

**VIRGINIA :**

**BEFORE THE DISCIPLINARY BOARD OF THE  
VIRGINIA STATE BAR**

**IN THE MATTER OF JOHN COURY MACDONALD, ESQUIRE  
VSB Docket Number 06-051-4245**

**ORDER**

**THIS MATTER** came before the Virginia State Bar Disciplinary Board at the request of the Virginia State Bar for an expedited hearing pursuant to Paragraph 13.I.1.b of the Rules of the Supreme Court of Virginia. The matter was heard on March 23, 2007, in Courtroom A of the Worker's Compensation Commission, 1000 DMV Drive, Richmond, Virginia 23220. The Board consisted of James L. Banks, Jr., First Vice Chair, W. Jefferson O'Flaherty, Lay Member, William C. Boyce, Jr., John W. Richardson, and Thomas R. Scott. The Bar was represented by Seth M. Guggenheim, Senior Assistant Bar Counsel. Proper notice was given to the Respondent, John Coury MacDonald. The proceedings were reported by Jennifer L. Hairfield of Chandler & Halasz, P. O. Box 9349, Richmond, Virginia 23227, telephone number (804) 730-1222.

Following the handling of two other matters on the Board's docket, the Respondent's case was called at approximately 10:30 a.m. Mr. MacDonald did not answer and his case was called three times in the adjacent hall with no response.

The hearing was then commenced with Mr. Banks polling the Board as to whether any conflict or bias existed which would prevent the member from hearing the matter fairly and objectively. All members answered in the negative, including Mr. Banks.

At this time, Mr. MacDonald appeared and, owing to the fact that Mr. MacDonald did not hear the Board's declarations of lack of bias, Mr. Banks, as a courtesy to Mr.

MacDonald, directed the Board members to once again introduce themselves and to declare their lack of bias. All did so.

Mr. Banks offered Mr. MacDonald the opportunity to review the Bar's documentary exhibits, which were extensive. Mr. MacDonald declined this opportunity.

The Bar then, by way of opening statement, alleged violations of the following Disciplinary Rules: 1.3(a), 1.3(b), 1.3(c), 1.4(a), 1.4(b), 1.4(c), 1.15(c)(3), 1.15(e)(2), 1.16(a), 1.16(d), 5.5(a)(1) and 8.4(b) and 8.4(c). Mr. MacDonald waived opening statement.

The Bar then began to present its case and moved all of its proffered exhibits into evidence. All were admitted without objection, save State Bar Exhibit #12 which was later admitted during the Bar's case in chief, without objection. Additional exhibits were admitted during the Bar's case, also without objection. Upon the conclusion of the Bar's case the Bar rested, and Mr. MacDonald presented no evidence and rested his case. Following argument by the Bar and waiver of argument by Mr. MacDonald, the Board withdrew to deliberate.

## **I. FINDINGS OF FACT**

The Board found the following to be matters of fact:

(1) At all times pertinent to this matter, Mr. MacDonald was a member of the Virginia State Bar.

(2) Mr. MacDonald's license to practice law in Virginia was suspended on October 11, 2006 for non-payment of annual dues and non-filing of his mandatory certification regarding liability insurance.

(3) Mr. MacDonald had not been reinstated as of this hearing.

## **A. THE RECEIVERSHIP**

(4) As a result of information acquired during an investigation conducted by the State Bar, the State Bar petitioned the Circuit Court of Fairfax County for the appointment of a Receiver. The State Bar alleged, among other things, that it appeared as though Mr. MacDonald had abandoned his law practice, that there were defalcations from a trust held for Charlotte Sedam and an associated default judgment in the Fairfax County Circuit Court, as well as four pending felony charges alleging obtaining money by false pretenses.

(5) The Fairfax County Circuit Court granted the Bar's petition for appointment of a Receiver, and appointed Richard S. Mendelson, a lawyer and experienced receiver in Alexandria, Virginia.

