

APR 28 2014

ENTRY ORDER

SUPREME COURT DOCKET NO. 2012-449

APRIL TERM, 2014

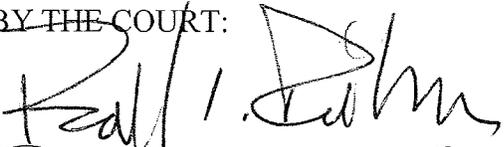
In re William MaGill, Esq.

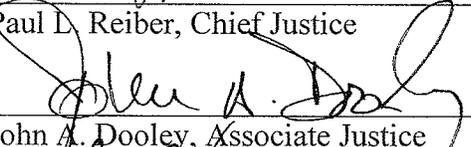
} Original Jurisdiction  
}  
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} Professional Responsibility Board  
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} PRB No. 2013-230

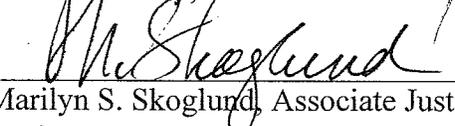
In the above-entitled cause, the Clerk will enter:

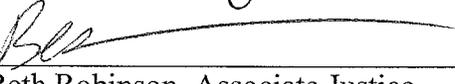
Respondent William MaGill has filed with the Court an affidavit of resignation supported by a statement of facts from disciplinary counsel. Respondent's resignation from the bar is accepted, and we order, pursuant to A.O 9, Rule 19.C, that William MaGill is disbarred on consent from the office of attorney and counselor at law, effective from the date of this order. Respondent shall comply with the requirements of A.O. 9, Rule 23.

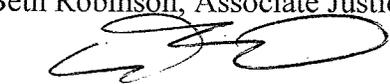
BY THE COURT:

  
\_\_\_\_\_  
Paul D. Reiber, Chief Justice

  
\_\_\_\_\_  
John A. Dooley, Associate Justice

  
\_\_\_\_\_  
Marilyn S. Skoglund, Associate Justice

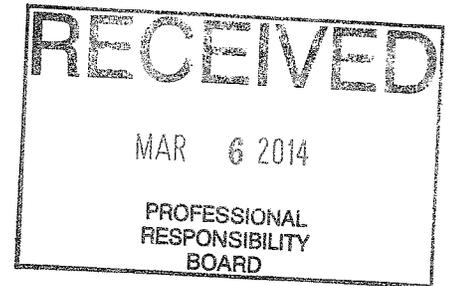
  
\_\_\_\_\_  
Beth Robinson, Associate Justice

  
\_\_\_\_\_  
Geoffrey W. Crawford, Associate Justice

ORIGINAL

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In Re: William MaGill, Esq.  
PRB File No. 2012-230



AFFIDAVIT OF RESIGNATION

NOW COMES William MaGill and, pursuant to Rule 19(A) of Administrative Order 9, hereby submits this affidavit of resignation. In so doing, and being duly sworn, I hereby depose and state as follows:

21. I am an attorney licensed to practice law in the State of Vermont.
22. I desire to resign my license to practice law in the State of Vermont.
23. My resignation is being rendered freely and voluntarily.
24. In submitting my resignation, I am not being subjected to coercion or duress.
25. I have reviewed Administrative Order 9, and I am fully aware of the implications of submitting my resignation.
26. I am aware that the Office of Disciplinary counsel is presently investigating allegations that I am guilty of misconduct that violates the Vermont Rules of Professional Conduct.
27. I am aware that, in PRB File No. 2012-230, the Office of Disciplinary Counsel is investigating allegations that I failed to communicate with my clients, neglected a client matter, and commingled funds from my operating account with client funds in my trust account.
28. I began winding down my private practice of law in 2009, and to the best of my recollection I finally closed my Northfield law office in February of 2010. I was feeling

completely overwhelmed by the demands of private practice, as well as issues affecting my personal life and my family relationships. Although I did not know it at the time, I have since come to understand that I was suffering from a major depression, which led to feelings of hopelessness and made it difficult or impossible for me to function. I am receiving professional treatment for my depression at this time.

