

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No. 2013.144

Decision No. 185

The parties have filed a Stipulation of Facts together with Recommended Conclusion of Law and a Recommendation for Sanctions. Respondent has waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the stipulated facts and conclusions and orders that Respondent be admonished by Disciplinary Counsel for failure to maintain a current running balance in his trust account for real estate clients in violation of Rule 1.15A(a)(2) of the Vermont Rules of Professional Conduct.

Facts

Respondent was admitted to practice law in Vermont in 1979. He is engaged in private practice and handles real estate closings as a part of his practice.

Respondent's trust accounting system was selected for compliance examination in connection with Disciplinary Counsel's regular audit program to determine whether his trust accounting system was in compliance with Rules 1.15 through 1.15B of the Rules of Professional Conduct.

The audit found that in real estate matters, Respondent's trust accounting system identified deposits by client, but did not maintain a current running balance for each client. For all other types of transactions, he maintained a running balance for each client.

Following the audit, Respondent brought his trust accounting system into

compliance with the rules. Respondent's client's funds were never improperly used or in jeopardy and no client lost money or was injured by this violation.

There are two aggravating factors here. Respondent has substantial experience in the practice of law and he has been disciplined in the past. The prior discipline was more than twenty years ago and for a violation unrelated to the present charge. In mitigation, Respondent had no selfish or dishonest motive, made a timely and good faith effort to rectify the consequences of the misconduct and cooperated with the disciplinary proceedings.

Conclusion of Law

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

“every lawyer or law firm holding funds of clients or third persons in connection with a representation . . . shall hold such funds in one or more accounts in a financial institution. . . The lawyer or law firm shall maintain an accounting system for all such accounts that shall include at a minimum, the following features:

. . . (2) a record for each client or person for whom property is held, which shall show all receipts and disbursements and carry a running balance.”

Respondent's failure to maintain a running balance for his real estate clients violated this rule.

Sanction

The parties recommendation for admonition by Disciplinary Counsel is consistent with both the ABA Standards for Imposing Lawyer Sanctions and prior hearing panel decisions. 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.” Respondent was negligent in his failure to follow the rules. There was no harm and little potential for harm. While there is one aggravating factor, Respondent’s substantial experience in the practice of law, this is not sufficient to serve to increase the sanction especially when we consider the presence of several mitigating factors. Respondent had no selfish or dishonest motive, *ABA Standards § 9.32(b)*, he had a timely and good faith effort to correct his accounting practices when he learned of the violation, *ABA Standards § 9.32(d)*, and he has cooperated with the Office of Disciplinary Counsel, *ABA Standards § 9.32(e)*. The prior disciplinary offense is both remote in time and unrelated to the present case and we do not consider it to be an aggravating factor.

This case is very similar to *In re PRB Decision No. 181* (2014) recently decided by this panel. As in the present case, the attorney was selected for random audit, the attorney was negligent, there was no harm and little potential for harm and there were a number of mitigating factors. In that case we suggested that the Assistance Panel process established by Administrative Order 9, Rule 4, might have been a better vehicle for handling the violations. We believe that the same is true of the present case. While there was a violation, it was not one that pervaded his entire trust account. When Respondent learned that he was not handling real estate transactions in accordance with the rule, he immediately changed his procedures. The same outcome could perhaps have been achieved more efficiently with a referral to an assistance panel.

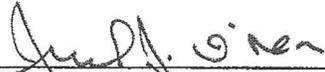
As we did in the previous case, we accept the recommendation for admonition for disciplinary counsel, but we reiterate our belief that the disciplinary process may not be the best vehicle for handling cases such as the present one.

Order

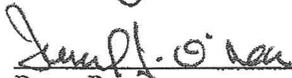
Respondent shall be admonished by Disciplinary Counsel of violation of Rule 1.15A(a)(2) of the Vermont Rules of Professional Conduct.

Dated: 3/12/15

Hearing Panel No. 10


Joseph O'Dea, Esq., Chair


Jonathan M. Cohen, Esq.


Roger Preuss

as duly authorized representative
ROGER PREUSS

