PCB 77

[07-Oct-1994]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File 95.09

NOTICE OF DECISION

DECISION NO. 77

This matter was presented to us by stipulated facts submitted by Respondent and Bar Counsel. We have accepted those facts and adopted them as our own.

This case involves an attorney who failed to attend to his attorney-trust account and who co-mingled his own funds with those of his clients.

Respondent has been a member of the Vermont bar for nearly 20 years. In May of this year he overdrew his attorney-trust account by nearly $3,000. This was due to the fact that he had settled a personal injury case for $6,000 and issued a trust account check to his client. However, Respondent had neglected to deposit the settlement check of $6,000 for several days. The

client promptly cashed the check. An overdraft resulted.

Respondent deposited the settlement check but failed to pay the overdraft charge of $52. This failure resulted in another overdraft the following month.

In order to guard against any further overdrafts, Respondent deposited $500 of his own funds into the trust account to act as a cushion.

Since 1990, banks who maintain attorney-trust accounts are required to report any overdrafts to Bar Counsel. When Bar Counsel received a report of these overdrafts, she examined Respondent's books.

Bar Counsel discovered that Respondent's sole method of accounting for his attorney-trust account was by checkbook register. He kept no separate ledgers or records of client funds. He did not keep a separate record of available client funds in each client's file or in a central file. He did note periodically, in pages opposite the checks in the checkbook, the amount currently held in trust for each client. If a client wanted an accounting, however, it would have to be constructed from the notations in the checkbook and the checkbook register. He had no computer records of the trust account, in general or by client.

Although Respondent had maintained this trust account for at least 10 years, he had never balanced it. He relied on the bank to keep accurate records. In the past, Respondent has maintained $100 of his own money in his IOLTA account to meet bank charges and obligations.

Respondent's conduct violated two provisions of the Code of Professional Responsibility.

Disciplinary Rule 9-102(C) requires that every attorney maintain:

1. a ledger system showing all activity in each trust account, identified as to source of funds and disbursement;

2. a separate accounting page or column for each client showing a running balance;

3. records of notices to clients of receipt and disbursement of funds; and

4. a single source identification index to all trust accounts in operation.

Respondent's method of record-keeping fell woefully short of these minimal standards.

Disciplinary Rule 9-102(A)(1) prohibits a lawyer from depositing his own funds in a client-trust account except for funds "reasonably sufficient to pay bank service charges."

Respondent's system of maintaining his own funds in the trust account as a "cushion" to prevent overdrafts from occurring is highly inappropriate. If Respondent had been properly attentive to his responsibilities to balance his

account, the cushion would have been unnecessary.

The proper procedure for ensuring that periodic bank charges on a trust account are paid with the attorney's funds, and not with trust funds, is for Respondent to balance the monthly trust account statements promptly. He may then deposit his or own funds into the trust account, equal to, but not exceeding the bank charge.

Since these disciplinary proceedings were instigated, Respondent has taken several remedial steps to bring his account into conformance with the requirements of DR 9-102. Respondent has computerized his client accounts and has established card indexes. He has established a monthly balancing system to assure that the account is balanced each month.

In considering sanctions, we find that Respondent here violated his duty to the profession but that he caused little or no harm. No facts were presented as to why Respondent failed to comply with a disciplinary rule that has been in effect for four years. We infer from the recommendations of the parties that Respondent's misconduct was due to ignorance of the rule, not a willful violation.

Section 4.14 of the ABA Standards for Imposing Lawyer Sanctions states that, absent aggravating and mitigating factors, an admonition is generally appropriate "when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client." The commentary suggests that such a sanction is appropriate for insufficient bookkeeping in trust accounts.

In mitigation, we find that Respondent has no prior disciplinary record, no dishonest or selfish motive, made timely good faith efforts to rectify the consequences of his misconduct, co-operated fully with bar counsel during the disciplinary proceedings, and regrets his misconduct. In aggravation, we find that Respondent has substantial experience in the practice of law.

Because of the many mitigating factors presented and the likelihood that Respondent poses no threat to the public and is unlikely to again violate the Code, we accept the parties' joint recommendation that a private admonition be imposed. The chair will issue a private letter of admonition to Respondent.

Dated at Montpelier, Vermont this 7th day of October, 1994.

PROFESSIONAL CONDUCT BOARD

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Deborah S. Banse, Chair

s/ s/

_____ _____

George Crosby Donald Marsh

s/ s/

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Joseph F. Cahill, Esq. Karen Miller, Esq.

s/

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Nancy Corsones, Esq. Garvan Murtha, Esq.

s/

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Paul S. Ferber, Esq. Robert F. O'Neill, Esq.

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Nancy Foster Ruth Stokes

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Rosalyn L. Hunneman Jane Woodruff, Esq.

s/

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Robert P. Keiner, Esq. Edward Zuccaro, Esq.