

Not for Publication.

IN THE SUPREME COURT OF THE VIRGIN ISLANDS

IN THE MATTER OF THE SUSPENSION)
OF) S. Ct. Civ. No. 2012-0013
MAXWELL MCINTOSH, ESQUIRE)
AS A MEMBER OF THE VIRGIN)
ISLANDS BAR.)

IN THE MATTER OF THE SUSPENSION) S. Ct. Civ. No. 2012-0025
OF)
MAXWELL MCINTOSH, ESQUIRE)
AS A MEMBER OF THE VIRGIN)
ISLANDS BAR.)

Considered and Filed: October 10, 2013

BEFORE: **RHYS S. HODGE**, Chief Justice; **MARIA M. CABRET**, Associate Justice; and
IVE ARLINGTON SWAN, Associate Justice.

OPINION OF THE COURT

PER CURIAM.

These matters come before the Court pursuant to the Office of Disciplinary Counsel’s “Notice to the Court and Motion for Order Directing Payment Into Court’s Registry.” Along with the motion, Disciplinary Counsel has provided this Court with an “Offer to Consent Discipline,” pursuant to which Maxwell McIntosh, a suspended attorney, consents to his disbarment and various other remedies as sanctions for numerous instances of ethical misconduct. For the reasons that follow, we accept the offer to consent, and grant Disciplinary Counsel’s motion, as modified.

I. BACKGROUND

The motion presently before the Court represents the culmination of more than two and one-half years of proceedings before this Court and the United States Court of Appeals for the Third Circuit, involving ethical misconduct committed by McIntosh. As we explained in our most recent opinion:

On February 13, 2012, this Court received a certified copy of a February 6, 2012 Order entered by the United States Court of Appeals for the Third Circuit in *In re: McIntosh*, Misc. No. 11–8024, which it docketed as S.Ct. Civ. No. 2012–0013. In its order, the Third Circuit found that McIntosh committed numerous ethical violations in conjunction with his representation of the appellee in *Benta v. Bryan*, Nos. 09–3490 & 09–3491, 2011 WL 1878641 (3d Cir. Mar. 31, 2011), including failing to file a brief, failing to respond to a court order, and making false representations about the record and his reason for failing to file a brief. After noting that McIntosh was completely nonresponsive in the disciplinary proceedings, the Third Circuit suspended him from the practice of law for one year. The same day this Court received the order, it required McIntosh to show cause as to why it should not impose reciprocal discipline pursuant to Supreme Court Rule 203(c).

The Ethics and Grievance Committee (“EGC”) filed a Petition for Disciplinary Action Based on Consent on March 13, 2012, which this Court docketed as S.Ct. Civ. No. 2012–0025. In its petition, the EGC stated that it had entered into a consent discipline arrangement with McIntosh pursuant to Supreme Court Rule 207.3.15, whereby McIntosh admitted to violating Model Rules of Professional Conduct 1.1, 1.3, 1.4(a), 1.15(a), 1.15(d), 8.1(b), 8.1(d), and 8.4(c) with respect to his representation of four clients in unrelated matters, and agreed to a three year suspension from the practice of law followed by one year of probation, as well as payment of restitution and costs. The offer to consent provided that McIntosh would serve the three year suspension concurrently with any reciprocal discipline ordered as part of S.Ct. Civ. No. 2012–0013, and stated that the one year of probation could be revoked and replaced with “no less than an additional 12 months” of suspension if McIntosh commits further violations of the Supreme Court Rules or the Model Rules of Professional Conduct. On March 19, 2012, McIntosh filed his response to the February 13, 2012 Order in S.Ct. Civ. No. 2012–0013, agreeing to imposition of reciprocal discipline if any period of suspension would be served concurrently with the discipline ordered in S.Ct. Civ. No. 2012–0025.

