

VIRGINIA :

BEFORE THE DISCIPLINARY BOARD OF THE  
VIRGINIA STATE BAR

IN THE MATTER OF HENRY ST. JOHN FITZGERALD  
VSB Docket No. 06-041-1450

**ORDER OF PUBLIC REPRIMAND, WITH TERMS**

This matter came on October 17, 2007, to be heard on the Agreed Disposition of the Virginia State Bar and the Respondent, relative to the matters contained in the Subcommittee Determination (Certification) issued by the Fourth District Subcommittee, Section I, on the 13<sup>th</sup> day of June, 2007. The Agreed Disposition was considered by a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Dr. Theodore Smith, lay member, William E. Glover, Glen W. Hodge, John W. Richardson, and William H. Monroe, Jr., presiding.

Kathleen M. Uston and Seth M. Guggenheim, representing the Bar, and the Respondent, Henry St. John FitzGerald, *pro se*, presented an endorsed Agreed Disposition, dated October 15, 2007, reflecting the terms of the Agreed Disposition. The court reporter for the proceeding was Theresa S. Griffith, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222.

Having considered the Agreed Disposition, it is the decision of the Board that the Agreed Disposition be accepted, and the Virginia State Bar Disciplinary Board finds by clear and convincing evidence as follows:

1. At all times relevant hereto, Henry St. John FitzGerald, (hereinafter "Respondent"), has been an attorney licensed to practice law in the Commonwealth of Virginia.

2. On October 31, 2005, a complaint was filed against Respondent by George W. Dodge, attorney for the sole heir of the Estate of Rose Ward Sloan. Mrs. Sloan was Respondent's cousin whose estate he had agreed to administer, some two (2) years following her death, due to the fact that no one else had qualified to serve in that capacity.

3. In his complaint, Mr. Dodge alleged that, despite many phone calls from both him and the Commissioner of Accounts to Respondent, as of the date of the filing of the complaint, Respondent had not submitted the documents necessary to complete his First Accounting, originally due in December, 2003.

4. On November 29, 2005, the complaint was forwarded to Respondent for his response. Respondent failed to respond. On January 5, 2006, the matter was referred for further investigation and on August 30, 2006, a summons and subpoena *duces tecum* were issued and duly served upon Respondent. Respondent did not appear on the date specified in, or otherwise respond to, the subpoena. Consequently, a Notice of Noncompliance and a Request for Suspension were thereafter filed and served upon Respondent, who finally contacted the Virginia State Bar in response to this Notice on September 19, 2006. Thereafter, on September 21, 2006, Respondent appeared at the Alexandria, Virginia office of the Virginia State Bar with his file on Sloan Estate.

5. At that time, Respondent informed Virginia State Bar Investigator James W. Henderson that he had not yet filed a completed First Accounting as he continued to await certain statements from the bank as well as other financial documents. Respondent also informed Investigator Henderson that, at that point, the estate had been substantially distributed, leaving

only \$5,000.00 to \$7,000.00 to be administered, and that he had hired a full time assistant whose sole job would be to close out the Estate and complete all necessary filings. Respondent also represented to Investigator Henderson that he would thereafter issue weekly progress reports.

6. On October 10, 2006, Respondent wrote to Investigator Henderson to advise that he was still awaiting certain necessary documents from the bank. Since that date until June 13, 2007, Respondent communicated no further with the Bar, failed to issue any of the promised weekly reports on the progress of the estate, and failed to file the required Accounting with the Commissioner of Accounts.

7. As a consequence, Respondent was removed as Administrator of the Sloan Estate effective March 30, 2007. Mr. Dodge was appointed as Successor Administrator and on October 1, 2007, he filed the required First Accounting with the Commissioner of Accounts.

8. In Mr. Dodge's Accounting, certain Estate funds were listed as being unaccounted for, specifically the proceeds from an E-Trade account, a Riggs Bank Estate account, and a Wachovia Cap Account. On October 10, 2007, Respondent appeared at the Alexandria, Virginia office of the Virginia State Bar with a cashier's check in the amount of \$3,256.74 representing the full amount of the E-Trade Account, and the following day delivered a second cashier's check in the amount of \$1,205.79 representing the full amount of the Riggs Bank Estate account. Respondent has also confirmed that the proceeds from the Wachovia Cap Account were used to purchase a \$4,000.00 Certificate of Deposit, currently being held by Adams National Bank.

9. The above referenced cashier's checks were turned over to Mr. Dodge on October 11, 2007 and thus, at this point, all Estate funds are accounted for.

