

[Filed 09-Aug-2006]

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: PRB File No 2006.241

Decision No. 93

The parties filed a stipulation of facts and a joint recommendation as to conclusions of law. The Panel accepts the stipulation and recommendation and orders that Respondent be admonished by Disciplinary Counsel for disbursing funds following a real estate closing without a prior determination that the funds were "collected funds" in violation of Rules 1.15(d)(1) and (2) of the Vermont Rules of Professional Conduct.

Facts

Respondent conducted a closing for clients who were refinancing their house. After the expiration of the three day right-of-rescission period, Respondent disbursed the checks related to the closing without first verifying that the bank had wired the funds to her trust account. The funds had not been wired due to a failure on the part of the bank. Respondent disbursed six checks which were honored by her bank due to the presence in her trust account of funds belonging to other clients. A seventh check was presented but dishonored due to insufficient funds.

One week after the closing the bank called Respondent to inform her that funds had not been wired. The funds were wired that day.

Respondent has been admitted to the Vermont Bar for 10 years. She has never been the subject of formal disciplinary proceedings and has never been disciplined. She cooperated fully with Disciplinary Counsel's investigation, has expressed remorse for her conduct and acknowledges that she should have verified the arrival of funds before writing checks. No client lost money as a result of this failure.

Conclusions of Law

Rule 1.15(d) of the Vermont Rules of Professional Conduct governs an attorney's responsibility for safekeeping of client property. Except as provided in paragraph(e):

(1) a lawyer shall not disburse funds for a client or third person unless the funds are "collected funds." For the purposes of this rule, "collected funds" means funds that a lawyer reasonably believes have been deposited, finally settled, and credited to the lawyer's account.

(2) a lawyer shall not use, endanger, or encumber money held in trust for a client or third person for purposes of carrying out the business of another client or person without the permission of the owner given after full disclosure of

the circumstances.

At a minimum this rule requires that an attorney check with his or her bank to determine whether an anticipated wire of funds has actually occurred. This, Respondent failed to do, and her conduct violates Rule 1.15(d)(1). By writing and disbursing checks on her trust account without insuring that the funds to be wired were in fact in her trust account, Respondent used the funds of other clients to cover the checks written for the closing in clear violation of Rule 1.15(d)(2). Sanction

Administrative Order 9 Rule 8(A)(5) provides that admonition is appropriate "[o]nly in cases of minor misconduct, when there is little or no injury to a client, the public, the legal system, or the profession, and when there is little likelihood of repetition by the lawyer." Assiduous care in managing trust accounts is required of attorneys, and an attorney's failure to meet this standard can have serious consequences for clients. Thus the rule is strict, and even an inadvertent failure can and should lead to discipline. In this case there was no intent to harm any client and no client was harmed. Respondent has no prior discipline, has expressed remorse and acknowledged that she should have verified the presence of funds before disbursing funds. Based upon this, we believe that there is little likelihood that the misconduct will be repeated and that admonition is the appropriate sanction.

Order

The hearing panel orders that Respondent be admonished by Disciplinary Counsel for violation of Rules 1.15(d)(1) and (2) of the Vermont Rules of Professional Conduct.

Dated: August 9, 2006
FILED August 9, 2006

/s/

Bruce C. Palmer, Esq.

/s/

Robert M. Butterfield, Esq.

/s/

Florence Chamberlin