(6) Following his appointment, Mr. Mendelson determined that Mr. MacDonald's office was in disarray, stacks of files were piled on a round table in Mr. MacDonald's office, and behind Mr. MacDonald's desk was a large amount of unopened mail, including mail from banks and the United States Internal Revenue Service.

(7) Upon inspection, Mr. Mendelson determined that some of this unopened mail was over a year old, including bank statements.

(8) Virtually every statement relating to Mr. MacDonald's trust account had checks for what appeared to be operating expenses, such as checks to Safeway, checks for office supplies, and checks made payable to Mr. MacDonald himself for round figures such as \$500.00 or \$1,000.00. In addition, there were numerous overdrafts.

(9) Mr. Mendelson also discovered a bank statement from SunTrust bank, admitted as the Bar's Exhibit #31, for an IOLTA Trust Account which was closed by the bank owing to overdrafts.

(10) Mr. Mendelson found among the files on the table thirty-eight (38) files dealing with trusts, some with unrecorded deeds for residential property and some with non-negotiated checks payable to various Circuit Courts for recordation of real property.

(11) Mr. Mendelson found several notifications of the termination of corporate status from the State Corporation Commission, of which the client had not been informed.

(12) Despite Mr. Mendelson's diligent efforts, he could find no subsidiary ledgers and was unable to determine what was owed to whom.

(13) Mr. Mendelson wrote two hundred fifty-seven letters, similar to the State Bar's Exhibit #11, which explained that Mr. MacDonald's law practice had been terminated and requesting the client to give information pertaining to monies owed, services not rendered, and so forth.

(14) Mr. Mendelson received numerous responses, among which were VSB Exhibit #12 in which Norma J. Edwards claimed that Mr. MacDonald was in possession of IRS documents and stock certificates which she wanted returned. In addition, Mr. MacDonald was still in possession of Mrs. Edwards's \$2,500.00 fee.

(15) Mr. Mendelson received a response from Richard and Sharon Puckett in which Mr. and Mrs. Puckett claimed that they were owed money for work never performed.

(16) Many clients complained of lack of response from Mr. MacDonald as well as the loss of advanced fees.

(17) Mr. Mendelson continues to receive daily responses of a similar nature.

(18) Mr. Mendelson found among Mr. MacDonald's mail a letter from the Circuit Court for Baltimore City regarding a dishonored check drawn on SunTrust Bank in the amount of \$3,345.00 dated 12/22/07 [sic].

(19) As a result of the letter from Baltimore City, Mr. Mendelson examined Mr. MacDonald's bank statements from November and December (VSB Exhibits #32 and #33) and determined that the trust account balance was zero when the check in question was written.

(20) Mr. Mendelson called the Court and determined that the dishonored check was written in order to record a Note relating to real property held by Nayana K. Talsania.

#### **B. Nayana K. Talsania Matter**

(21) Upon the death of Mrs. Talsania's husband, Mrs. Talsania hired Mr. MacDonald to help with his estate. In order to record a Note related to real property in Baltimore City, Maryland, Mr. MacDonald asked Mrs. Talsania to write two checks.

(22) Mrs. Talsania was aware that her personal checks would not be accepted by the Baltimore City Circuit Court but to this day does not know why Mr. MacDonald asked her to write two personal checks.

(23) The Note was dated October 16, 2006 and should have been recorded shortly thereafter.

(24) When Mrs. Talsania received no notification of the recording of the Note, she attempted to reach Mr. MacDonald by telephone. After many attempts to do so, Mrs. Talsania called the Virginia State Bar.

(25) Mrs. Talsania learned from the Virginia State Bar that Mr. MacDonald was suspended. Mrs. Talsania was never informed by Mr. MacDonald that he was suspended.

(26) In December of 2006, Mrs. Talsania was finally able to speak to Mr. MacDonald who told her he would proceed with the recording of the Note. It was this attempt on Mr. MacDonald's part which resulted in the dishonored check in the Baltimore City Circuit Court.

