

PCB 75

[09-Sep-1994]

STATE OF VERMONT

PROFESSIONAL CONDUCT BOARD

In re: PCB File No. 93.38

NOTICE OF DECISION

DECISION NO. 75

This disciplinary matter regarding irregularities in an attorney's trust account was submitted to us by Bar Counsel and Respondent on stipulated facts. We accept the stipulation and impose a private admonition.

Findings and Conclusions

Upon inquiry from bar counsel as to the reasons for a minor overdraft in his attorney trust account, Respondent examined his IOLTA account over the previous several months. He realized that he had not kept a running balance in the ledger of the account. The account had historically had a surplus

balance due in large part to the many title insurance premiums that had been deposited into the account.

Just prior to incurring the overdraft, Respondent had caught up on his final title reports and disbursed almost all of the premiums held in escrow. Due to the reduced balance, an overdraft occurred when a check on some other matter was presented for payment.

Upon further review of the account, Respondent discovered that the bank had been assessing bank charges for the past three years. Since he had not been reconciling the monthly statements, he had not transferred any money from his operating account to cover the service fees.

Finally, Respondent discovered several arithmetic errors in the account which led him to believe there was more in the account than there really was.

DR 9-102(B)(3) requires an attorney to "[m]aintain complete records of all funds...coming into the possession of the lawyer and render appropriate accounts to the client regarding them."

DR 9-102(C) mandates the account maintenance and client notification systems.

In not maintaining proper records of the disbursements of funds from his trust account and, thereby, permitting monies held in escrow to pay for the office obligation of bank charges, Respondent violated these two disciplinary rules.

Sanction

The applicable ABA Standard for Imposing Lawyer Discipline, Section 4.14, provides that, absent aggravating or mitigating circumstances, a private "[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 should have paid more attention to the integrity of his attorney trust account; however, his neglect caused no actual injury. This is the first time Respondent has been disciplined in his over 25 years as a member of the Vermont Bar. He has taken steps to rectify this problem by committing to reconciling his monthly IOLTA account immediately upon receipt. We see no likelihood of repeated misconduct.

Accordingly, the Chair is directed to issue a private letter of admonition to Respondent.

Dated at Montpelier, Vermont this 9th day of September, 1994.

PROFESSIONAL CONDUCT BOARD

/s/

Deborah S. Banse, Chair

/s/

George Crosby

/s/

Donald Marsh

/s/

Joseph F. Cahill, Esq.

/s/

Karen Miller, Esq.

/s/

Nancy Corsones, Esq.

J. Garvan Murtha, Esq.

/s/

Paul S. Ferber, Esq.

Robert F. O'Neill, Esq.

Nancy Foster

Ruth Stokes

Rosalyn L. Hunneman

Jane Woodruff, Esq.

/s/

Robert P. Keiner, Esq.

Edward Zuccaro, Esq.

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