

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2013.228

Decision No. 170

The parties have filed a Stipulations of Facts, Proposed Conclusions of Law and a Recommendation for Sanctions. The Respondent has waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the stipulated facts and recommendations and orders that Respondent be admonished by Disciplinary Counsel for transferring funds from his operating account to his trust account in order to pay business expenses for his law firm thus resulting in the commingling of his funds with those of his clients in violation of Rule 1.15(a)(1) of the Vermont Rules of Professional Conduct.

**Facts**

Respondent was admitted to the practice of law in Vermont in 1968 and is engaged in private practice. He maintains two bank accounts which he uses in connection with this practice, an operating account for paying the expenses of the business, and a client trust account exclusively for holding the funds of clients and third parties.

In June of 2012, Respondent's office ran out of blank checks for use with their operating account. The office had several bills that were due to be paid, and a member of his staff learned that it would take two weeks to obtain a new supply of bank checks. In order to pay those bills, Respondent authorized his staff to transfer \$750.00 from the operating account to the client trust account. The staff member set up a separate ledger sheet within the client trust account designated "office funds," and transferred \$750.00

from the operating account to the client trust account. She then wrote a number of checks on the client trust account to pay office expenses. Respondent signed those checks. The checks written at that time totaled \$302.00, leaving a balance of Respondent's own money in the client trust account of \$448.00.

In February of 2013, the office again unexpectedly ran out of blank checks for the office account. The office had some bills to pay, and the staff member recalled the "office funds" being held in the client trust account, which still totaled \$448.00. She wrote checks on the client trust account for these office expenses totaling \$444.76 and Respondent signed the checks, leaving a balance of Respondent's own money in the client trust account of \$3.24.

In March of 2013, Respondent was randomly selected to receive Disciplinary Counsel's Trust Accounting System Survey. Respondent worked with the same staff member to complete the survey. While doing so, it occurred to Respondent for the first time that the transfer of his own funds to the client trust account described above was in violation of the Rules of Professional Conduct, because such action constituted commingling of his own funds with client funds.

Immediately upon realizing his error, Respondent removed the balance of \$3.24 from the client trust account and self-reported the violation to Disciplinary Counsel.

Respondent acknowledges and takes full responsibility for his error. He has explained that it simply did not occur to him at the time of the transfer that he was violating the Rules of Professional Conduct. At all times, the funds in the client trust account were accurately identified as "office funds," and no clients were harmed or lost funds as a result.

There are number of mitigating factors present. Respondent has a 45 year history of practicing law with no disciplinary record. He has made full and free disclosure, including self-reporting the conduct at issue, and has cooperated fully with the disciplinary proceedings. He had no dishonest or selfish motive and has expressed remorse. The only aggravating factor is his substantial experience in the practice of law.

### **Conclusions of Law**

Rule 1.15 (a)(1) provides in part as follows: “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.” Respondent violated this rule when he placed \$750.00 of his own funds in his client trust account for the purpose of paying office bills. Even though Respondent separately identified the funds in his trust account, the deposit and maintenance of those funds in his client trust account nevertheless constituted impermissible commingling and violated Rule 1.15(a)(1).

### **Sanction**

The Hearing Panel accepts the joint recommendation for admonition by Disciplinary Counsel. This sanction is consistent with both the ABA Standards for Imposing Lawyer Discipline (ABA Standards) and previous Vermont cases.

The Supreme Court has long recognized that it is appropriate to refer to the ABA Standards when determining the appropriate sanction in a disciplinary case. *In re Andres*, 177 Vt. 511, 857 A.2d 803 (2004). The ABA Standards require us to first weigh the duty violated, the attorney's mental state and the actual or potential injury caused by the misconduct to arrive at a presumptive sanction, and to then look to the presence of aggravating or mitigating factors to determine whether that sanction should be increased

or decreased.

Section 4.14 of the ABA Standards provides that, “[a]dmonition 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.” In this case, Respondent acted negligently when he placed his own funds in his client trust account for the purpose of paying his office expenses. Although the funds were in his client trust account for a period of nine months, the funds were separately accounted for as “office funds” within his trust accounting system, and the risk of injury to any specific client was small. In addition, when Respondent realized that he had violated Rule 1.15(a)(1), he immediately removed the funds and self-reported the violation to Disciplinary Counsel.

Admonition is also consistent with prior Vermont disciplinary cases involving similar client trust account violations.

The most recent Vermont Supreme Court decision on the client trust rules is *In re Farrar*, 183 Vt. 592, 949 A.2d 438 (2008). In this case, the attorney regularly placed his own funds in his client trust account so that he would have money on hand for office bills. The Court found this to be impermissible commingling and made it plain that it would not minimize the Respondent's violation simply because he was unaware that his conduct violated the rules, nor did it matter that he had no selfish motive.

In a later hearing panel case also on commingling, *In re PRB Decision No. 138* (March, 2011), the panel wrote that although the Supreme Court had not explicitly characterized commingling as a strict liability offense, the Court's ruling in *Farrar* nevertheless “makes it difficult to discern a fact pattern not resulting in discipline in which the commingling rule was not followed to the letter.” In that case Respondent was

admonished when he deposited a check from his client directly into his operating account rather than into his trust account. A portion of the client's check was intended to cover some real estate recording fees due to a Town Clerk. The recording fees were always the funds of the client, and never should have been commingled with the lawyer's own funds in his operating account.

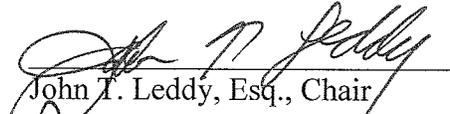
Based upon these cases and considering the ABA Standards, we accept the recommendation for admonition by Disciplinary Counsel.

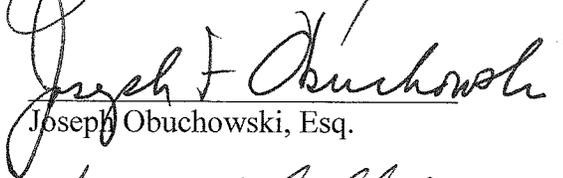
**Order**

Respondent shall be admonished by Disciplinary Counsel for violation of Rule 1.15(a) of the Vermont Rules of Professional Conduct.

Dated: 4/22/14

Hearing Panel No. 8

  
John T. Leddy, Esq., Chair

  
Joseph Obuchowski, Esq.

  
Jeanne Collins

