

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR DISCIPLINARY BOARD

**IN THE MATTER OF
MADELINE AGNES TRAINOR**

VSb DOCKET NO. 20-041-118814

**AGREED DISPOSITION MEMORANDUM ORDER
PUBLIC REPRIMAND WITH TERMS**

On Thursday, December 02, 2021 this matter was heard, telephonically, by the Virginia State Bar Disciplinary Board upon the joint request of the parties for the Board to accept the Agreed Disposition signed by the parties and offered to the Board as provided by Part 6, Section IV, Paragraph 13-6.H of the Rules of the Supreme Court of Virginia. The panel consisted of Thomas R. Scott, Jr., First Vice Chair; David J. Gogal; Tony H. Pham; Alexander Simon; and Nancy L. Bloom, Lay Member. The Virginia State Bar was represented by Laura Ann Booberg, Assistant Bar Counsel. Madeline Trainor was present and was represented by counsel Bernard J. DiMuro. The Chair polled the members of the Board as to whether any of them were aware of any personal or financial interest or bias which would preclude any of them from fairly hearing the matter to which each member responded in the negative. Court Reporter Click here to enter text., Chandler and Halasz, P.O. Box 9349, Richmond, Virginia 23227, telephone (804) 730-1222, after being duly sworn, reported the hearing and transcribed the proceedings.

WHEREFORE, upon consideration of the Agreed Disposition, the Certification, Respondent's Answer, Respondent's Disciplinary Record, the arguments of the parties, and after due deliberation,

It is **ORDERED** that the Disciplinary Board accepts the Agreed Disposition, and the Respondent shall receive Public Reprimand with Terms, as set forth in the Agreed Disposition, which is attached and incorporated in this Memorandum Order.

It is further **ORDERED** that the sanction is effective December 2, 2021.

It is further **ORDERED** that:

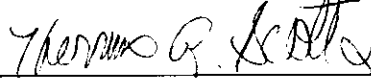
The Clerk of the Disciplinary System shall assess costs pursuant to Part 6, Section IV,

Paragraph 13-9.E of the Rules.

It is further ORDERED that an attested copy of this Order be mailed to the Respondent by electronic, regular first-class and certified mail, return receipt requested, at her last address of record with the Virginia State Bar at Redmon, Peyton & Braswell, LLP, 510 King St., Suite 301, Alexandria, VA 22314, and a copy by electronic mail to Bernard J. DiMuro, Respondent's counsel, and a copy by electronic mail to Laura Ann Booberg, Assistant Bar Counsel.

Enter this Order this 2nd day of December, 2021

VIRGINIA STATE BAR DISCIPLINARY BOARD

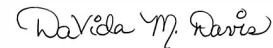


Thomas R. Scott, Jr.
First Vice Chair

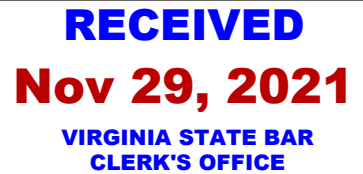


A COPY TESTE

DaVida M. Davis



Clerk of the Disciplinary System
Virginia State Bar



VIRGINIA:

BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
MADELINE AGNES TRAINOR

VSF Docket No. 20-041-118814

AGREED DISPOSITION
(PUBLIC REPRIMAND WITH TERMS)

Pursuant to the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13-6.H, the Virginia State Bar, by Laura Ann Booberg, Assistant Bar Counsel and Madeline Agnes Trainor, Respondent, and Bernard Joseph DiMuro, Respondent's counsel, hereby enter into the following Agreed Disposition arising out of the referenced matter.

I. STIPULATIONS OF FACT

1. Respondent was admitted to the Virginia State Bar ("VSB") on May 2, 1979. At all relevant times, Respondent was a member of the VSB.
2. During Respondent's 41 years of licensure to practice law in the Commonwealth of Virginia she has no disciplinary record.
3. On November 2, 2005, Respondent qualified as the administrator of the Estate of Gary Nateman ("the Estate") after Mr. Nateman died intestate on October 17, 2005.
4. Respondent provided VSB Investigator Ronald H. McCall ("Investigator McCall") with an unsigned document entitled "This is a Legal Contract" ("the Contract") for her representation of Mr. Nateman's sister, Sandra Nateman. The representation consisted of qualifying as administrator of the Estate.
5. The Contract listed the "basic duties of an executor/administrator," including the necessity of filing an inventory and a series of accounts with the Commissioner of Accounts until the Estate is closed.
6. Although the Contract listed an hourly rate of \$250, Respondent recalled that she was to be paid five percent of the Estate. On December 15, 2006, a payment of \$7500 was made from the Estate to Respondent's firm, Cyron & Miller, LLP.
7. Respondent's evidence would show that Respondent made this adjustment because it would be more expensive if she proceeded on an hourly rate because the Estate required more time than initially thought, that Sandra Nateman agreed to this adjustment and that the adjustment led to less fees than if it was done on an hourly basis.