On March 21, 2012, this Court entered separate orders of suspension in both S.Ct. Civ. No. 2012–0013 and S.Ct. Civ. No. 2012–0025. In S.Ct. Civ. No. 2012–0013, this Court imposed identical discipline as the Third Circuit, suspending McIntosh from the practice of law for one year, with the suspension to

become effective on April 5, 2012, pursuant to Supreme Court Rule 207.5.5(a). The order further advised McIntosh that he would be required to fully comply with all of the provisions in Supreme Court Rule 207.5.5 during that fifteen day period, including notifying all clients, co-counsel, opposing counsel, and courts of his suspension, and filing the affidavit required by Supreme Court Rule 207.5.5(g) demonstrating his compliance within ten days of the effective date of his suspension, or April 16, 2012. In S.Ct. Civ. No. 2012–0025, the Court granted the offer to consent, with minor modifications not relevant to this matter, and thus suspended McIntosh from the practice of law for three years, imposed a one year period of probation in the event he obtained reinstatement, and directed him to pay restitution to the grievants. The order entered in S.Ct. Civ. No. 2012–0025 further stated that the three year suspension would run concurrently with the one year suspension imposed in S.Ct. Civ. No. 2012–0013, and stated that any affidavit of compliance with Supreme Court Rule 207.5.5 filed as part of S.Ct. Civ. No. 2012–0013 would also apply to S.Ct. Civ. No. 2012–0025. . . .

McIntosh filed a motion for extension of time to comply with the Suspension Orders on April 4, 2012, which requested an extension until April 20, 2012, “to complete the winding down of his practice.” The motion, however, gave no reasons for an extension, and failed to outline any of the steps McIntosh took to achieve compliance with Supreme Court Rule 207.5.5. Although the Court did not rule on the motion, McIntosh failed to file the required affidavit by the April 16, 2012 due date. Likewise, McIntosh did not file an affidavit by his self-imposed April 20, 2012 deadline; rather, he filed a second motion for extension of time, which was virtually identical to the April 4, 2012 motion except that it requested a further extension until April 30, 2012.

This Court, in an April 23, 2012 Order, denied both motions without prejudice because McIntosh's cursory motions failed to explain why an extension of time was necessary. However, for nearly two months McIntosh did not file the affidavit, a renewed motion for extension of time, or any other documents with this Court. Thus, this Court, in a June 13, 2012 Order, required McIntosh to show cause, in writing within fourteen days, as to why he should not be held in contempt, referred to the EGC for additional disciplinary proceedings, or otherwise sanctioned for his failure to comply with the March 21, 2012 Suspension Orders.

McIntosh failed to respond to the June 13, 2012 Order. Disciplinary Counsel, however, filed a notice on July 10, 2012, which informed the Court that she “has received additional complaints, alleging that [McIntosh] has failed to return to all clients and/or third parties fees which have not [been] earned, monies or other property held in trust, and all files and/or other property of whatever nature, whether held in trust or not.” Based on this information, this Court, in a July 13, 2012 Order, again required McIntosh to show cause within fourteen days, and directed Disciplinary Counsel to advise this Court as to whether it should appoint an attorney-trustee pursuant to Supreme Court Rule 207.5.6. Yet again, McIntosh failed to file any documents with this Court. Consequently, this Court, in a September 11, 2012 Order, referred McIntosh to EGC for further disciplinary

proceedings, and required him to appear before this Court on October 9, 2012, to address the Court on the issue of whether he should be held in contempt or otherwise sanctioned for failing to comply with the March 21, 2012, June 13, 2012, and July 13, 2012 Orders.

McIntosh appeared at the October 9, 2012 hearing, attributed his inaction to a “paralysis” as a result of his suspension, and orally moved for an extension of time until November 30, 2012, to achieve full compliance with the March 21, 2012, June 13, 2012, and July 13, 2012 Orders, including filing the affidavit mandated by Supreme Court Rule 207.5.5(g). This Court, in an October 10, 2012 Order, granted the oral motion, and stated that it would defer a ruling as to whether McIntosh should be held in contempt or otherwise sanctioned for his prior noncompliance until after the November 30, 2012 deadline. Additionally, the Court required McIntosh to confer with Disciplinary Counsel on a weekly basis to update her on the status of returning unearned fees, property held in trust, and the progress of his attempts at achieving compliance. Yet again, the November 30, 2012 deadline passed, and McIntosh failed to file the affidavit or any other documents with this Court. Consequently, this Court, in a December 4, 2012 Order, directed McIntosh to show cause within fourteen days as to why he should not be held in contempt or otherwise sanctioned for his failure to comply with the March 21, 2012, June 13, 2012, July 13, 2012, and October 10, 2012 Orders. . . .

