STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In re: Stacey Adamski, Esq.
PRB File No. 2018-088

Decision No. 221

Disciplinary Counsel alleges that the Respondent, Stacey Adamski, Esq., violated the Rules of Professional Conduct by directing her administrative assistant to notarize two documents that had been signed by Respondent's client outside the assistant's presence on the previous day and by engaging in dishonest conduct toward her law firm. Evidence was presented by the parties at a hearing held on November 6, 2018.

Based on the evidence presented, the Hearing Panel finds and concludes that Disciplinary Counsel has not met the requisite burden of proof in connection with the charge relating to notarization of the legal documents. However, the Panel finds and concludes that Respondent engaged in dishonest conduct toward her law firm in violation of Rule 8.4(c). The Panel further concludes that Respondent should receive a public reprimand for her misconduct.

FINDINGS OF FACT

Respondent, Stacey Adamski, Esq., was admitted to practice in Vermont in 2002. On May 1, 2017, Respondent joined a Windsor County law firm. She was paid a salary based on an understanding that she would bill a specified number of hours of work per year. Immediately prior to joining the Windsor County firm, Respondent was employed by a Chittenden County law firm. While at the Chittenden County law firm she handled a variety of cases, including family law cases and a variety of cases involving claims for money damages.

Following her job interview with the Windsor County firm, Respondent provided to the firm's five partners a list of her then-pending tort cases which she hoped to bring with her and

continue handling at the Windsor County firm. Her email to the partners identified the purpose of the communication as "an update on the status of the bigger tort cases." Exhibit R-D. The managing partner requested the disclosure because Respondent was handling some plaintiffs' cases and the firm wanted to identify those cases and the likelihood that they would generate revenue for the firm.[1]

The referenced cases included "2 additional cases within the A[ttorney] G[eneral]'s office [in which] complaints have been filed against the employers." Respondent described the second case as a discrimination/retaliation case and indicated that "my wife is the plaintiff/complainant." With regard to her wife's case Respondent stated that "[w]e did a good amount of documentation for that case, I like the strength of it." Respondent stated nothing further in the email about her handling of that particular case.

At the conclusion of the email, Respondent stated as follows: "I did talk with my partners [at the law firm that employed Respondent at that time] about the pending litigation. We have agreed to a cut off of April 14, 2016. Any cases that resolve prior to that date belong to [the law firm that employed Respondent at that time]. Resolution after that date, [the law firm that employed Respondent at that time] waives interest."

After Respondent was hired by the Windsor County firm, she continued to represent her spouse in connection with the discrimination claim. She arranged for notifications and correspondence from the Attorney General's Office ("AGO") to be sent to her at her new law firm. She utilized the new law firm's resources working on the case, and she kept time records

[1] In her testimony, Respondent suggested that the purpose of the email was limited to allowing the new firm to undertake a conflict-of-interest inquiry. The Panel finds that the managing partner's testimony is credible that the purpose was broader. In addition, the substance of the email is consistent with the managing partner's testimony. The email was focused on Respondent's tort cases only and went beyond disclosing the identity of the parties to the litigation.

for the time she spent working on the case.

In late June 2017, the AGO sent a draft Charge of Employment Discrimination to Respondent as the attorney for Respondent's wife. The cover letter advised Respondent to have her client review the charge and, assuming it was accurate and truthful, to "sign it in the presence of a notary," along with an Authorization to Investigate form and to return the two completed forms to the AGO. Both documents contain standard notarization language to the effect that the person signing the document appeared before the notary and affirmed and executed the document in the presence of the notary.

Respondent's spouse signed and dated the Charge and the Authorization to Investigate, respectively, on July 4, 2017, while at home. However, neither document was notarized at that time.

The following day, July 5, Respondent brought the two documents to the offices of her law firm, handed the Charge and Authorization to Investigate to an administrative assistant, and asked the assistant to prepare a cover letter to the AGO. The assistant notarized the two documents at that time and prepared a cover letter for Respondent's signature. Respondent signed the letter and then the two documents were transmitted to the AGO.