10. Respondent has been diagnosed with depression and Attention Deficit Disorder by Richard A. Ratner, M.D. and has been receiving active treatment for both of these conditions. Respondent has also demonstrated high legal ability over his many years of practice, has assisted in many Continuing Legal Education programs and publications of the Virginia State Bar, and served for many years on the faculty of the University of Virginia Trial Practice Institute.

In approving the Agreed Disposition, the Board gave due consideration to evidence furnished by and on behalf of the Respondent, to representations made by the Respondent, and to representations made by Bar Counsel. The Board finds as applicable mitigating factors contained in the *Standards for Imposing Lawyer Sanctions*, published by the American Bar Association, as follows:

- a. absence of a dishonest or selfish motive
- b. personal or emotional problems;
- c. full and free disclosure to disciplinary board [and] cooperative attitude toward proceedings;
- d. character [and] reputation;

The Board finds by clear and convincing evidence that such conduct on the part of the Respondent constitutes a violation of the following Rules of the Virginia Code of Professional Responsibility:

**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.

**RULE 1.15 Safekeeping Property**

- (c) A lawyer shall:
  - (4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer which such person is entitled to receive.

**RULE 8.1 Bar Admission and Disciplinary Matters**

An applicant for admission to the bar, or a lawyer already admitted to the bar, in connection with a bar admission application, any certification required to be filed as a condition of maintaining or renewing a license to practice law or in connection with a disciplinary matter, shall not;

- (b) fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

It is hereby ORDERED that the Respondent shall receive a Public Reprimand with Terms as representing an appropriate sanction if this matter were to be heard. The terms and conditions which shall be met by the Respondent are as follows:

1. The Respondent shall remain under the care of licensed psychiatrist Richard A. Ratner, M.D. (or, if Dr. Ratner becomes unavailable, such other mental health care provider as agreed upon by Respondent and the Virginia State Bar), and such other health care providers to whom Respondent might be referred by Dr. Ratner, until at least October 31, 2009, or such earlier time as the Respondent is discharged from Dr. Ratner's care with the concurrence of Bar Counsel. Respondent shall cooperate fully and comply with all treatment recommendations made by Dr. Ratner and such other health care providers during the said period. Such

compliance shall include, but not be limited to, attending all further therapy, counseling, and evaluation sessions as may be required by Dr. Ratner and/or other health care providers to whom Respondent is referred by him, taking all medications as may be prescribed by Dr. Ratner or other health care providers to whom Respondent has been referred by Dr. Ratner, and submitting to such further testing, evaluation, and clinical assessments as may be required by Dr. Ratner and any health care providers to whom Respondent has been referred by Dr. Ratner.

2. The Respondent shall immediately provide Dr. Ratner, and all health care providers to whom Respondent has been referred by Dr. Ratner, a copy of the Order of the Disciplinary Board adopting these terms and a release which authorizes and directs Dr. Ratner and such other health care providers to furnish the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314, with written reports which state whether, in the professional opinion of the health care provider writing the report, the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full time private practice of law. Such reports shall detail the basis for such opinions rendered, and shall further state whether, to the best of the health care provider's knowledge, the Respondent is in compliance with paragraphs numbered 1, 2, and 3 of the Disciplinary Board Order entered herein. In the event a health care provider does not state that Respondent is in compliance with the terms hereof, such health care provider shall nonetheless present written facts (*e.g.*, missed appointments, failure to take medication, failure to provide information required for continued treatment/assessments, and failure to pay a provider's bills) to the Virginia State Bar sufficient to permit Bar Counsel's assessment of whether Respondent is in compliance with the terms hereof. At a minimum, during the period that these terms remain in

effect, Dr. Ratner (or his approved successors) shall furnish the Bar with such reports at quarterly intervals, commencing December 1, 2007. Notwithstanding the reporting schedule set forth above, Dr. Ratner (or his approved successors) shall notify the Bar immediately upon his assessment that the Respondent's physical or mental condition materially impairs the Respondent's ability to represent clients in the full time private practice of law.

3. The Respondent shall bear the cost and expense of compliance with the terms set forth herein, including, but not limited to, the cost of the assessments, therapy, counseling, medication, and all health care contemplated by the terms hereof, and the costs imposed, if any, by Dr. Ratner (or his approved successors) and all other health care providers in preparing and furnishing any and all reports submitted to the Virginia State Bar pursuant to the terms hereof.