9. After December, 2009 I stopped accepting new clients and tried to find alternate counsel for my remaining clients. Nevertheless, I continued to represent a couple of clients, among them a Mr. and Mrs. Hummel, who were beneficiaries of the Hummel Trust. As the Trustee of the two trusts created for the benefit of the Mr. Hummel and his wife one of my responsibilities was to pay the premium for their insurance policies. During the period April 2011 through May 2012 there were times when I neglected to timely pay the Hummels' life insurance policies and failed to timely communicate with Mr. and Mrs. Hummel. I also failed to submit documentation which would have allowed Mr. and Mrs. Hummel to receive duplicate copies of the insurance invoices and other communications from the insurance company. During this period of time I failed to regularly check the post office box in Northfield where I received mail related to my remaining clients and private practice of law, and I failed to monitor my voicemail messages. Eventually I ceased communicating with Mr. and Mrs. Hummel, despite the fact that I was still the Trustee for the Hummel Trusts.

10. As Trustee for the Hummel Trusts I would receive a check from the Hummels for the insurance premium due on their policies, deposit the money into my attorney trust account, and then pay the insurer with a check drawn on my trust account.

11. On at least one occasion, when I had failed to collect my mail and did not have the check

from the Hummels, I transferred money from either my operating account or my personal account into my trust account and paid the insurance company with a check drawn on my trust account.

To the best of my information and belief, and based on a review of available bank records which I have provided to the Office of Disciplinary Counsel, this most likely occurred in March of 2012.

By depositing my own money into my trust account, I commingled my funds with those of my clients.

12. On December 13, 2012, the Vermont Supreme Court issued an Order suspending my license to practice law, pending the outcome of a Court ordered audit of my client trust account.

13. I provided the Office of Disciplinary Counsel with all available financial records from my law practice in order to facilitate an audit of my trust account. The audit commenced in January, 2013. The audit revealed that there were five checks written from my trust account for which there was insufficient information to ascertain the reason for the payment or from which client matter the checks were drawn, despite the fact that the other checks drawn on my trust account were identified by client name and matter.

14. The five checks from my Trust account which are in question are listed below, with date, check number and amount of check:

12/24/09	#2140	\$1,350.00
1/8/10	#2141	\$1,350.00
2/8/10	#2143	\$ 500.00
3/5/10	#2144	\$1,300.00
8/25/10	#2149	\$4,500.00

15. My practice when writing checks from my Trust account was to provide information including an explanation of each of the payments, which client matter was involved and the reason for each payment. I failed to include such information on any of the five checks at issue.

16. I have made a diligent search for records which would definitely resolve the question of the purpose for which each of these checks was drawn, without success. After I closed my Northfield law office in (I believe) February 2010 I moved most of my records to the basement of my home. The basement area was flooded by sewage in September, 2010, and most of my records were destroyed. I have provided the Office of Disciplinary Counsel with documentation which confirms the flooding of my basement and the destruction of property and records located in the basement. I was able to obtain duplicate records from my bank but those records did not positively resolve questions re: the reason for payments listed in paragraph 14 and/or the client matter drawn upon.

17. I maintained an electronic (Quicken) register of my Trust Account, and I provided that to the Office of Disciplinary Counsel, along with my bank records, to facilitate the audit of my Trust account. My review of that Register provides me with some additional information about the checks at issue. The information from my Quicken register regarding the five checks at issues is as follows:

**A. 12/24/2009 Trust Account 2140 William M. MaGill Attorney At Law Closing Proceeds Out R -1,350.00.** Although I cannot be absolutely positive, this note indicates to me that Check #2140 was most likely written to compensate me either for costs incurred or attorney fees I had earned.

**B. 1/8/2010 Trust Account 2141 William M. MaGill Attorney At Law Closing Proceeds Out R-1,350.00.** Although I cannot be absolutely positive, this note indicates to me that Check #2141 was most likely written to compensate me either for costs incurred or attorney fees I had earned.

**C. 2/8/2010 Trust Account 2143 William M. MaGill Attorney At Law Services R -500.00.** Although I cannot be absolutely positive, this note indicates to me that Check #2143 was most likely written to compensate me for attorney fees I had earned.

**D. 3/5/2010 Trust Account 2144 William M. MaGill attorney fees Misc R-1,300.00. 3/5/2010.** Although I cannot be absolutely positive, this note indicates to me that Check #2144 was most likely written to compensate me for attorney fees I had earned.

**E. 8/25/2010 Trust Account 2149 William M. MaGill Attorney fees Closing Proceeds Out R -4,500.00.** Although I cannot be absolutely positive, this note indicates to me that Check #2149 was most likely written to compensate me for attorney fees I had earned.

18. Checks 2140, 2141, 2143 and 2144 were all drawn at or about the time I was winding down my private practice of law. At the time check # 2149 was drawn I had closed my office and was actively representing only a few clients.

