

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2014.147

Decision No. 184

The parties have filed a Stipulation 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 the recommendation for sanctions and orders that Respondent be admonished by Disciplinary Counsel for violation of the following trust account management rules of the Vermont Rules of Professional Conduct: Rule 1.15A(a)(1) (failure to have supporting documentation for account activity), Rule 1.15A(a)(2) (failure to maintain a running balance for each client) and Rule 1.15A(a)(4) (failure to maintain a single source for all trust account activity). The charge of violation of Rule 1.15(b), for maintaining a balance of \$250 of personal funds in her trust account, is dismissed.

**Facts**

Respondent is licensed to practice in Vermont, having been admitted in 2010. She charges a flat fee for most of the legal work which she performs. When she charges at an hourly rate, she does not ask for a retainer.

As part of Disciplinary Counsel's audit program, Respondent's trust account was audited for an eleven month period. The certified public accountant performing the audit provided a report to Disciplinary Counsel outlining areas of Respondent's trust accounting practice which did not comply with the rules.

At the time of the audit, Respondent's practice was to keep a copy of the flat fee

agreement and the client's check in each client's file with a note of any retainer. At the conclusion of the work, Respondent would pay the balance to her business account and keep a copy of the check. Respondent also had a spreadsheet that showed the deposits into the account and reconciled the balance of the account each month tying it to the trust account statement. The spreadsheet also showed when the retainer was transferred to the business account.

Respondent did not maintain a running balance for each client, nor did she maintain a single source for all trust account activity. Respondent relied on individual client files to document trust account activity, but this method did not identify the balance by client and did not reconcile to her bank statement.

Respondent now maintains a running balance for each client, which is recalculated as account activity occurs. She now understands that she needs to be able to produce a document containing all trust account activity including the current running balance. Respondent now reconciles her trust account on a monthly basis and has taken steps to bring her bookkeeping practices in line with the rules.

The auditor found two deposits to Respondent's trust account without identifying client names. After researching the matter in the presence of the auditor, Respondent was able to confirm the source of the deposits. There were two receipts for withdrawals that could not be reconciled exactly to the respective client accounts. This was due to a bookkeeping error by Respondent. The auditor recommended procedures to prevent recurrence of this problem and Respondent has implemented them. There is no evidence that any client funds were misused.

At the time that Respondent opened her trust account, she deposited \$250.00 in

the account believing that this amount was necessary to avoid bank service charges.

While the parties have stipulated that this amount was more than required to cover any bank fees, there is no evidence presented as to the amount or frequency of fees assessed by the bank. Respondent has now removed this sum from her trust account.

Respondent's client funds were never 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 disciplinary record, she had no selfish or dishonest motive, she has made a timely and good faith effort to correct her accounting practices and has cooperated with the disciplinary proceedings. There are no aggravating factors.

### **Conclusions of Law**

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

- (a) Every lawyer or law firm holding funds of clients or third persons in connection with a representation as defined in Rule 1.15(a)(2) shall hold such funds in one or more accounts in a financial institution. An account in which funds are held that are in the lawyer's possession as a result of a representation in a lawyer-client relationship shall be clearly identified as a "trust" account. An account in which funds are held that are in the lawyer's possession as a result of a fiduciary relationship that arises in the course of a lawyer-client relationship or as a result of a court appointment shall be clearly identified as a "fiduciary" account. The lawyer shall take all steps necessary to inform the financial institution of the purpose and identity of all accounts maintained as required in this rule. The lawyer or law firm shall maintain an accounting system for all such accounts that shall include, at a minimum, the following features:
- (1) a system showing all receipts and disbursements from the account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements;
  - (2) a record for each client or person for whom property is held, which shall show all receipts and disbursements and carry a running account balance;
  - (3) records documenting timely notice to each client or person of all receipts and disbursements from the account or accounts; and
  - (4) single source for identification of all accounts maintained as required in this rule.

Respondent violated 1.15A(a)(1) by failing to have supporting documentation for two withdrawals and two deposits to her trust account. She violated Rule 1.15A(a)(2) by failing to maintain a running balance for each client who had funds in the trust account, and she violated Rule 1.15A(a)(4) by failing to maintain a single source for all trust account activity.

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 in an amount necessary for that purpose.” Respondent deposited the sum of \$250 in her trust account at the time the account was open, thinking that it was necessary to avoid fees and the parties have stipulated that this violated the rule. We are not, however, provided with any facts as to the amount and frequency of fees charged by the bank to this account. In a previous decision, without these specific facts, the hearing panel found that the deposit of \$1000.00 for purposes of paying bank fees was excessive. *In re PRB Decision No. 163* (2013). We do not disagree with this decision, but we are unable to find by clear and convincing evidence that Respondent violated this rule by the deposit of \$250 of her own funds in her trust account and this portion of the charge is dismissed.

### **Sanction**

This case is one of a number of recent cases in which attorneys, selected for audit by Disciplinary Counsel’s compliance program, have been admonished for violation of the trust account rules.

This sanction is also consistent with the ABA Standards for Imposing Lawyer Discipline which 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.” § 4.14. Respondent was negligent in her failure to follow the trust account rules, but client funds were never improperly used or in jeopardy, and there is no evidence that any client or third party was injured. In applying the ABA Standards we look also to aggravating and mitigating factors to determine whether the sanction should be increased or decreased. There are no aggravating factors and several mitigating factors present. Respondent has no disciplinary record, *ABA Standards §9.32(a)*, she had no selfish or dishonest motive, *ABA Standards §9.32(b)*, she has made a timely and good faith effort to correct her accounting practices, *ABA Standards §9.32(d)*, and has cooperated with the disciplinary proceedings, *ABA Standards §9.32(e)*.

The facts of the present case are similar to these previous cases and we accept the parties’ recommendation for admonition by Disciplinary Counsel. Like Respondent, the lawyer in *In re PRB Decision No.180* (2014), was selected for audit and like Respondent failed to maintain a single source of all trust account activity and did not have documentation for all activity in the trust account. The facts in *In re Decision No.175* (2014) and *In re PRB Decision No 167* (2014) are very similar and also resulted in admonition.

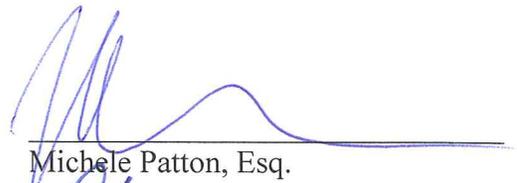
### Order

Based upon the foregoing we order that Respondent be admonished by Disciplinary Counsel for violation of Rules 1.15A(a)(1), 1.15A(a)(2) and 1.15A(a)(4) of the Vermont Rules of Professional Conduct.

Dated: February 20, 2015

Hearing Panel No. 5  
  
Erin J. Gilmore, Esq., Chair



A handwritten signature in blue ink, appearing to read 'Michele Patton', written over a horizontal line.

Michele Patton, Esq.

A handwritten signature in blue ink, appearing to read 'Christopher Bray', written over a horizontal line.

Christopher Bray