Disciplinary Counsel alleges that the assistant brought to Respondent's attention the absence of a proper notarization and that Respondent directed the assistant to notarize the documents notwithstanding the fact that Respondent's spouse had signed the documents the previous day and was not present in the office. The assistant did not testify that she was told to notarize the documents. Rather the assistant testified that she discussed with Respondent the fact that the documents would have to be backdated in order to match the date when the documents were signed (July 4) and that she understood Respondent wanted her to proceed to backdate the

documents. Respondent denied that she directed the assistant to notarize the documents or that she asked the assistant to backdate the documents. She testified that she was unaware that the documents had not been notarized until the charges were filed in this proceeding and that she did not discuss backdating the documents with the assistant. In light of this conflicting testimony and the absence of other evidence, the Panel is unable to find by clear and convincing evidence – the applicable standard of proof – that Respondent directed the assistant to notarize or backdate the documents or that Respondent otherwise approved of the notarization.

On October 11, 2017, Respondent represented her spouse at a mediation in connection with her spouse's discrimination claim. Prior to the mediation, Respondent sought out advice from other lawyers in her firm concerning their experience with the mediator. During the course of the mediation, Respondent communicated with one of the partners of her law firm, J.S. Respondent and her spouse had been friends with J.S. and his spouse beginning in law school and J.S. had encouraged Respondent to join the firm. J.S.'s practice was limited to worker's compensation matters and he served as a consulting attorney for Respondent on worker's compensation cases, with which Respondent had no prior experience at the time she joined the Windsor County firm. J.S. believed that he was being consulted during the mediation because of his experience working with insurance companies.

In the early afternoon on October 11, during the mediation, Respondent sent the following text messages to J.S. concerning the negotiations and raised the issue of payment to the law firm of for her services in the event of a settlement, and Respondent received the following responses from J.S.:

- Respondent: They are up to 30 [thousand dollars] – 1:11 pm.
- J.S.: That is beyond nuisance value already. Clearly they see liability – 1:12 p.m.

- Respondent: What is [the law firm's] take? – 1:14 p.m.
- J.S.: Very good question. I'm guessing she didn't sign an engagement agreement. – 1:16 p.m.
- Respondent: Good guess – 1:16 p.m.
- J.S.: [The] standard fee [of the law firm partner who works on employment discrimination cases] is 1/3 as far as I know. What is your usual fee? – 1:18 p.m.
- Respondent: When it's my wife, 0%. When I owe my new job some good faith fees for the time I've spent working a case, more than O – 1:23 p.m.
- J.S.: I guess we should talk – 1:27 p.m.
- Respondent: Can you talk with [the partners] and see what they expect?
- J.S.: Sure I'll try to get them right now. – 1:31 p.m.
- J.S.: Give me a minute – 1:53 p.m.

* * *

Respondent conveyed to J.S. at that time that the case was likely to be settled:

- Respondent: I'm headed for Mexico – 1:53 p.m.
- J.S.: Why? – 1:53 p.m.

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- Respondent: The boss [Respondent's spouse's employer] lied about his last best number – 1:54 p.m.

* * *

J.S. proceeded to consult with the other four partners of the law firm. One of the partners handled employment discrimination cases on a regular basis. After the consultation, the partners authorized J.S. to respond to the inquiry from Respondent regarding a payment to the firm by stating that the firm would accept one-third of the settlement as payment. The following

exchange ensued:

- J.S.: I talked with everyone, including [the partner who handles employment discrimination cases]. Apparently our usual fee is 40 to 50% for employment cases and we will do 1/3 on this one. **** – 2:05 p.m.
- Respondent: We will need to talk about that – 2:08 p.m.
- J.S.: Call me when you can – 2:09 p.m.

After this communication, a settlement was reached by the parties at the mediation that provided for a payment to Respondent's spouse in the amount of $54,000.00 in return for withdrawal of the charge of discrimination.

After Respondent and her spouse had left the mediation that afternoon and were in their car, Respondent telephoned J.S., advised him that the parties had settled the case and discussed the fee issue. Respondent indicated that she and her spouse felt that a payment to the law firm in the amount of $8,000 would be reasonable under the circumstances, as opposed to paying one-third of the settlement amount. J.S. stated that he was only one of five partners in the law firm and that if she wanted to propose an alternative to paying one-third of the settlement amount then she should submit that to the group of five partners.