8. On March 2, 2006, Respondent filed an Inventory. On March 9, 2007, the Commissioner of Accounts sent Respondent a notice stating that she failed to file the 1st Account which was due on March 2, 2007.
9. On October 22, 2007, Respondent filed an Amended Inventory. On November 20, 2007, Respondent filed an Account and Respondent responded to an inquiry from Pamela Wanamaker, the then Commissioner of Accounts of Arlington County, and stated:

You are quite right to castigate me for my behavior. You have made things very clear for me, but I have done nothing but procrastinate. It is unacceptable, and I apologize. Last Friday, I was ready, I thought, to deliver to you the Amended Inventory and the Amended Account. I was off on the Account by \$.44, but when I re-did the numbers, I was off by more. I have spent over 20 hours over the last three days, and am now \$2.74 off. I'm afraid I give up on this one. Please help.

Please note that I have amended yet again the Amended Inventory by adding the cash of \$111.85 in the Republic Group. I also discovered that there had been interest added into the Fidelity Muni Money Market account from October 1 to October 17, 2005 which I had not picked up, so I changed the amount on the Amended Inventory to reflect that as well.

I don't have the Wachovia check of \$4200 yet. Happy Thanksgiving. For Christmas, I'm asking for accounting classes. Actually, I guess I'll be hiring someone to help me out, or requesting remedial accounting from your office.

10. On November 13, 2008, Respondent filed the 3rd Account, and listed a disbursement to Sandra Nateman of \$50,000 on May 11, 2008. When the 3rd Account was filed, the balance of funds in the Estate was \$49,515.93.
11. Beginning with Respondent's 6th Account filed in 2012, Respondent repeatedly reported that she was in negotiations with the Internal Revenue Service ("IRS") over back taxes.
12. On June 27, 2012, Respondent wrote to Robin Moss ("Moss") at the Office of Commissioner of Accounts, and stated, "Unfortunately, this estate is not closed yet because we are in negotiations with the IRS over back taxes. As soon as this issue is resolved I will be able to finalize the account and make a final distribution."

13. On August 1, 2012, Respondent again wrote to Moss enclosing her firm's check for a filing fee to replace the Estate's check which was "un-cashable." She further stated, "We have not been notified by the bank of any problem, so I suspect that, as I write almost no checks from this account, the account has gone 'dormant.'"
14. After August 2012, Respondent wrote checks for filing fees from her firm's account and then reimbursed the firm from her personal account.
15. On October 28, 2013, February 20, 2015, August 2, 2016 and December 7, 2018, Respondent wrote to the Commissioner of Accounts and repeated that she was in continued negotiations with the IRS. Despite these repeated claims, Respondent could not produce any evidence to the VSB of any ongoing problems or negotiations with the IRS.
16. From June 2012 to December 2018, the balance of the Estate funds in two BB&T accounts was approximately \$48,000. The December 17, 2018 bank statements show ending account balances of zero after both account balances of \$2119.11 and \$45,921.27 escheated to the Commonwealth of Virginia.
17. In April 2019, Complainant, Elizabeth Louise Wildhack ("Wildhack") was appointed as the Commissioner of Accounts for Arlington County.
18. The 12th Account was due on December 23, 2019. By letter dated December 27, 2019, Wildhack notified Respondent that the 12th Account was delinquent and she had 30 days to file it to avoid a summons being issued.
19. Respondent did not file the 12th Account within 30 days, and on February 5, 2020, a summons was issued. The summons was served on Respondent on February 24, 2020 and the response was due on March 24, 2020.
20. On April 20, 2020, Wildhack sent Respondent an email advising her that Wildhack had delayed notifying the VSB and filing a request for a Rule to Show Cause due to the tolling provisions of the Judicial Emergency declared by the Supreme Court of Virginia.
21. By email dated May 14, 2020, Respondent advised Wildhack that she had forgotten to calendar the date that the 12th Account was due. She attempted to obtain bank records online but could not access the account. According to Respondent, she went to the bank and was informed that the funds of the estate had escheated to the Commonwealth of Virginia. She stated:

I am mortified. I thought I would be in a position to have the funds restored, I would pay the lost interest, and file the Accounting, but clearly, I have been unable to do so timely. I have no doubt that the funds will be restored. Truthfully however, I

never thought it would take this long, and in the meantime, I have been terrified that I have acted so stupidly.

