



THE STEIN LAW FIRM

November 15, 2006

Ms. Virginia L. Ferrara  
Chief Disciplinary Counsel  
Post Office Box 1809  
Albuquerque, NM 87103-1909

Re: Ethical Complaint Against Gregory W. MacKenzie, Esq.  
Popejoy & MacKenzie  
Unit C  
10590 Second Street, N.W.  
Albuquerque, NM 87114-2209

Dear Ms. Ferrara:

This letter is my formal complaint against Gregory W. MacKenzie, Esq., whose office is at the above address. As required under Rule 16-803.A, this is a report of violations of multiple sections of Rule 16-804. The complaint arises from his actions outside of court in his representation of Cathie Temmerman in the Guardianship and Conservatorship case brought by him on behalf of his client against her father, Bruce C. Clinesmith, in the Second Judicial District Court, Case No. PQ-2005-00063.

As background, beginning in the early 1990's Mr. Clinesmith took monies that were the property of both him and his wife, Ruth M. Clinesmith, and placed them into three trusts. One was an irrevocable Charitable Remainder Uni-Trust (CRUT) in which both Mr. and Mrs. Clinesmith were the Trustors. This trust paid a percentage of the corpus jointly to them for life and for the life of the survivor. The Trustee and beneficiary was Moody Bible Institute of Chicago, hereinafter Moody. This CRUT has over \$1 million in assets.

The second trust was a revocable intervivos trust - a Living Trust - in which Bruce was nominally the sole Trustor and Moody was the initial Trustee. The third trust was also a Living Trust in which Bruce was nominally the sole Trustor and initial Trustee. In September of 2004 Moody became the Trustee of this third trust after Moody's attorney had Bruce resign. These two trusts had over \$10 million in assets in 2005. Moody's attorneys drafted all these trusts.

Stuart L. Stein, Esq. • Attorney at Law  
Main Office: CityPlace - Suite 2200 • 2155 Louisiana, N.E.  
Albuquerque, NM 87110 • Phone (505) 889-0100 • Fax (505) 889-0953  
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Not included in the assets of any of these trusts was a stock brokerage account at Citigroup Smith Barney that had a value of approximately \$300,000.00 held in the names of Bruce Clinesmith and Ruth Clinesmith as joint tenants with right of survivorship. It was discovered in the Spring of 2005 that Moody was secretly paying the legal fees of Ms. Temmerman owed to Mr. MacKenzie and his lawfirm.

In early 2005 when Mr. MacKenzie was representing Ms. Temmerman, he contacted the Clinesmith's Smith Barney broker, Leonard E. Leetzow, Jr., in Sarasota, Florida and informed him of the guardianship and conservatorship case to get the broker to freeze the \$300,000.00 joint account in the name of Mr. and Mrs. Clinesmith.

Mr. MacKenzie interfered with the property rights of Mr. and Mrs. Clinesmith to stop either of them from entering the Smith Barney account and gaining access to their monies. Because of Mr. MacKenzie's conduct the account was frozen. This was accomplished either by telephone or letter or both with Mr. Leetzow. Neither Mr. MacKenzie nor his client, Ms. Temmerman, had any interest in the Smith Barney account of Mr. and Mrs. Clinesmith.

Mrs. Clinesmith, specifically, was deprived of access to her property during the time the freeze was in place. To lift the freeze, this office was retained to bring suit in the United States District Court for the District of New Mexico to allow Mrs. Clinesmith her rightful access to these monies. See, Case No. CIV-05-696 LAM/LCS. Ultimately, Citigroup Smith Barney lifted the wrongful freeze and Mrs. Clinesmith was able to get the account transferred to another account. The cost to Mrs. Clinesmith for these legal services was significant and were only necessary because of Mr. MacKenzie's illegal actions.

Mr. MacKenzie's action was a criminal interference with property rights of both Mr. or Mrs. Clinesmith to have immediate access to their account, in addition to being actionable civilly. The actions constituted mail fraud under 18 U.S.C. §1341 and/or wire fraud under 18 U.S.C. § 1343 or both. It is not a defense to mail or wire fraud that the object of the scheme to defraud was only to freeze the account. See, United States v. Males, 459 F.3d 154 (2nd Cir. 2006).

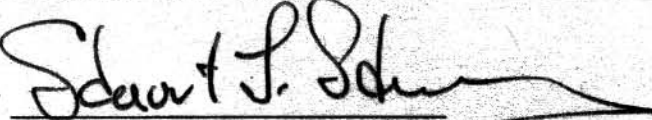


The above cited criminal statutes are for the protection of any deprivation of property rights. See, Carpenter v. United States, 484 U.S. 19, 108 S.Ct. 316, 98 L.Ed.2d 275 (1987) and United States v. Welch, 327 F.3d 1081, 1106 (10th Cir. (2003).

Civilly, these actions constitute tortious interference with contractual relations. See, Eldorado Utilities v. Eldorado Area Water and Sanitation District, 2005-NMCA-036, 137 N.M. 217, 109 P.3d 305.

The undersigned has materials, including transcripts of sworn testimony, that support these allegations. Since Mr. MacKenzie is a witness on behalf of your office in the pending disciplinary matter against this writer, the investigation of this complaint should be passed to an independent investigator for investigation and prosecution. As required by the Rules of Discipline, this writer will cooperate with the disciplinary and other investigative agents.

Yours very truly,  
THE STEIN LAW FIRM

by   
Stuart L. Stein

cc: Sasha Siemel, Esq., Chair - Disciplinary Board  
Hon. David C. Iglesias, United States Attorney  
Agent in Charge, Albuquerque FBI Office