[O]n December 17, 2012, McIntosh filed a motion requesting an extension of time until December 21, 2012, to respond to the December 4, 2012 Order, as well as permission to file a medical report under seal. In his motion, McIntosh attributed his failure to comply with the October 10, 2012 Order to the death of his nephew on November 30, 2012, and implied that the medical report would further explain his inaction. Although this Court did not immediately rule on the motion, McIntosh again failed to comply with his self-imposed December 21, 2012 deadline. Nevertheless, in the interests of justice, this Court, in a January 9, 2013 Order, extended the deadline for McIntosh to respond to January 23, 2013, and granted him permission to file his response and any accompanying documents under seal. Although the January 23, 2013 deadline has lapsed, McIntosh, consistent with his prior practice, [did] not file[] any documents with this Court.

In re Suspension of McIntosh, S. Ct. Civ. Nos. 2012-0013, 0025, 2013 WL 991250, at *1-3 (V.I. Mar. 14, 2013) (unpublished). This Court, in its March 14, 2013 Opinion, held McIntosh in civil contempt for his non-compliance, ordered him to pay a \$2,000 fine to compensate this Court, and imposed an additional fine of \$10 per day to coerce McIntosh to file the required affidavit. *Id.* at *4. To date, McIntosh has not filed the affidavit, paid any of the accrued fines, or filed any other documents with this Court.

On October 2, 2013, Disciplinary Counsel filed its “Notice to the Court and Motion for Order Directing Payment Into Court’s Registry.” In this motion and its accompanying exhibits, Disciplinary Counsel discloses that, in addition to this Court’s referral, the EGC received two new grievances against McIntosh that were not the subject of the prior discipline by consent. In May 2013, McIntosh, through his counsel, executed another consent discipline agreement with Disciplinary Counsel and the EGC, in which he agreed to (1) his disbarment; and (2) entry of a consent judgment against him as to the two new grievants, as well as three prior grievants who, to date, had not been paid restitution. Additionally, Disciplinary Counsel has informed this Court that on October 1, 2013, McIntosh moved the Superior Court for payment of outstanding legal fees owed to him in *In re Estate of Phillip*, Super. Ct. PB. No. 94/2007 (STX), which amount to \$7,705. Given McIntosh’s history of failing to pay restitution and accrued fines in a timely manner, Disciplinary Counsel requests that this Court order emergency relief by directing the Superior Court not to issue these funds directly to McIntosh, but to hold them in this Court’s registry so that they may be used to pay the accrued fees and partially satisfy the consent judgments in the event they are accepted by this Court.

II. DISCUSSION

“This Court, as the highest court of the Virgin Islands, possesses both the statutory and inherent authority to regulate the practice of law in the Virgin Islands.” *In re Gonzalez*, S. Ct. BA. No. 2013-0026, 2013 WL 5429374, at *2 (V.I. Sept. 30, 2013) (citing 4 V.I.C. § 32(e)). This authority encompasses the power to discipline attorneys for ethical misconduct. *In re Suspension of Adams*, 58 V.I. 356, 361 (V.I. 2013).

Before considering Disciplinary Counsel’s request for emergency relief, we consider the duly-executed offer for consent discipline. The EGC lacks plenary authority to disbar an

attorney by consent; such authority is vested solely with this Court, which must approve any offer to consent that would impose such a sanction. V.I.S.CT.R. 207.3.15(a). While Supreme Court Rule 207.3.15(a) requires the filing of a petition for disciplinary action based on consent, we note that, unlike Supreme Court Rule 207.5.1—which governs the preparation of petitions for disciplinary action in cases adjudicated by the EGC through the normal adversarial process—Rule 207.3.15(a) does not mandate that the petition for consent discipline be filed by the EGC itself, but only that it actually be filed with this Court. Consequently, although it was filed with this Court by Disciplinary Counsel rather than the EGC, we find that the offer to consent is properly before us.