On a subsequent date not long after the mediation had concluded, Respondent had a conversation at the law firm with another associate, C.R., concerning the mediation. Respondent expressed to C.R. that she was angry at the partners' request for one-third of the settlement to be paid to the firm. In the words of C.R., Respondent was "really, really angry about it." C.R. encouraged Respondent to "talk to [the partners] and sit down and work it out." Respondent, however, was resistant to that suggestion and became increasingly resistant as C.R. continued to urge her to resolve the dispute. At the conclusion of the conversation, when Respondent had to

leave the office, she stated to C.R. words to the effect that "[t]here's no way they're going to get my money."

On another date after that conversation, C.R. spoke to Respondent in the office and asked her whether she had talked with the partners or was going to talk to them about the fee dispute. Respondent "waved [her] off." Respondent's body language was understood by C.R. to mean that Respondent was not going to talk with the partners about the dispute.

On October 25, 2017, the settlement check related to Respondent's spouse's case arrived at the law firm. The check was made payable to Respondent's spouse. In accordance with the firm's standard procedure, the check was scanned into an electronic database whose function includes providing an electronic case file for each case and matter handled by the law firm. The check was then provided to Respondent's administrative assistant, R.A. When Respondent telephoned R.A. that same day from a courthouse, R.A. advised Respondent that the settlement check in her spouse's case had arrived. Respondent directed R.A. to put the check on her desk and R.A. did so. Respondent arrived at the office later that day. When she left the office that evening she took the check with her and brought it home. She did not advise anyone at the law firm that she was removing the check from the office.

The law firm maintained a filing cabinet in the area of R.A.'s desk where Respondent's "paper" files were stored and maintained by R.A. Standard practice at the law firm was for a lawyer's administrative assistant to provide to the lawyer handling a case the hard copies of papers received in the mail related to that case after the papers had been scanned and linked to an electronic file for that case; after reviewing the papers, the lawyer would usually return the papers to the assistant for filing in the "paper" file. However, lawyers would sometimes keep files in their offices while working on them and do their own filing.

Following the completion of the mediation, Respondent kept the paper file for her spouse's claim in her office at all times. At no time did she return the file to her assistant.

On October 26, 2017, Respondent deleted the electronic copies of two documents related to her spouse's case from the law firm's electronic database. The first document was the electronic copy of the settlement check and cover letter from opposing counsel. The second document was a letter dated October 19, 2017 from the AGO to Respondent's spouse and her former employer (through their respective lawyers) confirming the AGO's understanding that the case had been settled and enclosing a form for Respondent's spouse to withdraw the charge of discrimination. Both documents were deleted at the same time of day.

Respondent conceded in her testimony that she intended to delete the copy of the settlement check and cover letter, and the Panel so finds. She testified that she did not intend to delete the AGO correspondence and that the deletion was inadvertent. The Panel is unable to find by clear and convincing evidence that Respondent intended to delete the AGO correspondence.

Respondent did not at any time advise anyone at the law firm that she was planning to delete or had deleted the copy of the settlement check and cover letter from the law firm's computer system.

On two occasions following the mediation, the managing partner of Respondent's firm asked both J.S. and the firm's bookkeeper whether a settlement check had been received in connection with Respondent's spouse's claim. They both indicated that they had no information. On the second occasion, November 9, 2017, when Respondent was not in the office, the managing partner asked Respondent's assistant, R.A., if she had seen a settlement check. She became visibly nervous and asked the managing partner to talk directly to Respondent.

Eventually R.A. told him that the case had settled and that a check had been received approximately two weeks earlier.

The managing partner then attempted unsuccessfully to locate either the paper file for the case or an electronic record that would provide some evidence of a settlement and of the settlement check having been received in the office. He was unable to locate the paper file in the file cabinet where Respondent's cases were generally kept.

Later that day, when Respondent arrived in the office, the managing partner met with her. In response to his questions, Respondent confirmed that a settlement had been reached at the mediation; that the settlement documents had been signed; that a settlement check had been issued; that the check was at her house; and that the check had not yet been cashed. The managing partner asked Respondent why she had not said anything about the check arriving. In response, she said that she had told J.S. on the day of the mediation that a one-third fee was not fair and had suggested that an $8,000 fee was reasonable. She stated to the managing partner words to the effect that "the ball is in your court." At that point, the managing partner ended the meeting, telling Respondent that he would get back to her.

