

PCB 66

[01-Apr-1994]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In Re: PCB File No. 91.01

DECISION NO. 66

This matter came before the Board by way of a stipulation entered into by Bar Counsel and Respondent. We accept the Stipulation of Facts as filed by the parties. That stipulation is incorporated herein by reference.

Briefly summarized, Respondent has been practicing law in Vermont for approximately twenty years. Ten years ago, Respondent set up his law practice as a solo practitioner. He relied entirely upon his secretary to set up and maintain his attorney trust accounts.

Shortly after the rule regarding mandatory reporting of overdrafts was enacted by the Vermont Supreme Court, the Professional Conduct Board was

notified that Respondent's attorney trust account showed an overdraft of funds. Respondent also received this notice.

In response to this notice, Respondent immediately deposited funds into the trust account to make sure that each client who had funds in the trust account was credited with the amount that should have been on hand. Respondent also immediately contacted and engaged the services of an independent firm of certified public accountants to determine the cause of the overdraft and to recommend whatever steps needed to be taken in order to remedy the problems.

The accountant determined that the overdraft was due to a misconception on the part of Respondent's secretary as to how client's expenses should have been handled.

Respondent's trust account was used as a repository of client's funds and for payment of client's expenses. The mistake in administering the fund was as follows: client expenses were paid from the trust account irrespective of the amount available on the account of a particular client; if the client's trust account did not have funds sufficient to cover the expenses so paid, the client was billed after the obligation was paid; when the client remitted the payment, the amount was deposited in the trust account.

At the time the accountant reviewed Respondent's attorney trust account, the accountant determined that there were 89 client accounts. Of these, 48 had credit balances and 41 had debit balances. Since receiving the report of the certified public accountant, Respondent has corrected the manner in which the

law office trust account is handled. Steps have been taken to ensure the proper management of all client's funds. This was confirmed by a review of Respondent's attorney trust account by an investigator employed by the Professional Conduct Board.

We find no evidence to suggest any intent to engage in any impropriety with respect to the way in which this law office trust account was handled. We do find, however, that the Respondent, as an attorney, is solely responsible for the proper management and handling of client trust accounts and for the proper supervision of his employees. We find no direct personal gain or benefit was derived by Respondent or any of his staff in connection with the way in which the trust account had been operated; however, the law office did receive an indirect benefit.

#### CONCLUSIONS OF LAW

An attorney has a serious responsibility to ensure that funds held in trust for a client are used solely for the purposes of that client. Inherent in that responsibility is the requirement that an attorney have a full and current understanding of the minimum requirements of maintaining client trust accounts and insuring that his staff meet those requirements. By not fully educating and supervising his staff as to the requirements of trust account maintenance, Respondent failed to maintain the integrity of the individual client trust account, thereby violating DR9-102(B)(3).

#### SANCTIONS

In considering the appropriate sanction to impose here, we find a number of mitigating factors including the absence of a prior disciplinary record; absence of a dishonest or selfish motive; good faith effort to rectify the consequences of the misconduct; full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings; and remorse.

In aggravation, we find a history of improper use of client funds, albeit unintentional, and substantial experience in the practice of law.

Bar Counsel and Respondent jointly recommended that a private admonition be imposed in this case. In light of the fact that it has been three and one-half years since this incident occurred and no further overdraft notifications have been received, we accept the joint recommendation and impose a private admonition upon Respondent.

Dated at Montpelier, Vermont this 1st day of April, 1994.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

Anne K. Batten

/s/

Donald Marsh

/s/

Joseph F. Cahill, Esq.

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

/s/

/s/

Nancy Foster

Ruth Stokes

/s/

/s/

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

/s/

Robert P. Keiner, Esq.

Edward Zuccaro, Esq.