

IN RE: KEVIN JOSEPH MacDONALD

NO. BD-2015-071

S.J.C. Order of Term Suspension entered by Justice Cordy on January 7, 2016, with an effective date of February 6, 2016.¹

Page Down to View Memorandum of Decision

¹ The complete Order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
No. BD 2015-071

IN RE: KEVIN JOSEPH MacDONALD

MEMORANDUM OF DECISION

This matter comes before me on an information filed by the Board of Bar Overseers (board), recommending that Attorney Kevin Joseph MacDonald be suspended from the practice of law indefinitely. The recommendation was not unanimous, one member preferring a lesser sanction. Bar counsel had recommended a suspension of one year and one day.

The petition for discipline filed with the board alleged various violations of the Rules of Professional Conduct, including: (1) that MacDonald's professional liability insurance had lapsed in 2011, but he falsely certified to the board later that year that he was covered by such insurance, and thereafter wrongly accepted case assignments and compensation from the Committee of Public Counsel Services for a nineteen month period of time; and (2) that in 2012 MacDonald entered into a Flat Fee Agreement to file an appeal of a negligent homicide conviction and a motion for a new trial in the same

case, and that although he received partial payment of the flat fee, he did not file an appeal or a motion for a new trial and only belatedly filed a motion to revise and revoke his client's sentence (which he did not mark up for a hearing), nor did he refund any of his client's fee or return his client's file when he was terminated as the attorney.

MacDonald did not file an answer to the petition, thereby deeming the allegations admitted and waiving his right to present evidence in mitigation.

There is little doubt that the violations before me are serious and warrant a significant period of suspension. They are made more serious by MacDonald's prior 2007 six-month suspension from the practice of law for failing to communicate adequately with another of his clients and failing to act with reasonable diligence causing the client's matters to be time barred or dismissed. The board rightly contends that MacDonald's current ethical violations are similar to his former ones, and reflect a disheartening pattern of neglect and dishonesty.

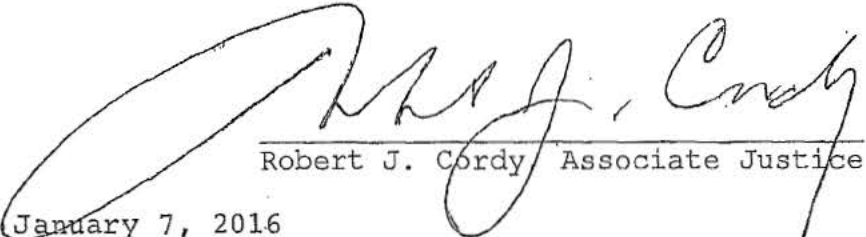
I held a hearing on September 2, 2015, at which MacDonald appeared and argued for a lesser sanction. At the hearing, I learned that the board did not have the benefit of reviewing the Flat Fee Agreement in question, when reaching its conclusions and recommendation. I was subsequently provided with a copy.

Of note is the Agreement's provision, in capital letters, that:
The "CLIENT EXPRESSLY UNDERSTANDS AND HEREBY ACKNOWLEDGES THAT NO
LEGAL REPRESENTATION, APPEARANCE OR PREPARATION WILL BEGIN IN
THIS MATTER UNTIL PAYMENT ON ACCOUNT . . . IS PAID IN FULL."

The client paid a little over one-half of the agreed on
flat fee and, consequently, MacDonald delayed pursuing her
posttrial remedies until such time as the "account" was paid in
full.

While this might mitigate the lack of diligence component
of the disciplinary petition, it does not mitigate MacDonald's
refusal to provide an account "as to all legal services
rendered" and to return the file to his client on the
termination of their relationship -- also requirements of the
Flat Fee Agreement.

In any event, I am of the view that a suspension of two
years is fully warranted in this case, and so order.


Robert J. Cordy Associate Justice

Entered:

January 7, 2016