



THE STEIN LAW FIRM

April 16, 2007

Martin Lopez, III, Esq.  
Attorney at Law  
1500 Mountain Road, N.W.  
Albuquerque, NM 87110

Re: Complaint Against Gregory W. MacKenzie, Esq.  
Chronology

Dear Mr. Lopez:

At our meeting on Thursday, April 5, 2007 you asked for a chronology of the matters concerning Mr. MacKenzie that were presumptively violative of the Rules of Professional Conduct.

1. The Bogarosh Case, Discipline Case No. 06-2003-458. This was less than 4 years ago in 2003. One of the charges against me concerned the fee for accomplishment of the A/B Split and 706 Estate Tax Return. This office subpoenaed Attorneys Ken Leach, Susan Tomita and Randolph Hamblin who were listed as witnesses by disciplinary counsel. Amongst the materials requested to be produced were copies of 706 Estate Tax Returns prepared and filed with the IRS by the deponents. Ms. Tomita was the Guardian Ad Litem for Peter Bogarosh, the ward, and Mr. Hamblin represented Barbara BogaRosh, the daughter of Peter and the petitioner in the guardianship and conservatorship case. Mr. Leach had no roll in the Bogarosh case.

Mr. MacKenzie served a Motion for Protective Order claiming an attorney-client privilege for Leach, Tomita and Hamblin in all the materials requested, including 706 Estate Tax Return. He discussed the fact of the burden of going through all their thousands of files to seek out 706 Estate Tax Returns.

The prosecutor on the case for the Disciplinary Board was Disciplinary Counsel Sally Scott-Mullins. She told this writer and the hearing committee that these three lawyers represented by MacKenzie and Attorney Lawrence Kay, were expert witnesses on the case.

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The hearing committee only allowed four depositions although disciplinary counsel listed six witnesses on the Specification of Charges. A decision was made to take the depositions of the experts. Before the depositions, Ms. Scott-Mullins said that only Leach would be an expert witness, with Hamblin, Tomita and Kay becoming fact witnesses.

In the response papers filed by this office the question was raised if any of these lawyers prepared 706 Estate Tax Returns, i.e. are there any 706 Returns for which a privilege could be raised. MacKenzie never directly responded: he just continued to raise the privilege. Mr. MacKenzie clearly stated in this filings if his clients prepared and filed 706 Estate Tax Returns.

At the depositions, neither Leach, Tomita nor Hamblin testified under oath that they prepared 706 Estate Tax Returns. No such documents existed in their files.

Mr. MacKenzie's motion for protective order asking that these non-existent documents not be produced was a violation of Rules 16-301, 16-302 and 16-404 of the Rules of Professional Conduct.

2. The Clinesmith Case, Disciplinary Case No. 02-2006-505. Mr. MacKenzie represented Kathe Temmerman, the daughter of Bruce Clinesmith and step-daughter of his wife Ruth Clinesmith. The Petition was to have a Bruce Clinesmith declared incapacitated and appoint Decades LLC as his temporary and permanent guardian and conservator. The case was opened in March of 2005. MacKenzie was secretly paid \$15,000.00 in fees and costs by Moody Bible Institute of Chicago, the trustee of two trusts created nominally in the name of Bruce, alone.



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This office initially represented Bruce and Ruth Clinesmith. They told me that their joint account at Citigroup Smith Barney was frozen and no one has told them why or how that was done. I sent a letter to the local office of Citigroup Smith Barney to get answers. Their response was a non-response, response: they understood that Bruce was somehow not well so they froze the account but did not say how they obtained that information. These two letters were attached to the federal suit filed by this writer on behalf of Ruth Clinesmith to gain access to that account and were given to you at our meeting.

At the hearing on the discipline case, James S. Goddard, Esq., the attorney for Citigroup Smith Barney, testified that it was either Kathe Temmerman or her attorney Gregory MacKenzie who made the contact with the company which resulted in the freeze.

MacKenzie used the Citigroup Smith Barney case as a club in the guardianship case to show why this writer should be removed as the attorney for Bruce Clinesmith. Mr. MacKenzie never told the Judge on the Clinesmith guardianship case, the Hon. Linda M. Vanzi, that he or his client's contact with Citigroup Smith Barney was the precipitous act that caused the freeze that this writer was attempting to correct.

As pointed out in the testimony of Goddard, the freeze was illegal: it was not supported by the contract Bruce and Ruth signed with the company or any other independent authority.

Mr. MacKenzie's testimony on these points after Goddard's testimony, was a classic example of avoiding any direct answers to avoid incriminating himself of violations of the Code of Professional Conduct. He needed to review his records to give a more comprehensive answer. The hearing committee refused to require these materials to be produced.



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His actions outlined above in the Clinesmith Guardianship case was in violation of Rule 16-303.(A).(2) by helping his client to accomplish an fraudulent or criminal act: keeping Ruth Clinesmith from access to an account upon which she was a joint tenant.

Without having access to his file to obtain confirming letters to Citigroup Smith Barney or to his client this office was hogtied and was unable to show the wrongful acts of Mr. MacKenzie or his client to the hearing committee. Any written contact between MacKenzie and Citigroup Smith Barney is not privileged. Because the contact with Citigroup Smith Barney by either MacKenzie or Temmerman was an illegal and unprivileged act directed at the Clinesmith joint account, there is no attorney-client privilege under Evidentiary Rule 11-503.(D) for letters about this subject between MacKenzie and his client; you can demand such records as a special investigator for the Disciplinary Board.

It is hoped that this above chronology is what you were looking for to comprehensively finish your investigation. If it falls short of the mark, please call and let me know the specifics that you thought this would cover and it will be supplemented with such further information.

Yours very truly,  
THE STEIN LAW FIRM

by

  
Stuart L. Stein

VIA FACSIMILE: 243-6339