### **C. The Charlotte Sedam Matter**

(27) Mrs. Sedam became acquainted with Mr. MacDonald when Mr. MacDonald was hired to work for her husband, a lawyer, in 1992 or 1993.

(28) Mrs. Sedam's husband died in 1994 and Mrs. Sedam hired Mr. MacDonald to establish six Trusts relating to Mr. Sedam's estate. Four of the Trusts were to be in the names of Mr. and Mrs. Sedam's children, one Trust was to be for the children as a group, and one Trust was to be for Mrs. Sedam.

(29) As far as Mrs. Sedam has been able to determine, the first four Trusts were never established and Trusts five and six are still in existence.

(30) As of May 10, 2006, Mrs. Sedam had received no accountings on the Trusts and became suspicious. In a letter to Mr. MacDonald dated May 10, 2006, Mrs. Sedam demanded from Mr. MacDonald, among other things, a complete accounting (VSB Exhibit #20).

(31) In another letter dated June 8, 2006 (VSB Exhibit #21), Mrs. Sedam tells Mr. MacDonald that she has received no records and she once again requests these records.

(32) Once again, on June 19, 2006, Mrs. Sedam demanded records (VSB Exhibit #22) in a facsimile sent to Mr. MacDonald.

(33) Mrs. Sedam has never received any accounting.

(34) On June 19, 2006, Mrs. Sedam was able to speak with Mr. MacDonald by telephone. A record of the conversation appears in VSB Exhibit #23.

(35) In this conversation, Mrs. Sedam demands the accountings previously requested, and requests Mr. MacDonald to wire funds to her from the Trusts.

(36) Mr. MacDonald replied that he had taken all of the funds and there was nothing left for him to send. Mr. MacDonald stated that it was his intent to borrow the money from the Trusts and to repay the money but that plan “didn’t work out”. When Mrs. Sedam asked Mr. MacDonald how much money he had taken, Mr. MacDonald estimated between \$85,000.00 and \$100,000.00. He also admitted that he had done no accountings because he didn’t want Mrs. Sedam to be aware of the defalcations.

(37) Despite the depletion of the Trusts, Mr. MacDonald claimed that he was within his rights to use the Trust money for his personal benefit because he was the Trustee. He denied that this was any form of fraud or theft. He also said that he would prepare Promissory Notes for the amount taken.

(38) When Mrs. Sedam accused Mr. MacDonald of using the money to purchase drugs, Mr. MacDonald did not admit the allegation but did say that part of his “recovery” was a ten day trip to Cuba for which he was leaving that night.

(39) When Mrs. Sedam informed Mr. MacDonald that she would seek legal and professional redress, Mr. MacDonald replied, "I will see you in court. Thank you for calling."

(40) The Promissory Note to which Mr. MacDonald referred was found among Mr. MacDonald's files (VSB Exhibit #27). The Note is dated January 14, 2005. Mrs. Sedam never saw the Note until the day prior to this hearing, March 22, 2007.

(41) The Note was in no way discussed with Mrs. Sedam and was simply prepared by Mr. MacDonald who inserted whatever terms he deemed appropriate. The Note does not mention any particular amount, but simply provides that Mr. MacDonald will repay the amounts "borrowed" on his own schedule but by January 14, 2015 at an interest rate of 7% per annum. The purported maker of the Note is "J. Coury MacDonald, an individual" and the purported holder of the Note is "J. COURY MACDONALD, TRUSTEE, as Trustee of The GKCJ Irrevocable Trust Number Five and/or Six." Mrs. Sedam has hired other counsel to assist her with these matters, and she has incurred in excess of \$14,000.00 in legal expenses.

(42) The current value of the Trusts is zero dollars in cash, but the Trust still holds two small parcels of real estate.

(43) The Trusts were originally funded with approximately \$900,000.00. Mrs. Sedam estimates that Mr. MacDonald has converted at least \$300,000.00. She is unable to give a precise figure owing to the fact that she has never received any accountings, and is only able to estimate the amount of missing funds by subtracting the amounts received from the Trust from the amount deposited to the Trust.