19. Over the years I had developed a practice whereby I would withdraw most, but not all of the fees and/or costs that were due to me at the time a matter, such as a real estate closing, concluded. In retrospect, I was overly cautious about overdrawing my Trust account due to expenses such as wire transfers and other closing costs which I was having difficulty keeping track of. Accordingly, I often left some of my personal funds in my Trust account at the conclusion of various legal transactions.

20. When my practice ended there were several thousand dollars of non-client funds in my

Trust account which I believed and continue to believe belonged to me. However, at that point in time I could no longer determine which client and which matter the funds originally related to.

21. Upon information and belief the monies I paid to myself by checks numbered 2140, 2141, 2143, 2144 and 2149 represented fees and/or costs I had earned/incurred from or on behalf of more than one client and more than one matter over the years.

22. I do not admit that I misappropriated client funds.

23. I do admit that I have not been able to provide the Office of Disciplinary Counsel with information or evidence, other than my bank records and my Quicken check register, regarding the purpose or payee of the five checks in question or to which client matter they are related.

24. I acknowledge that the material facts upon which these allegations are based are true.

25. I submit my resignation because I know that if the Office of Disciplinary Counsel pursues charges of misconduct predicated upon the conduct (i.e., commingling of funds, neglect of a client matter, failure to communicate with clients) under investigation, including the audit of my account, I could not successfully defend against those charges.

26. I am aware that, pursuant to Rule 19(B) of Administrative Order 9, Deputy Disciplinary Counsel will file a Statement of Additional Facts relating to the misconduct under investigation.

27. I am aware that Deputy Disciplinary Counsel will also file a Memorandum of Law relating to the misconduct under investigation.

28. Based on the foregoing, I freely and voluntarily resign my license to practice law in the State of Vermont.

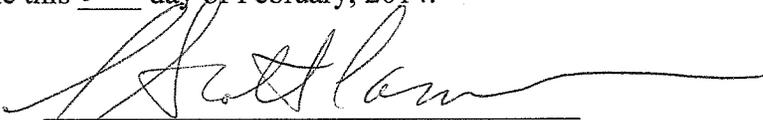
29. The facts recited herein are based on my personal knowledge, except where stated upon information and belief, in which case I believe them to be true.

DATED at Washington County, Montpelier, this 28<sup>th</sup> day of February, 2014.

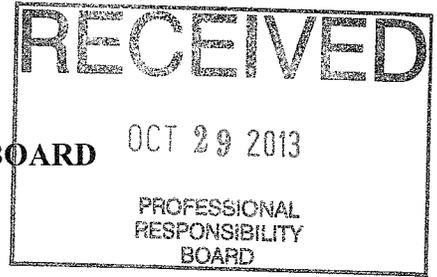
  
\_\_\_\_\_  
William MaGill

STATE OF VERMONT -  
COUNTY OF Washington, SS

Subscribed and sworn to before me this 28<sup>th</sup> day of February, 2014.

  
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Notary Public  
My commission expires: 2-5-2015

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD



In Re: William McGill, Esq.  
PRB File No. 2013-230

STATEMENT OF ADDITIONAL FACTS

NOW COMES Kimberly Rubin, Deputy Disciplinary Counsel, and pursuant to Administrative Order 9, Rule 19(B), hereby submits the following facts, in addition to the facts set forth in the Respondent's Affidavit of Resignation:

1. Respondent was admitted to the Vermont Bar in June, 2003.
2. On January 17, 2012, a Hearing Panel for the Professional Responsibility Program issued Decision 148, publicly reprimanding the Respondent for a lengthy delay in closing an estate and for failing to communicate with his clients, in violation of Rule 1.3 and Rule 1.4(a) of the Vermont Rules of Professional Conduct in effect prior to September 1, 2009, and Rule 1.3, Rule 1.4(a)(3) and Rule 1.4(a)(4), which were effective thereafter.
3. On May 16, 2012, Paul Hummel, a client of Respondent, filed a complaint with the Office of Disciplinary Counsel alleging that Respondent, as the Trustee of the two trusts created for the benefit of the Mr. Hummel and his wife, neglected to timely pay the Hummels' life insurance policies, failed to timely communicate with the Hummels and eventually ceased communicating with the Hummels, despite the fact that he was still the Trustee for the Hummel Trusts, in violation of Rule 1.3 of the Vermont Rules of Professional Conduct which states that a "lawyer shall act with reasonable diligence and promptness in representing a client." and Rules 1.4(a)(3) and (4) which state that a lawyer shall

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- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests for information.

