

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2014.112

Decision No. 171

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 violation of Rule 1.15(f)(2) of the Vermont Rules of Professional Conduct for disbursing funds in connection with a real estate closing from one trust account when she had deposited the funds for the closing into a second trust account.

**Facts**

Respondent is licensed to practice law in the State of Vermont, having been admitted to practice in 1989. Respondent's law firm maintains IOLTA accounts at two Vermont banks.

On November 8, 2013, Respondent held a real estate closing in which Bank One was the lender. The required funds for that closing were deposited to the Respondent's trust account in Bank One and all checks relating to that transaction were written from that account.

A wire transfer in the amount of \$101,445.83 was to be wired from the Bank One trust account to pay off the mortgage belonging to the previous owner. The wire was,

however, erroneously sent from Respondent's trust account in Bank Two. Respondent was the attorney responsible for verifying that the wire was sent from the correct account.

A majority of bank wire transfers initiated from Respondent's firm are through its Bank Two trust account. As a result, Respondent mistakenly contacted Bank Two to initiate the wire transfer relating to the November, 8, 2013, real estate closing. The mistake in wiring the funds from the wrong trust account was simply the result of human error.

On November 29, 2013, and again on December 2, 2013, Respondent's Bank Two trust account was overdrawn and notices of the overdraft were sent to Respondent's firm and to the Office of Disciplinary Counsel.

At the time the \$101,445.83 was wired from Bank Two, there were funds in that bank belonging to other clients. By the time Respondent became aware of the mistake, funds belonging to these other clients had been disbursed and the account had insufficient funds to honor twenty checks drawn on the Bank Two trust account. The clients whose funds were in that bank account had not given Respondent or her firm permission to use their money to conduct the business of her other client.

As soon as Respondent became aware of the overdrafts and the insufficient funds in the Bank Two trust account, a check was written in the amount of \$101,445.83 from the Bank One trust account and deposited into the Bank Two trust account. All of the payees involved with the Bank Two returned checks were contacted and the checks in question were either redeposited or reissued.

The harm to clients was minor, and the error was remedied as soon as Respondent learned of it.

The following mitigating factors are present. Respondent had no dishonest or selfish motive; she made a timely and good faith effort to rectify the consequences of the misconduct; she has cooperated with the disciplinary proceedings and has expressed remorse. The only aggravating factor is Respondent's substantial experience in the practice of law.

### **Conclusions of Law**

Rule 1.15(f)(2) of the Rules of Professional Conduct provides that

A lawyer shall not use, endanger, or encumber money held in trust for client or third person for purposes of carrying out the business of another client or person without the permission of the owner given after full disclosure of the circumstances.

When Respondent deposited the funds for closing in Bank One and dispersed funds from Bank Two to pay off the mortgage, funds in Bank Two belonging to other clients were used for this purpose and eventually the account was overdrawn. By disbursing funds from the wrong trust account, Respondent violated Rule 1.15(f)(2) by using and endangering money held in trust for one client for the purpose of carrying out the business of another client without the owner's permission.

### **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 admonition is "appropriate when the 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 she deposited client funds into one trust account but wired funds from another trust account, resulting in an overdraft of the second account. There was no actual injury and little potential for injury to a client.

There are also a number of mitigating factors. Respondent had no dishonest or selfish motive, *ABA Standards §9.32(a)*; she made a timely and good faith effort to rectify the consequences of the misconduct, *ABA Standards §9.32(d)*; she has cooperated with the disciplinary proceedings, *ABA Standards §9.32(e)*, and has expressed remorse *ABA Standards §9.32(l)*. Even considering the one aggravating factor, Respondent's substantial experience in the practice of law, *ABA Standards §9.22(i)*, the mitigating factors confirm the appropriateness of admonition in this case.

Admonition is also consistent with several recent cases involving payouts in real estate transactions.

In *In re PRB Decision No. 129* (2010) the attorney had two trust accounts which he used for real estate closings. In two separate closings he wired funds from one trust account when the funds required for the transfer had been deposited to the other trust account. As in the present case, the attorney was negligent, the error was quickly rectified and he was admonished for violation of Rule 1.15(f)(2) and its predecessor rule.

In a similar admonition case involving a loan payoff, *In re PRB Decision No. 147* (2012), the attorney confirmed that the wired funds had left the sending bank, but neglected to confirm that his bank had received the transfer thus using the funds of other clients to make the payoffs.

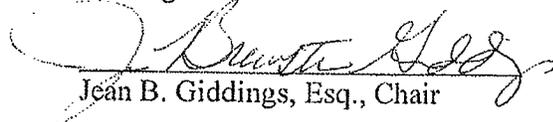
Based upon the foregoing, we accept the recommendation for admonition by Disciplinary Counsel.

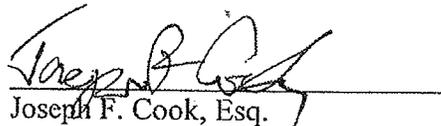
#### Order

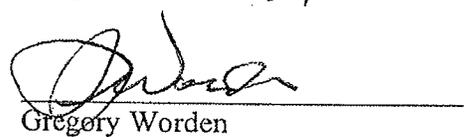
Respondent shall be admonished by Disciplinary Counsel for violation of Rule 1.15 (f)(2).

Dated: 4/29/14

Hearing Panel No. 2

  
Jean B. Giddings, Esq., Chair

  
Joseph F. Cook, Esq.

  
Gregory Worden