4. The Respondent shall make arrangements to utilize the services of law office management consultant Janean S. Johnston, 250 South Reynolds Street, #710, Alexandria, Virginia 22304-4421, (703) 567-0088, to audit his law office practice policies, methods, systems, and procedures, including but not limited to, his trust accounting policies and procedures. The Respondent shall follow with consistency all recommendations made to him by Ms. Johnston while such oversight is in progress. The Respondent shall grant Ms. Johnston access to his law practice from time to time, at her request, for purposes of ensuring that Respondent is complying with Ms. Johnston's recommendations. The Virginia State Bar shall have access (by way of telephone conferences and/or written reports) to Ms. Johnston's findings and recommendations, as well as her assessment of Respondent's level of compliance with her recommendations. The Respondent shall be obligated to pay when due Ms. Johnston's fees and costs for her services (including provision to the Bar of information concerning this matter). The Respondent shall

have discharged his obligations respecting the terms contained in this Paragraph 4 if he has fulfilled and remained in compliance with all of the terms contained in herein through October 31, 2009. Ms. Johnston shall report to the Virginia State Bar no less than every six (6) months, commencing on March 1, 2008, and in such reports advise the Bar in detail of Respondent's compliance, or lack thereof, with Ms. Johnston's recommendations. Notwithstanding the reporting schedule set forth herein, Ms. Johnston shall make immediate report to the Virginia State Bar of any determination by her that the Respondent's law office management functions materially impair the Respondent's ability to practice law in compliance with the Rules of Professional Conduct. To implement the terms hereof, the Respondent shall immediately provide Ms. Johnston with a copy of the Order of the Disciplinary Board incorporating these terms and a release which authorizes and directs Ms. Johnston to furnish the Virginia State Bar c/o Kathleen M. Uston, Assistant Bar Counsel, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314 with the information and reports referred to herein.

5. For the period between November 1, 2007, and October 31, 2009, the Respondent shall engage in no conduct which violates any provisions of Virginia Rules of Professional Conduct 1.1, 1.3, 1.15, 8.1, or 8.4 including any amendments thereto, and/or which violates any analogous provisions, and any amendments thereto, of the disciplinary rules of another jurisdiction in which the Respondent may be admitted to practice law. The terms contained in this Paragraph 5 shall be deemed to have been violated when any ruling, determination, judgment, order, or decree has been issued against the Respondent by any disciplinary tribunal which contains a finding that Respondent has violated one or more provisions of the disciplinary rules referred to above; *provided, however*, that the conduct upon which such finding was based

occurred within the two-year period referred to above, and provided, further, that such ruling has become final.

6. Should the Respondent fail to comply with the terms set forth in the immediately preceding Paragraphs 1, 2, 3, 4 and 5, he shall receive a five (5) year suspension of his license to practice law in the Commonwealth of Virginia.

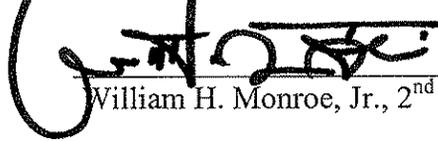
7. Should the Virginia State Bar allege that Respondent has failed to comply with the terms of discipline referred to herein and that the alternative disposition should be imposed, a “show cause” proceeding pursuant to Part 6, § IV, Para. 13 (I)(2)(g) of the *Rules of the Supreme Court of Virginia*, will be conducted, at which proceeding the burden of proof shall be on the Respondent to show the disciplinary tribunal by clear and convincing evidence that he has complied with terms of discipline referred to herein. Any show-cause proceeding will be considered a new matter, and under Part 6, § IV, Para. 13(B)(8)(c)(1) of the *Rules of the Supreme Court of Virginia*, the Respondent will be assessed an administrative fee and costs of such show-cause proceeding.

It is further ORDERED that, pursuant to Pursuant to Part 6, § IV, Para. 13(B)(8)(c)(1) of the *Rules of the Supreme Court*, the Clerk of the Disciplinary System shall assess costs for this Agreed Disposition proceeding.

It is further ORDERED that a copy teste of this Order shall be mailed by Certified Mail, Return Receipt Requested, to the Respondent, at 2200 Wilson Boulevard, Suite 800, Arlington, Virginia, 22201, his last address of record with the Virginia State Bar, and by regular mail to Assistant Bar Counsel Kathleen M. Uston, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, VA 22314.

Entered this 22<sup>d</sup> day of OCTOBER, 2007

VIRGINIA STATE BAR DISCIPLINARY BOARD

  
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William H. Monroe, Jr., 2<sup>nd</sup> Vice Chair