Mr. Hummel alleged that the misconduct occurred from April 29, 2011 through May 12, 2012.

4. Respondent failed to act with reasonable diligence and promptness in representing the Hummels when, over the course of a year, he failed to timely pay the insurance premiums for the trusts, failed to submit the necessary documentation to allow the Hummels to receive duplicate copies of the invoices and other communication from the insurance companies (to allow the Hummels to monitor Respondent's actions on their behalf), and failed to timely retrieve his mail or voicemail messages, in violation of Rule 1.3 of the Rules of Professional Conduct.
5. Respondent failed to promptly keep the Hummels reasonably informed about the status of the matter and failed to comply with reasonable requests for information when he failed to timely respond (or respond at all) to numerous voicemail messages and emails from the Hummels over the course of over a year, in violation of Rules 1.4(a)(3) and 1.4(a)(4) of the Rules of Professional Conduct.
6. As Trustee for the Hummel Trusts, Respondent would receive a check for the insurance premium from the Hummels, deposit the money into his attorney trust account, and then pay the insurer with a check drawn on his trust account.
7. During the course of Deputy Disciplinary Counsel's investigation of the Hummel Complaint, it became apparent that there was a possible trust account violation by Respondent. Respondent admitted to Deputy Disciplinary Counsel that in order to pay the insurer on at least one occasion (when he had failed to collect his mail and

timely deposit a check from the Hummels), Respondent transferred money from his operating account into his trust account in order to pay the insurer with a check drawn on his trust account. Respondent subsequently retrieved his mail and deposited the Hummel's check.

8. By depositing his own money into his trust account, Respondent commingled his funds with those of his clients in violation of Rule 1.15(a)(1) of the Rules of Professional Conduct, which states

A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in accordance with Rules 1.15A and B. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

9. Due to Respondent's refusal to provide meaningful discovery to Deputy Disciplinary Counsel throughout the investigation of the Hummel complaint and upon discovering at least one violation of Rule 1.15(a)(1), Deputy Disciplinary Counsel entered into a stipulation with Respondent in which Respondent consented to a Court ordered Interim Suspension of his license to practice law and agreed to submit to a Court ordered audit of his trust account.
10. On December 13, 2012, the Vermont Supreme Court issued an Order immediately suspending the Respondent's license to practice law on an interim basis pending conclusion of a financial audit. This Order is still in full force and effect.
11. An audit of Respondent's trust account commenced in January, 2013. The audit revealed that there were five checks written from the trust account for which there

was insufficient information to ascertain the reason for the payment and from which client matter the checks were drawn. The audit revealed that the other disbursements from the Respondent's trust account were identified by client matter and recipient of the check. Therefore, the five checks in question were an aberration.

12. Deputy Disciplinary Counsel requested Respondent provide additional information regarding these five checks, including an explanation of each of the payments, which client matter was involved and the reason for each payment, along with any supporting documentation. The five checks in question are listed below, with date, check number and amount of check:

12/24/09	#2140	\$1,350.00
1/8/10	#2141	\$1,350.00
2/8/10	#2143	\$500.00
3/5/10	#2144	\$1,300.00
8/25/10	#2149	\$4,500.00

To date, the information listed in the table above, is the totality of the information Deputy Disciplinary Counsel has regarding these five checks.

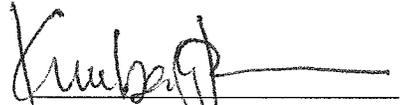
13. Respondent was unable to provide an explanation or any supporting documentation regarding the five checks in question.
14. Respondent does not admit that he misappropriated the client funds or otherwise used them in contravention of the Rules of Professional Conduct, but Respondent does admit that he has not produced any evidence that the funds were dispersed appropriately and ethically according to the Rules of Professional Responsibility.
15. Respondent does not contest that he has provided no evidence to defend against Deputy Disciplinary Counsel's claim that respondent violated Rule 8.4(c) by

misappropriating client funds from his attorney trust account. Rule 8.4(c) states that it is professional misconduct for a lawyer to “engage in conduct involving dishonestly, fraud, deceit or misrepresentation”.

16. This statement of facts may be considered in any reinstatement proceeding, as provided in A.O. 9, Rule 19(B).

DATED at Burlington, Vermont, this 29 day of October, 2013.

Respectfully submitted,

  
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Kimberly Rubin  
Deputy Disciplinary Counsel

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of  
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Counsel

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