

61 PRB

[26-Jan-2004]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: PRB File No. 2004.066

Decision No. 61

On October 31, 2003, the parties filed a stipulation of facts as well as conclusions of law and recommendations on sanctions. Respondent also waived certain procedural rights including the right to an evidentiary hearing. The panel accepts the facts and recommendations and orders that Respondent be admonished by Disciplinary Counsel for failure to keep adequate records of his trust accounts in violation of Rules 1.15 and 1.15A of the Vermont Rules of Professional Conduct.

Facts

Respondent is an attorney admitted to practice law in Vermont. His firm does several real estate transactions each week and maintains closing accounts at Chittenden Bank, New England Federal Credit Union (hereinafter NEFCU) and Banknorth.

On June 30, 2003, the firm deposited \$23,502.28 earmarked for a NEFCU closing into its Banknorth account. Nobody at the firm realized the mistake, and checks drawn on the NEFCU account were distributed after the closing. In reality, the funds against which the checks were supposed to have been drawn had been deposited into the Banknorth account.

On August 8, 2003, the firm deposited \$8,789.15 earmarked for a NEFCU closing into its Banknorth account. Again the mistake went unnoticed, and checks drawn on the NEFCU account were distributed after the closing. As in the previous case, the funds against which the checks were supposed to have been drawn had been deposited into the Banknorth account.

On September 12, checks were presented against the firm's NEFCU account, and due to the mistaken deposits of June 30 and August 8, there were insufficient funds in the account to cover the checks. The bank honored the checks and, pursuant to Rule 1.15C of the Vermont Rules of Professional Conduct, notified Disciplinary Counsel and Respondent of the overdraft.

Respondent determined that the shortage in the NEFCU account resulted

from the mistaken deposits of June 30 and August 8. He also determined that, due to the firm's high volume of business in July and August, no overdrafts occurred before September. On September 12, Respondent transferred \$32,291.43, the amount of the two mistaken deposits, from the firm's Banknorth account to its NEFCU account.

Between June 30 and September 12, nobody at the firm reconciled the accounts and, as a result, nobody at the firm was aware that the actual balances in the NEFCU and Banknorth accounts were wrong.

Respondent promptly provided Disciplinary Counsel with an explanation of the overdraft. Respondent has emphasized to his staff the importance of trust account management and has taken steps to ensure that deposits to the firm's IOLTA accounts are double-checked to ensure that they are deposited to the proper account. The firm highlights the name of the bank on deposit slips so that it is readily matched with outgoing checks. In addition, the firm has instituted a policy by which its trust accounts are reconciled every month.

Respondent has no disciplinary record, and there is no evidence that Respondent's firm misappropriated client funds.

Conclusion of Law

Rules 1.15 and 1.15A of the Vermont Rules of Professional Conduct

impose specific record-keeping requirements upon attorneys. In this case, funds that should have been deposited into Respondent's firm's NEFCU account were mistakenly deposited into the firm's Banknorth account. For more than two months, nobody at the firm reconciled the firm's trust accounts and the deposit errors went undiscovered. In essence, the volume of business allowed the firm to use other clients' money to cover what was a shortage in the NEFCU account. These errors were not discovered until the firm was notified of an overdraft to the NEFCU account, more than three months after the first mistaken deposit to the firm's Banknorth account. The situation was compounded by the firm's failure to make timely reconciliations of its trust accounts. The Hearing Panel finds that this conduct violates the record-keeping requirements of Rules 1.15 and 1.15A of the Vermont Rules of Professional Conduct.

Sanction

An admonition is appropriate only when the misconduct is minor, little or no injury results, and there is little likelihood of repetition. A.O. 9, Rule 8(A)(5). There is no evidence of any injury, and from the steps taken by Respondent to improve his office banking practices and record keeping, we believe that there is little likelihood of recurrence. While lax administration of an attorney's trust accounts is never insignificant, the Hearing Panel believes that, taking all of the factors into consideration, this case falls within the bounds of A.O. 9, Rule 8(A)(5), and that admonition is the appropriate sanction.

Conclusion

The hearing Panel approves the imposition of an ADMONITION by
Disciplinary Counsel for violation of Rules 1.15 and 1.15A of the Vermont
Rules of Professional Conduct.

Dated January 20, 2004

Hearing Panel No. 3

/s/

Robert O'Neill, Esq.

/s/

S. Stacy Chapman III, Esq.

/s/

Ruth S. Stokes

FILED: JANUARY 26, 2004