22. On May 26, 2020, Wildhack entered into an Agreed Order allowing Respondent to resign as Administrator. Gretchyn Meinken, Esq. ("Meinken") was appointed in her place.
23. Beginning with her appointment as Administrator through the date of her resignation, Respondent received notices of deficiencies on March 9, 2007, October 25, 2007, March 20, 2009, March 22, 2012, May 2, 2012, June 20, 2016 and December 27, 2019.
24. Respondent told Investigator McCall that she could have closed out the Estate since she did not hear from the IRS, but instead she just "put it out of her head."
25. Meinken told Investigator McCall that the Estate held two accounts. One account contained approximately \$2,200. The other account contained approximately \$45,921.27. Based on the above-referenced December 17, 2018 bank statement, Meinken and Respondent thought that the funds in both accounts had escheated to the Commonwealth of Virginia.
26. In February 2020, Respondent contacted the Division of Unclaimed property to try to recover the funds but was informed by letter dated August 12, 2020 that the funds from the larger BB&T account could not be located.
27. After Meinken was appointed, she contacted the BB&T bank manager and discovered that only the funds from the smaller account had escheated to the state, but the funds from the larger account were in the bank's possession. On September 1, 2020, BB&T issued a check to the Estate for \$45,921.27.
28. On December 16, 2020, Meinken received a check from the Commonwealth of Virginia payable to the Estate for \$10,232.26. This amount consisted of a return of the escheated funds from the smaller BB&T account, as well as other escheated assets of the Estate that were recovered based on Meinken's request for the return of unclaimed property.
29. Respondent has fully and freely disclosed her client file to the Disciplinary Board, cooperated with the bar's investigation and has had a cooperative attitude towards the proceedings to date. She has also displayed substantial remorse for her actions as set out above. Should this matter proceed to a hearing, Respondent will present evidence through affidavits describing her good character, professionalism and reputation in the community. In addition, Respondent will present evidence that her actions were not motivated by any dishonest or selfish motive and that she has over 40 years of voluntarily mentoring bankruptcy attorneys on an individual basis as well as participating as a speaker in numerous seminars with Judges and other attorneys including up to the present. Respondent will also present evidence regarding her decades long volunteer work with the Virginia State Bar Bankruptcy Law Section where she has served on its' Board of Governors for numerous years while also overseeing the production of the quarterly

Bankruptcy newsletter. Should this matter proceed to a hearing Respondent will present evidence of additional volunteer work to aid the public and the Bar.

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.

(b) A lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, but may withdraw as permitted under Rule 1.16.

RULE 1.16 Declining Or Terminating Representation

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

(1) the representation will result in violation of the Rules of Professional Conduct or other law[.]

III. PROPOSED DISPOSITION

Accordingly, bar counsel and Respondent tender to the Disciplinary Board for its approval the agreed disposition of PUBLIC REPRIMAND WITH TERMS as representing an appropriate sanction if this matter were to be heard through an evidentiary hearing by a panel of the Disciplinary Board. Bar counsel and Respondent agree that the effective date for the

sanction shall be the date of entry of the Disciplinary Board Order approving this Agreed Disposition. The terms with which Respondent must comply are as follows:

1. Respondent is placed on probation for a period of one (1) year commencing upon the date that the Disciplinary Board enters a disposition approving the 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 the Respondent is admitted to practice 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 or the Supreme Court of Virginia shall conclusively be deemed to be a violation of this Term.
2. Within one (1) year from the date of entry of the Disciplinary Board Order approving this Agreed Disposition, Respondent shall enroll and attend six (6) hours of continuing legal education (CLE) in the substantive area of trusts and estate law which hours shall not be credited toward Respondent's compliance with her annual mandatory CLE requirement. Upon completion of this Term, Respondent shall so certify in writing to Laura Ann Booberg, Assistant Bar Counsel.

Upon satisfactory proof that all terms and conditions have been met, this matter shall be closed.

If, however, any of the terms and conditions is not met by the deadlines imposed above, Respondent agrees that the Disciplinary Board shall impose a SIX-MONTH SUSPENSION of

Respondent's license to practice law in the Commonwealth of Virginia pursuant to Rules of Court,
Part Six, Section IV, Paragraph 13-18.O.

If the Agreed Disposition is approved, the Clerk of the Disciplinary System shall assess
costs pursuant to ¶ 13-9.E of the Rules.

THE VIRGINIA STATE BAR

By: Laura A. Booberg
Laura Ann Booberg
Assistant Bar Counsel

Madeline Agnes Trainor
Madeline Agnes Trainor
Respondent

Michael Lieberman
Bernard Joseph DiMuro, Esq.
Michael Lieberman, Esq.
Respondent's Counsel