Following his meeting with Respondent, the managing partner met again with R.A. in private and confirmed that the check had been received in the office and had been scanned into the electronic database. At his request, a staff member, S.S., undertook a search of the electronic database and discovered a notation in the Recycle Bin that two documents had been deleted by Respondent on October 26, 2017: (1) the settlement check and cover letter; and (2) the October 19, 2017 correspondence from the AGO confirming the settlement (Ex. DC-4).

Following his meeting with Respondent on November 9, the managing partner consulted with the other partners of the firm. The next day, November 10, the managing partner and two

other partners telephoned Respondent, who was working at the firm's Burlington office that day. The purpose of the call was to inform Respondent that the firm had cut off her access to the firm's computer system, including her work email, and were suspending her while they gathered more information about the status of the settlement check. When questioned during the conference call Respondent confirmed that the check had been mailed to the office and that she had deleted the electronic copy of the settlement check from the law firm's computer system. At some point in the conference call the managing partner indicated that the firm was not going to press the issue of a fee in Respondent's spouse's case. The managing partner stated that the partners were concerned about the absence of law firm records relating to the settlement check and the law firm's related ethical obligations to the client. The managing partner asked for and received an assurance from Respondent that Respondent's spouse actually had the check.

Upon being notified that she was being suspended, Respondent stated that she was resigning her position immediately. By the end of the call, Respondent was discussing with the partners how to turn in her office key and obtain as soon as possible the paper files for cases that she would retain upon leaving the firm.

At some point on November 10, either before or after the conference call, Respondent deposited the settlement check at a bank in Burlington.

The following Monday, November 13, Respondent turned in her office key at the firm and took possession of the paper files for those cases she was retaining. The files that were provided to Respondent included the paper file for Respondent's spouse's case, which was located at that time on the table in Respondent's office.

On November 17, 2017, the law firm informed Respondent's spouse by letter that Respondent was no longer employed by the firm and that the firm waived any payment for fees or expenses in connection with the spouse's discrimination claim.

The Panel finds that Respondent's actions in connection with her removal of the check from the office and deletion of the electronic copy of the check and cover letter were undertaken with a motive of concealing from the law firm's partners the existence of the settlement check and preventing the partners from holding the check or from stopping the disbursement of some disputed portion of the settlement proceeds pending resolution of the fee dispute.

CONCLUSIONS OF LAW

I.

Disciplinary Counsel alleges that Respondent is responsible under the Rules of Professional Conduct for the improper notarization by Respondent's assistant of the two legal documents in question. Under Rule 8.4(c) "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation." V.R.Pr.C. 8.4(c).

A lawyer may be held responsible under certain circumstances for the conduct of a nonlawyer who is working with that lawyer: "With respect to a nonlawyer employed or retained by or associated with a lawyer . . . a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved." V.R.Pr.C. 5.3(c)(1).

In this case, it is undisputed that the two documents were signed by Respondent's wife outside the presence of the notary public who notarized the documents; that the day after the documents were signed Respondent handed the two documents to her assistant to prepare a cover

letter to the AGO; and that the assistant, who was a notary, backdated the two documents so that the date of signature by Respondent's spouse and the date of notarization would be the same. The notary's statement to the effect that Respondent's spouse appeared before the notary and affirmed the statements contained in the respective documents was, in fact, not true.

The issue in dispute at the hearing was whether Respondent was aware, at the time she handed the documents to her assistant, that they had not been previously notarized and whether she nevertheless directed her assistant to notarize the documents or, if Respondent was initially unaware, whether she subsequently ordered or approved of the assistant's notarization. Under the rules governing lawyer disciplinary proceedings, charges of misconduct must be established by clear and convincing evidence – an intermediate standard of proof that is less demanding than the "beyond a reasonable doubt" standard applicable in criminal proceedings but more demanding than the "preponderance of the evidence" standard applicable in civil proceedings.