(44) Regarding the real estate held by the Trust, it has been determined that the taxes have not been paid on the properties and that the insurance policies have lapsed.

#### **D. MACDONALD'S TESTIMONY**

(45) Mr. MacDonald was called as a witness by the State Bar and questioned about his bankruptcy filing of February 23, 2007.

(46) Mr. MacDonald acknowledges that he did not include the debt to the Baltimore City Circuit Court in his filing.

(47) Mr. MacDonald listed a \$75,000.00 debt to Mrs. Sadem which Mr. MacDonald acknowledges was an estimate in that he has no records to support it.

(48) Mr. MacDonald testified that he has no income and that his statement in the bankruptcy petition in which he claims to have been "employed for three weeks" is false.

(49) Mr. MacDonald acknowledges that the people listed as dependents in his bankruptcy petition are his fiance's children.

(50) Mr. MacDonald acknowledges that no security was offered relating to the Promissory Note (VSB Exhibit #27).

(51) Mr. MacDonald acknowledges that he has been charged with four felonies in Fairfax County relating to withdrawals from automatic teller machines.

(52) Regarding the Promissory Note, Mr. MacDonald acknowledged that he drafted it and has no recollection of showing it to Mrs. Sadem.

(53) Mr. MacDonald admitted that the writing on the check register included in VSB Exhibit #27, which reveals several "loans" to JM, is his writing.

## II. VIOLATIONS

### **RULE 1.3                    Diligence**

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

The Board finds that the Bar has proven a violation of this Rule by clear and convincing evidence. Mr. MacDonald's abandonment of his files and practice, his failure to record land transactions, his failure to provide accounts to his clients, and his failure to inform his clients of corporate revocations from the State Corporation Commission constitute a violation of this Rule.

- (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.

The Bar has proven a violation of this Rule by clear and convincing evidence. Mr. MacDonald's failure to record land transactions is a violation of this Rule.

- (c) A lawyer shall not intentionally prejudice or damage a client during the course of the professional relationship, except as required or permitted under Rule 1.6 and Rule 3.3.

A violation of this Rule has been proven by clear and convincing evidence. Mr. MacDonald's failure to record land transactions, his defalcations, and the fact that his clients were required to hire other counsel, not the least example of which is Mrs. Sedam's expenditure of in excess of \$14,000.00 to her current counsel, constitutes violations of this Rule.

### **RULE 1.4                    Communication**

- (a) A lawyer shall keep a client reasonable informed about the status of a matter and promptly comply with reasonable requests for information.

A violation of this Rule has been proven by clear and convincing evidence. Mr. MacDonald's abandonment of his practice and failure to keep his clients informed of matters relating to their legal interests constitutes a violation of this Rule.

- (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

The Bar has proven a violation of this Rule by clear and convincing evidence. Not only did Mr. MacDonald fail reasonably to explain a matter to a client, but in many cases he gave no explanations at all.

- (c) A lawyer shall inform the client of facts pertinent to the matter and of communications from another party that may significantly affect settlement or resolution of the matter.

The Board finds that the Bar did not meet its burden with regard to this alleged violation.

**RULE 1.15 Safekeeping Property**

- (c) A lawyer shall:
  - (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to the client regarding them.

The Bar has proven a violation of this Rule by clear and convincing evidence. Not only did Mr. MacDonald fail to render appropriate accounts to clients, but no such records existed from which Mr. MacDonald could possibly render such accounts.

- (e) Record-Keeping Requirements, Required Books and Records. As a minimum requirement every lawyer engaged in the private practice of law in Virginia, hereinafter called "lawyer," shall maintain or cause to be maintained, on a current basis, books and records which establish compliance with Rule 1.15(a) and (c). Whether a lawyer or law firm maintains computerized records or a manual accounting system, such system must produce the records and information required by this Rule.

