

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2014.141

Decision No. 175

The parties have filed a Stipulation of Facts, Recommended 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 the recommended conclusions of law and orders that Respondent be admonished by Disciplinary Counsel for violation of Rules 1.15(a)(2), 1.15A(a)(4), 1.15(a)(1), and 1.15(d) of the Vermont Rules of Professional Conduct for failure to maintain her trust account in accordance with the Rules. The charge of violation of Rule 1.15(b) is dismissed.

**Facts**

Respondent is licensed to practice law in Vermont, having been admitted in 1996. Her practice consists mainly of residential real estate transactions.

Respondent's trust account was chosen to be audited as part of the audit program conducted by Disciplinary Counsel. The audit was conducted by a Certified Public Accountant (CPA) who audited Respondent's accounts for the period December 1, 2012, through November 30, 2013. As a result of the audit Disciplinary Counsel opened an investigation into Respondent's trust account management.

The CPA found material non-compliance with the Rules of Professional Conduct during the audit period which included the following:

1. Respondent did not maintain a running balance for each client.

2. The trust accounts were not regularly reconciled to bank statements.
3. Respondent did not maintain a single source for all trust account activity.
4. Respondent was unable to provide supporting documentation for a check written from the IOLTA account.
5. There were outstanding checks written from the IOLTA account, including items dating back to 2008, which had not been cashed.

Respondent reconciled her trust account in monthly stages and kept a list of files with open balances (for which checks had not been cashed). She also maintained a list of each file which had a balance and the amount of the balance. Respondent is now aware that Rule 1.15A(a)(2) requires that she keep a running balance for each client and for the trust account and that the balance should be recalculated as account activity occurs, rather than at the end of each month.

Respondent's general practice was to reconcile her trust account to bank statements monthly, but fell behind for a few months in the previous year. She has now caught up and reconciles her trust account monthly.

Respondent did not maintain a single source for all trust account activity. She kept all her trust account information in one file box and was able to retrieve information regarding account balances by searching the documents in the files in the box. Respondent is now aware that Rule 1.15A(a)(4) requires her to be able to produce a document which contain all her trust account activity including the current running balance. Respondent has taken steps to correct her bookkeeping practices to comply with the Rule.

With respect to the check for which there was no supporting documentation,

Respondent now knows that her bookkeeping is insufficient to provide supporting documentation for each check. There is no evidence to suggest that the funds were improperly disbursed or misused.

With respect to the outstanding checks, Respondent now knows that she must promptly address them including submitting those funds to the Vermont State Treasurer when they become “unclaimed property.”

Respondent’s client funds were not improperly used or in jeopardy and there is no evidence that any client or third party was injured as a result of these violations.

The following mitigating factors are present: Respondent has no prior disciplinary record; she had no selfish or dishonest motive; she has made a timely and good faith effort to rectify the consequences of the misconduct, and she has cooperated with Disciplinary Counsel. There are no aggravating factors.

### **Conclusions of Law**

Rule 1.15A(a) sets forth the specific requirements that a lawyer’s trust accounting system must comply with as follows:

(a) Every attorney in private practice or who otherwise receives client funds or the firm organization shall maintain a trust accounting system that shall include, at a minimum, the following features:

- (1) a ledger or system showing all receipts and disbursements from the trust account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements;
- (2) a separate accounting page record or columns for each client for whom property is held, which shall show all receipts and disbursements and carry a running account balance;
- (3) records documenting timely notice to clients of all receipts and disbursements from trust accounts; and
- (4) an index, or equivalent single source for identification of all trust

accounts, including special interest-bearing trust accounts, probate accounts, custodial accounts and client agency accounts.

Respondent violated this Rule when failed to maintain a running balance for each client (1.15A(a)(2)) and failed to maintain a single source for all trust account activity (1.15A(a)(4)).

Rule 1.15(a)(1) of the Rules of Professional Conduct provides that:

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. Funds shall be kept in accordance with Rules 1.15A and B. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

Respondent violated this Rule when she failed to maintain supporting documentation for a check written on her trust account.