In the offer to consent, McIntosh admits to converting client property, failing to safeguard and segregate trust property, failing to respond to the new grievances filed against him, violating the terms of this Court’s prior suspension orders, and failing to pay court-ordered fines and restitution in a timely manner. Based on these admissions, as well as McIntosh’s history of prior discipline, we, like Disciplinary Counsel and the EGC, find that disbarment represents the appropriate sanction. *See* STD’S FOR IMPOSING LAWYER SANCTIONS § III.C, Stds. 4.11, 5.11, 6.21, 8.1.¹ Therefore, we accept the offer to consent without modification, and accordingly disbar McIntosh from the Virgin Islands Bar and, concurrently with issuance of this Opinion, shall enter separate judgments against him as to each of the five grievants to whom he admits to owing restitution.²

¹ Although their application may be somewhat relaxed in the consent discipline context, when fashioning a sanction for an attorney’s ethical misconduct, “[t]he [EGC] is guided by the American Bar Association’s Standards for Imposing Lawyer Sanctions, and may only deviate from those Standards for good cause.” V.I.S.CT.R. 207.4.1.

² Since the five grievants are not signatories to the offer to consent, and lack standing to object to the offer to consent discipline with this Court, *see* V.I.S.CT.R. 207.4.11(c), our entry of judgment consistent with the terms of the offer to consent is not intended to preclude the grievants, pursuant to *res judicata* or any other doctrine, from

Turning to Disciplinary Counsel's motion, we agree that emergency relief is appropriate. This Court, by virtue of its exclusive jurisdiction to regulate the legal profession in the Virgin Islands, also possesses broad authority to fashion appropriate equitable remedies when it suspends or disbars an attorney, such as placing the attorney's law practice in receivership and appointing an attorney-trustee to inventory all files and bank records. *See, e.g., V.I. Bar v. Brusch*, 49 V.I. 409, 415 (V.I. 2008). It is difficult to imagine a more appropriate case for imposing such a remedy than here, where McIntosh has admitted to knowingly converting client property, disregarding court orders, and refusing to pay restitution and fines despite having the means to do so. Moreover, this Court cannot ignore that, as a practical matter, McIntosh has less of an incentive to comply with the terms of the current offer to consent, given that he has agreed to his immediate disbarment.

Thus, in order to ensure that McIntosh meets his obligations to both the government and the grievants, this Court hereby appoints the Office of Disciplinary Counsel as the receiver of the accounts receivable for McIntosh's former law practice, *see* V.I.S.CT.R. 207.5.6, and consequently directs the Superior Court not to issue any payments to McIntosh directly, whether in Super. Ct. PB. No. 94/2007 (STX) or any other case. However, rather than directing that these funds be deposited in the registry of this Court, we believe the Superior Court, as the court in which these matters are pending, is capable of exercising supervisory authority over the pertinent funds. After ascertaining the total amount of outstanding receivables, Disciplinary Counsel may submit a plan, for this Court's consideration, to determine how those funds may be released.

III. CONCLUSION

For the foregoing reasons, we accept the offer to consent, hereby disbar McIntosh as a

seeking any other remedies against McIntosh for his admitted misconduct, such as initiating civil proceedings in the appropriate judicial forum.

member of the Virgin Islands Bar, and enter judgment against him in the amount set forth in the consent discipline agreement. Having accepted the offer to consent, we also relieve McIntosh of the \$10 per day fine imposed to coerce his compliance with our prior suspension orders, and accordingly fix the monetary sanction for his civil contempt at \$4,010, representing the initial \$2,000 fine and \$2,010 in accrued fines from the day after entry of our March 14, 2013 Opinion to October 2, 2013, the day Disciplinary Counsel notified this Court of the offer to consent. We also grant motion for emergency relief, as modified, and accordingly appoint Disciplinary Counsel as the receiver of McIntosh's former law practice for the purpose of collecting and inventorying all outstanding receivables, including those owed to McIntosh by the Superior Court.

ATTEST:
VERONICA J. HANDY, ESQ.
Clerk of the Court