The evidence presented to the Panel was not sufficient for the Panel to conclude, by clear and convincing evidence, that Respondent directed the notarization by her assistant or otherwise knew of it in violation of V.R.Pr.C. 8.4(c). Accordingly, the Panel will dismiss the charge with respect to the notarization of the documents.

II.

Next, the Panel considers whether Respondent's conduct surrounding the settlement of her spouse's discrimination claim amounted to dishonesty or deceit in violation of Rule 8.4(c). The term "dishonesty" has been defined as:

> [e]ncompass[ing] fraudulent, deceitful, or misrepresentative behavior. In addition to these, however, it encompasses conduct evincing a lack of honesty, probity or integrity in principle; a lack of fairness and straightforwardness. Thus, what may not legally be characterized as an act of fraud, deceit or misrepresentation may still evince dishonesty.

Matter of Shorter, 570 A.2d 760, 768 (D.C. 1990) (quoting *Tucker v. Lower,* 200 Kan. 1, 4, 434 P.2d 320, 324 (1967)).

A finding of deceit can be predicated on either affirmative actions or concealment. *See In re Strouse*, 2011 VT 77, ¶ 14, 190 Vt. 170, 34 A.3d 329 (associate who failed to inform senior attorney that she had renewed a relationship with the senior attorney's client's husband engaged in deceit in violation of Rule 8.4(c)). Moreover, "[a] duty [to speak] may arise from the relations of the parties, or superior knowledge, or means of knowledge." *Id.* ¶ 15; *see also Attorney Grievance Comm'n of Maryland v. Floyd*, 929 A.2d 61, 66 (Md. 2007) ("[T]he law recognizes that deceit can be based on concealment of material facts as well as on overt misrepresentations.").

In order to find a violation of Rule 8.4(c), the majority of courts "look for some culpable state of mind." ABA Ctr. For Prof'l Responsibility, Annotated Model Rules of Prof'l Conduct 679 (8th ed. 2015); *see, e.g.*, *Iowa Supreme Court Disciplinary Board v. Netti*, 797 N.W.2d 591, 605 (Iowa 2011) ("[T]he better view is to require some level of scienter that is greater than negligence to find a violation of [Rule 8.4(c)]"); *In re Cutright*, 910 N.E.2d 581, 589-90 (Ill. 2009) (requiring "some act or circumstances that showed the respondent's conduct was purposeful").

"[W]hile Rule 8.4(c) is broad and . . . encompasses conduct both within and outside the realm of the practice of law, ...[it] applies only to conduct so egregious that it indicates that the lawyer charged lacks the moral character to practice law." *In re PRB Docket No. 2007-046*, 2009 VT 115, ¶ 12, 187 Vt. 35, 989 A.2d 523 (2009); *see also id.* (concluding that the rule reaches conduct "that reflects on an attorney's fitness to practice law").

Applying these principles to the facts, the Panel concludes that Respondent's conduct violated Rule 8.4(c). The Panel is convinced by the totality of the credible evidence that Respondent's conduct surrounding the settlement check and cover letter and deletion of the electronic copy of the check was dishonest and deceitful.

After Respondent learned on the day of the mediation, in response to her own inquiry, that the partners of the law firm were requesting payment to compensate the firm for Respondent's services in an amount greater than Respondent felt was fair, Respondent engaged in conduct that was intended to conceal the existence of the settlement check from the partners and prevent the partners from holding the check or some portion of the settlement proceeds pending resolution of the fee dispute.[2] As soon as Respondent learned from her assistant that the settlement check had arrived she directed the assistant to put the check on her desk.

Respondent then proceeded to remove the check from the office that same night and, the very next day, she deleted the electronic copy of the settlement check and cover letter from the law firm records. She undertook these actions with the knowledge that the partners at the law firm had asserted a financial interest in a portion of the settlement proceeds. In addition, Respondent did not inform anyone at the law firm that she was removing the check from the office; did not document in writing the delivery of the check to her spouse, which would have been normal procedure for a lawyer in any case; and did not inform anyone at the firm that she

[2] Rule 1.15(e) provides that "[w]hen in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute." Disciplinary Counsel has not alleged that Respondent's removal of the settlement check violated Rule 1.15(e) or that the partners might have invoked that provision to hold the check or the portion of the check in dispute. Therefore, the Panel does not consider either question. However, this provision sketches out a possible course of action that the partners might have conceivably pursued – rightly or wrongly – if they had learned that the check was in the office and, therefore, provides some context for evaluating Respondent's conduct. In addition, this rule arguably should, at the very least, have raised a question in Respondent's mind as to whether her delivery of the check to her spouse without notice to the partners was appropriate under Rule 1.15(e).

was planning to delete or had deleted the electronic copy of the settlement check. Her conduct was dishonest.