Rule 1.15 (d) provides that:

Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Respondent had numerous checks written from her trust account dating back to 2008 which had not been cashed. Her failure to reconcile her trust account activity to her bank statements on a monthly basis and her failure to deal with the outstanding checks violated this Rule

Rule 1.15(b) provides that:

A lawyer may deposit the lawyer's own funds in an account in which client funds are held for the sole purpose of paying service charges or fees on that account, but only on an amount necessary for that purpose.

Violation of this rule requires a finding that Respondent kept her own funds in her trust account. There is no evidence presented showing that Respondent's funds were in her trust account and this charge is dismissed.

### **Sanction**

The Vermont Supreme Court has long held that it is appropriate to refer to the ABA Standards for Imposing Lawyer Sanctions (ABA Standards) for guidance in determining the sanction in a disciplinary case. *In re Warren*, 167 Vt. 259, 261 (1977); *In re Berk*, 157 Vt. 524, 532 (1991) (citing *In re Rosenfeld*, 157 Vt. 537, 546-47 (1991)).

In applying the standards we look to the duty violated, the lawyer's mental state, and the extent of the injury or potential injury. We then look to aggravating and mitigating factors to determine whether the presumptive sanction should be modified.

Respondent had a duty to her clients to preserve their property. The rules are clear that in order to safeguard client property, an attorney must adhere to the trust account rules. Respondent violated that duty by failing to regularly reconcile her account to bank statements, by failing to maintain a running balance for each client, by failing to maintain a single source for all trust account activity, by failing to provide documentation for a check written from the account and for having uncashed checks in the account, some dating back to 2008.

Respondent's failure was due to negligence, not to any intentional violation of the Rules. She believed that her accounting system was adequate, when in fact it was not.

There was little or no actual injury to any client in this case. Client funds were never in jeopardy, and there is no evidence that any client or third party was injured as a result of these violations.

There are several mitigating factors present and no aggravating factors. Respondent has no prior disciplinary record, *ABA Standards §9.32(a)*; she had no dishonest or selfish motive, *ABA Standards §9.32(b)*; she made a timely and good faith effort to rectify the violations by making changes to her trust accounting methods and by submitting unclaimed funds to the State of Vermont, *ABA Standards §9.32(d)*, and she has cooperated with these proceedings, *ABA Standards §9.32(e)*.

Respondent's conduct fits within the parameters of Section 4.14 of the ABA Standards which provides that admonition is "appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client."

Admonition is also consistent with other Vermont cases dealing with similar trust account violations.

Recently there have been a number of trust account cases on violation of the trust account rules which were brought to Disciplinary Counsel's attention by either trust account audits, as in the present case, or responses to the trust account survey.

In *In re PRB Decision No. 163* (2013), the attorney was randomly chosen for audit as in the present case. The audit uncovered approximately \$5000 in outstanding checks at least 5 years old as well as other accounting irregularities. Upon learning of the procedure for handling these unclaimed funds, the attorney filed unclaimed property reports of the excess balance in his account and worked to bring his accounting into compliance with the rules. No client funds were lost.

In a similar case *In re PRB Decision No 167* (2014), the attorney was selected for audit and the audit revealed that his trust accounts were not reconciled to bank statements and client balance.

In both of these cases the attorneys worked to bring their trust accounting into compliance with the rules and the hearing panels imposed admonition by Disciplinary Counsel.

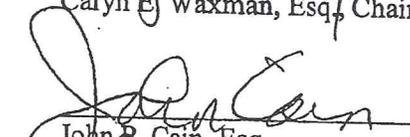
**Order**

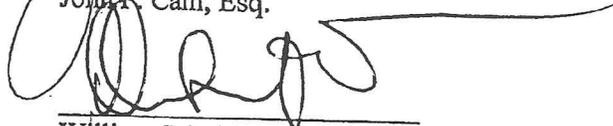
Admonition is consistent with both the ABA Standards and Vermont case law and the panel orders that Respondent be admonished by Disciplinary Counsel for violation of Rules 1.15(a)(2), 1.15A(a)(4), 1.15(a)(1), and 1.15(d) of the Vermont Rules of Professional Conduct.

Dated: August 27, 2014

Hearing Panel No. 6

  
Caryn E. Waxman, Esq., Chair

  
John R. Cain, Esq.

  
William Schubart

