at his address of record dated January 3, 2013, the Clerk forwarded a copy of the Memorandum Order, which contained language requiring compliance with Paragraph 13-29.

By letter dated February 1, 2013, the Clerk again sent the Respondent the December 27, 2012 letter, Agreed Disposition Summary Order and Paragraph 13-29 Compliance Affidavit, all of which had been returned to the Clerk marked "Return to Sender, Unclaimed, Unable to Forward".

By letter dated February 19, 2013, the Clerk again sent to Respondent her January 3, 2013 letter and the Memorandum Order, both of which had been returned to the Clerk marked "Return to Sender, Unclaimed, Unable to Forward".

By letter dated February 26, 2013, the Clerk advised the Respondent that the Clerk's Office had not received the proof of compliance with Paragraph 13-29 in which letter the Clerk reminded the Respondent that failure to comply could lead to further suspension or revocation of his license to practice law.

The Respondent failed to answer any of the Clerk's correspondence and did not file his affidavit as required under Paragraph 13-29 leading to the hearing at hand.

At the hearing on May 17, 2013 it was determined that the Respondent, who is 82 years of age, had withdrawn from the active practice of law prior to the December 9th 2012 disciplinary hearing. He had wrapped up his affairs, closed his office and discharged all of his employees. The Respondent testified that he currently lives alone without outside assistance and is being treated for depression and attention deficit disorder. He further testified that he suffers from memory loss, particularly as it relates to following up on matters left in his care. At the time of his suspension, the Respondent stated he had only one client, an elderly woman whose family was seeking to have her declared incompetent. The matter had been referred to the Respondent by a friend. The Respondent further testified that he had not agreed to represent the lady in court, her matter being heard in a jurisdiction where Respondent did not practice, but that he had taken steps to assist her in efforts to obtain competent counsel for the woman. He stated that he had also helped arrange for the woman to undergo an independent psychiatric

examination. The Respondent never appeared as counsel of record for the woman in any tribunal nor had he charged her a fee for his assistance. The Respondent further testified that when his suspension was ordered, he notified the woman of the same and terminated any further activity on her behalf. At such time she had already obtained competent counsel to assist her in the matter who did in fact represent her throughout the entire proceeding.

The Respondent also freely admits he failed to provide the Bar with certification of his actions stating he was unaware of his obligation to do so.

Based on the Respondent's testimony, the Panel is not certain that the Respondent had any clients at the time of his suspension to whom he was required to give notice. It appeared that as an accommodation, the Respondent assisted his friend in locating counsel for the unfortunate woman and assisted in arranging to have her examined. Neither of these acts in and of themselves constitutes practicing law. All matters of active legal representation were apparently handled by other counsel engaged for this purpose.

It is obvious; however that Respondent did fail to comply with his obligation to certify his actions to the Bar as required under Paragraph 13-29, a fact Respondent freely admitted.

The Board takes compliance with Part Six, Section IV, Paragraph 13-29 very seriously. Without compliance the Bar is unable to ascertain whether the attorney whose license has been suspended or revoked has taken the necessary steps to protect his or her clients, such protection being of paramount importance. Moreover, the proper

administration of justice requires the appropriate tribunals be apprised of what has occurred. For these reasons even a violation such as the one at hand where it is obvious no harm befell anyone cannot be ignored. Likewise, the Board is not unmindful that the Respondent's age and health issues may well have contributed to the circumstances of this matter, but again compliance with Paragraph 13-29 is a requirement when so ordered.

#### DISPOSITION

Upon hearing the testimony offered in this matter and reviewing the Exhibits entered herein, the Board finds that the Respondent failed to comply with the requirements of Paragraph 13-29 as imposed upon him in December of 2012 in that he failed to certify his compliance within the sixty day period provided to him to do so. Upon such finding and following due deliberation of both the facts of the case at hand and evidence presented as to the appropriate sanction to be imposed, the Board **ORDERS** that the Respondent's license to practice law within the Commonwealth of Virginia be **SUSPENDED** for an additional term of Thirty days which suspension is to take effect immediately upon the completion of the term of the Four-year suspension entered at the hearing on December 19, 2012.

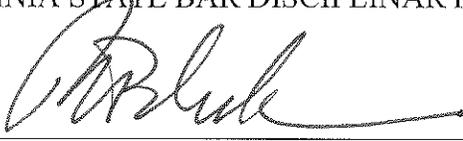
The Respondent, having testified under oath that he no longer has clients to whom notice would otherwise need to be given and is in no manner involved in any matters before any tribunal; it is further **ORDERED** that the notice requirement of Part Six, Section IV, Paragraph 13-29 are hereby dispensed with.

It is further ORDERED that, 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 against the Respondent.

It is ORDERED that an attested copy of this Order be mailed to the Respondent, Henry St. John FitzGerald by certified mail at his Virginia State Bar address of record, 1620 N George Mason Dr., Arlington, VA 22205, and a copy hand-delivered to Renu M. Brennan, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219-2800.

Entered: May 23, 2013

VIRGINIA STATE BAR DISCIPLINARY BOARD

By:   
PAUL M. BLACK, Chair Designate