The Panel's conclusion that Respondent acted dishonestly is further reinforced by other evidence. After the mediation, Respondent told her colleague, C.R., that she was very angry at the partners as a result of their request for one-third of the settlement. Despite repeated suggestions by C.R. that Respondent talk to the partners and discuss the issue with the partners, Respondent resisted that suggestion and indicated that she would not do so. Moreover, Respondent stated, in response to C.R.'s suggestion, that she was adamantly opposed to the partners getting "her money." Likewise, when she was asked by the managing partner why she had not said anything about the check having been received, Respondent referred to the fee dispute.

The evidence that the settlement check was not deposited until November 10 is also relevant. The check was deposited by Respondent approximately two weeks after it had been received and removed from the office by Respondent, one day after the managing partner had asked Respondent about the existence of a settlement check, and the same day that she was advised by the managing partner that the firm was waiving any interest in the settlement proceeds. The delay suggests that Respondent was waiting to see whether the partners would once again bring up the fee issue – or forget about it. The delay in cashing the check was consistent with an intention to conceal the check from the partners and see if the dispute would simply go away.

Respondent testified that the check was not deposited sooner because she and her spouse did not have time to go to the bank. But that testimony is highly questionable. This was a large check ($54,000.00) and Respondent and her spouse would in the normal course have had every

reason to deposit a check in that amount promptly.[3]

Respondent owed a duty to the partners of the law firm to be forthright in her dealings with the firm. Instead, she concealed information from them to advance her own interests. In *Iowa Supreme Court Bd. of Professional Ethics & Conduct v. Huisinga*, 642 N.W.2d 283 (Iowa 2002), a lawyer was charged with dishonesty based on having deposited a check in his personal account instead of the firm's account and misleading his partners in the law firm about the matter. In his defense, the lawyer contended that that he had received unequal treatment from the partners and was protecting his financial interests in connection with a pending breakup of the firm. The Court observed as follows:

> An attorney cannot resort to self-help to rectify what may be perceived to be an inequity in the division of law partnership earnings. Most law partnerships are grounded upon a total trust and confidence among the partners. A breach of this exceedingly close relationship merits disciplinary action.

Id. at 287; *see also id.* at 288 (describing respondent's conduct as "a betrayal of the fundamental trust by which we, as lawyers, are bound and upon which we must rely in our professional associations with one another."). The Court further observed that "[h]ad [the respondent] directly confronted [the other law partners] about the perceived inequity of his situation, this would be no more than a contract dispute. Instead the record reveals [respondent's] attempt to conceal wrongdoing until caught in the act. No amount of after-the-fact rationalizing can satisfactorily explain this fundamental breach of honesty and professional ethics."

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[3] It was apparent from the testimony of Respondent's spouse that she was deferring to Respondent on the handling of the check. Even though the parties agree that the check was deposited on November 10, approximately two weeks after it was brought home, Respondent's spouse testified that it was deposited "maybe within a couple of days, I don't remember."

While Respondent was not a partner in the firm, she was an employee and a colleague of all the lawyers in the firm. *See Attorney Grievance Comm'n v. Potter*, 844 A.2d 367, 382 (Md. 2004) (concluding that associate engaged in dishonest conduct toward law firm's partners and recognizing that "under the law of agency, there exists a fiduciary relationship between a law firm and its associate attorneys"). That relationship should have caused her to be completely transparent with the partners about any action she intended to take with respect to the settlement check – especially because she was representing her own spouse and therefore had a personal financial interest in the settlement proceeds that was in conflict with the partners' interest. Yet she failed to notify anyone that she was planning to deliver the check to her spouse and to delete the electronic copy.