- (2) in the case of funds or property held by a lawyer or law firm as a fiduciary subject to Rule 1.15(d), the required books and records include:
  - (i) an annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same or similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the lawyer is properly discharging the obligations of the fiduciary relationship;
  - (ii) original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under (i), above;
  - (iii) the records required under this paragraph shall be preserved for at least five full calendar years following the termination of the fiduciary relationship.

This allegation has been proven by clear and convincing evidence. In the cases discussed in this hearing, no such summaries or accounts as required by this Rule were provided to the clients.

**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 representation of a client if:
  - (1) The representation will result in violation of the Rules of Professional Conduct or other law;

The Board does not find that a violation of this Rule has been proven by clear and convincing evidence.

- (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).

A violation of this Rule has been proven by clear and convincing evidence. Mr. MacDonald took no action to notify his clients of his suspension of October 12, 2006.

**RULE 5.5 Unauthorized Practice of Law**

- (a) A lawyer shall not:
  - (1) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction;

The Board finds clear and convincing evidence of a violation of this Rule. When Mr. MacDonald consulted with Mrs. Talsania regarding the filing of her Note with the Baltimore City Circuit Court, he was aware that he was suspended from the practice of law, failed to tell Mrs. Talsania that he was suspended, and proceeded to attempt to file the Note.

**RULE 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (b) commit a criminal or deliberately wrongful act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice law;

The Board finds proof of a violation of this Rule by clear and convincing evidence. Mr. MacDonald's frequent use of the funds in the Sedam Trusts for personal purposes does not constitute "loans" but embezzlement.

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation which reflects adversely on the lawyer's fitness to practice law;

The Board does not find proof by clear and convincing evidence of a violation of this Rule.

**III. SANCTION**

In determining the appropriate sanction for these violations, the Board considered mitigating evidence offered by the Bar to the effect that Mr. MacDonald has no

disciplinary record other than his interim suspension for failure to pay dues. Mr. MacDonald presented no evidence in mitigation. The record however is replete with evidence in aggravation. Mr. MacDonald abandoned his law practice and left his clients without representation. Mr. MacDonald made no effort to protect the interests of his clients. Following his suspension for failure to pay dues, Mr. MacDonald informed no one of his suspended status. Many of Mr. MacDonald's clients were damaged by his failure to inform them of the revocation of their corporate status by the State Corporation Commission, of tax issues, and of his failures to record matters relating to real estate transactions. Worse yet, Mr. MacDonald simply helped himself to at least \$300,000.00 held in trust for Charlotte Sadem. Mr. MacDonald continues his fraudulent actions in the United States Bankruptcy Court.

Mr. MacDonald's conduct is reprehensible and cannot be tolerated. The only way to protect the public from Mr. MacDonald is to revoke his license to practice law in Virginia. It is so ordered effective March 23, 2007.

#### **DUTIES OF THE RESPONDENT**

It is ORDERED that, as directed in the Board's March 23, 2007 Summary Order in this matter, a copy of which was served on Respondent by certified mail, Respondent must comply with the requirements of Part 6, Section IV, Paragraph 13 M, of the Rules of the Supreme Court of Virginia. The time for compliance with said requirements runs from March 23, 2007, the effective date of the Revocation Order. All issues concerning the adequacy of the notice and arrangements required by the Summary Order shall be determined by the Board.

It is further ordered pursuant to Paragraph 13 B.8.c.1 of the Rules of the Supreme Court of Virginia, that the Clerk of the Disciplinary System shall assess costs against the Respondent.

It is finally ordered that the Clerk of the Disciplinary System shall forward a copy of this order, by certified mail, return receipt requested, to the Respondent, John Coury MacDonald, at his address of record with the Virginia State Bar, 4020 University Drive, Suite 207, Fairfax, Virginia 22030, and by regular mail to Seth M. Guggenheim, SeniorAssistant Bar Counsel, Virginia State Bar, 100 North Pitt Street, Suite 310, Alexandria, Virginia 22314-3133.

ENTERED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

VIRGINIA STATE BAR DISCIPLINARY BOARD

By: \_\_\_\_\_  
James L. Banks, Jr., First Vice Chair