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VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
DAVID NICHOLLS MONTAGUE**

VSB DOCKET NO. 04-010-1921

ORDER OF PUBLIC REPRIMAND

This matter came to be heard on September 21, 2004, upon an Agreed Disposition between the Virginia State Bar and the Respondent, David Nicholls Montague.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Glenn M. Hodge, Esquire, Russell W. Updike, Esquire, Robert E. Eicher, Esquire, Thaddeus T. Crump, Lay Member, and Peter A. Dingman, Esquire, Second Vice Chair, considered the matter by telephone conference. The Respondent, David Nicholls Montague, participated, as did Edward L. Davis, Assistant Bar Counsel, on behalf of the Virginia State Bar.

Upon due deliberation, it is the unanimous decision of the board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar, the Respondent and his counsel are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, David Nicholls Montague (hereinafter Respondent or Mr. Montague) was an attorney licensed to practice law in the Commonwealth of Virginia, except for a ninety-day period beginning June 28, 2002, when his license to practice law was suspended by the Virginia State Bar Disciplinary Board, and from October 24, 2003 when the Board suspended his license again for two years.

2. During February 2001, Donna Rogers met with Mr. Montague concerning her divorce.
3. Mr. Montague prepared a bill of complaint that Ms. Rogers endorsed on May 1, 2001.
4. On or about that time, Ms. Rogers paid Mr. Montague \$500 for attorney's fees and \$76 for filing fees.
5. In addition to the bill of complaint, Mr. Montague prepared a motion to grant Ms. Rogers exclusive use of the marital home.
6. Mr. Montague understood that Mrs. Rogers was in tremendous fear of her husband and that, therefore, she did not want Mr. Montague to file the bill of complaint or the motion pending further instruction from Ms. Rogers.
7. In October 2003, the file being inactive, Mr. Montague's administrative assistant called Ms. Rogers and asked her to come to the office to review the pleadings and endorse them if she wanted her divorce.
8. On or about October 22, 2003, Ms. Rogers came to the office and reviewed the pleadings.
9. The same date, October 22, 2003, someone updated the bill of complaint by pen and ink; however, it was never filed.
10. Two days later, on October 24, 2003, Mr. Montague appeared before the Virginia State Bar Disciplinary Board where his license to practice law was suspended for a period of two years.
11. Mr. Montague says that he prepared a letter to notify Ms. Rogers about the suspension of his law license, and like a number of other letters he mailed, the letter was not delivered; however, there was no evidence of this among the materials that he sent to the bar in accordance with Paragraph 13.M, Part 6, Section IV of the Rules of Court. The bar's records, however, show that Mr. Montague did notify approximately one hundred other clients about the suspension of his license.
12. Ms. Rogers attempted to reach Mr. Montague by telephone to ascertain the status of her case, but could not reach him.
13. On or about January 6, 2004, having not heard from Mr. Montague, Ms. Rogers went to his office and found it closed up. Upon inquiry at an office next door, she learned for the first time that his license had been suspended.

14. Ms. Rogers then contacted Mr. Montague at his home. On February 2, 2004, he issued her a partial refund in the amount of \$298.50. (Mr. Montague kept \$277.50 of the \$500 advance fee, representing 1.5 hours at \$185 per hour, leaving a balance of \$222.50 plus the filing fee.) On June 24, 2004, Mr. Montague refunded the rest of the money advanced by Ms. Rogers, having on reflection concluded that his services had not been beneficial to her.

15. The initial refund issued by Mr. Montague, which included the filing fee, was by check drawn on a personal account.

16. When Mrs. Rogers called Mr. Montague at home, he gave her the name of another lawyer whom he held in high regard. He sent her entire file back on February 3, 2004.

II. DISCIPLINARY RULE VIOLATIONS

The parties agree that the foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.3 Diligence

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

RULE 1.15 Safekeeping Property

(a) All funds received or held by a lawyer or law firm on behalf of a client, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

- (1) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein; or
- (2) funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, and the portion belonging to the lawyer or law firm must be withdrawn promptly after it is due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

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).

III. DISPOSITION

In accordance with the Agreed Disposition, it is the decision of the Disciplinary Board to Issue a Public Reprimand, and the Respondent, David Nicholls Montague, is hereby reprimanded effective upon entry of this order.

The court reporter who transcribed these proceedings is Dorothy J. Lewis, of Chandler & Halasz, Registered Professional Reporters, Post Office Box 9349, Richmond, Virginia 23227. (804) 730-1222.

Pursuant to Part 6, Sec. IV, Para. 13.B.8(c) of the Rules, the Clerk of the Disciplinary System shall assess costs.

It is ORDERED that an attested copy of this Order be mailed by Certified Mail, Return Receipt Requested, to the Respondent, David Nicholls Montague, at his address of record with the Virginia State Bar, 33-E West Queen's Way, Hampton, Virginia 23669, and to Edward L. Davis, Assistant Bar Counsel, Virginia State Bar, 707 East Main Street, Suite 1500, Richmond, Virginia 23219.

ENTERED THIS 23rd DAY OF September, 2004

THE VIRGINIA STATE BAR DISCIPLINARY BOARD

By 
Peter A. Dingman, 2nd Vice Chair