Respondent advances various arguments in an attempt to justify her conduct and portray it as having been taken in good faith. She argues that the check was made payable to her spouse only and therefore Respondent was obligated to deliver it to her spouse immediately upon receipt. There are several problems with this argument. First, Respondent was aware of the fee dispute on the day of the mediation and she was in a position to provide instructions to opposing counsel for how the check should be cut. Respondent cannot benefit from failing to alert opposing counsel that there was a dispute pending with respect to the settlement proceeds. Secondly, even assuming Respondent did not arrange for the check to be payable exclusively to her spouse, she was clearly aware that a claim against the proceeds had been asserted by the partners. The fact that the check was payable only to Respondent's spouse did not negate the fact that the partners had asserted an interest in the proceeds and that the dispute was unresolved. Under those circumstances it was dishonest for Respondent to remove the check and deliver it to

her spouse without informing anyone at the firm that she was planning to do so. Likewise, it was dishonest of her to surreptitiously destroy the electronic copy of the check.

Similarly, Respondent's suggestions that she was free to delete the electronic copy of the check on grounds that the computer image of the check was somehow "personal" to her spouse and "not firm property" is without merit. Whatever right Respondent's spouse may have had to the proceeds of the settlement at the time, the check was the product of work performed on a case by a lawyer at the law firm and therefore the law firm was entitled to document in the law firm's records the receipt of the check and its disposition. The managing partner had every reason to be upset and concerned about the destruction of the electronic copy of the check and cover letter and the removal of the check. Respondent had not obtained authority from the partners of the law firm to delete such documents from the firm's computer database. She did not seek permission to do so; nor did she advise anyone that she intended to do so.

Deletion of law firm records has been determined to be dishonest and has resulted in discipline in other jurisdictions. For example, in *Attorney Grievance Comm'n v. Potter*, 844 A.2d 367, 381 (Md. 2004), the Court held that a lawyer's unauthorized deletion of law firm computer records "reflected adversely upon his honesty and trustworthiness" and therefore violated Maryland's version of Model Rule 8.4(c), among other provisions. *Id.* at 381; *see also In the Matter of Schwartz*, 599 S.E.2d 184 (Ga. 2004) (lawyer who deleted voice mail messages on the voice mail system of his former law firm engaged in dishonest conduct).

It should also be noted that the Vermont Legislature has made it a crime to alter, damage, or destroy computer records without lawful authority to do so. *See* 13 V.S.A. § 4104 ("A person shall not intentionally and without lawful authority, alter [or] damage . . . data contained in [a] computer, computer system, computer program, or computer network."); *id.* § 4105 ("[A] person

shall not . . . intentionally and without lawful authority, destroy any . . . data contained in [a] computer, computer system, computer program, or computer network."). And one jurisdiction has held that a lawyer not only engaged in dishonest conduct under Model Rule 8.4(c) but also violated Model Rule 8.4(b), the rule pertaining to criminal conduct, when he destroyed electronic files in his law firm's computer system in violation of a computer crimes statute similar to Vermont's. *See Potter*, 844 A.2d at 372 & 381.

Because Disciplinary Counsel did not charge Respondent with a violation of Vermont's Rule 8.4(b), which makes it a violation of the Rules for a lawyer to "engage[ ] in a 'serious crime,'" the Panel does not address the question of whether destruction of the computer record of the settlement check violated any one of the referenced Vermont statutes and, if so, whether such conduct constituted a "serious crime" as that term is defined in Rule 8.4(b). The Panel only points out that the existence of these criminal statutes undermines Respondent's suggestion that a law firm's case-related computer record could be deleted on grounds that it was "personal" to a client.

Apart from the absence of any right on the part of Respondent to delete the computer record, the Panel rejects Respondent's testimony that she believed, whether rightly or wrongly, that it was appropriate to delete the electronic copy of the check because she considered it a "personal" document belonging to her spouse. Her spouse was a client of the law firm. For professional responsibility reasons and to protect against malpractice claims, all work-related documents at law firms are preserved. Respondent has not presented any evidence in this case that would support such a belief on her part. Moreover, as explained above, there is substantial evidence supporting the finding that Respondent's purpose was to destroy evidence of the check

and frustrate any attempt by the partners to hold the check or some portion of the check pending resolution of the fee dispute. Respondent's testimony as to her belief was not credible.[4]

Respondent also argues that in the absence of a written contingency agreement or other fee agreement the partners of the law firm could not, as a matter of law, assert an interest in any portion of the settlement check. It is true that the Rules of Professional Conduct require that a contingent fee agreement be reduced to writing at the outset of representation. *See* V.R.Pr.C. 1.5(c). In addition, the Rules require that "the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate." V.R.Pr.C. 1.5(b). And it is undisputed that there was no written or verbal fee agreement put in place by Respondent when she began representing her spouse while she was working at her old law firm or at any time thereafter.

But whatever effect the provisions of Rule 1.5 might or might not have on the assertion of a claim for attorney's fees in the absence of a written fee agreement,[5] Respondent overlooks

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[4] Likewise, Respondent's assertion that she received inadequate training regarding the firm's expectations as to the use of the electronic records system is without merit. Whatever degree of training that Respondent received in connection with the firm's computer system, there was no evidence presented that she was told she could delete a record of a settlement check. Moreover, the evidence was undisputed that her conduct was not accidental. Respondent accessed the system and knew that she was deleting the settlement check and cover letter when she did so.

[5] Under current Vermont law, "in the absence of contract, an attorney is entitled to charge what his services are reasonably worth and the client is obligated to pay that sum." *Parker, Lamb & Ankuda, P.C. v. Krupinsky*, 146 Vt. 304, 306, 503 A.2d 531, 531 (1985) (quotation omitted); *see Swanson & Lange v. Miner*, 159 Vt. 327, 333, 623 A.2d 976, 978 (1992) (affirming that "a written fee agreement is not required to collect payment for legal services, despite the preferred practice to have one"). Courts that have declined to award attorney's fees on a contingency basis where no written agreement was put in place have, at the same time, ruled that a lawyer can still pursue recovery of fees using an alternative "reasonable value of services rendered" methodology, also known as "quantum meruit." *See, e.g., Glick v. Barclays De Zoete Wedd, Inc.*, 692 A.2d 1004, 1010 (N.J. 1997) ("Where an attorney performs legal services for another at his request, but without any agreement or understanding as to the remuneration, the

the fact that she initiated the communication with the partners about paying a fee despite her knowledge that there was no fee agreement. She asked one of the partners "What is [the firm's] take?" while indicating that "I owe my new job some good faith fees for time I've spent working [the] case." Then, even after J.S. advised her that he thought the one partner who handled discrimination cases had a standard fee of one-third of any settlement, she asked him to "talk with them and see what they expect."

Moreover, after having been advised that all the partners felt that one-third of the settlement amount would be an appropriate payment to the firm, Respondent did not take any action to notify the partners that she believed they could not pursue an interest in the proceeds and that she and her spouse were no longer willing to pay anything to the firm. On the contrary, she told J.S. that she and her spouse felt a payment of $8,000 would be reasonable.

Respondent could not indicate to the partners that she and her spouse felt it was fair and appropriate to pay the firm some amount for the work she had performed while at the firm and then proceed as if that communication had never occurred. Although Respondent arguably had a reasonable basis on which to push back on the law firm's request for one-third of the settlement amount – including the fact that she had started working on the case before she came to the new firm – the ethical rules pertaining to fee agreements did not excuse her conduct.

Respondent suggests that the law firm was somehow at fault because none of the partners had discussed with her the firm's expectation of receiving a fee until the day of the mediation. To begin with, Respondent bears some responsibility for the fact that the firm was unaware that

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law implies a promise on the party who requested such services to pay a just and reasonable compensation."); *cf. In re Sinnott*, 2004 VT 16, ¶ 20, 176 Vt. 596, 845 A.2d 373 (invalidating fee agreement as unreasonable and rejecting lawyer's alternative quantum meruit claim on grounds that "respondent at no time performed any service of value to [the client], and thus was not entitled to any remuneration").

there was no fee agreement in the case until she told them on the day of the mediation. Respondent was the person with knowledge that there was no fee agreement and she never informed the partners that there was no agreement until she was on the verge of reaching a settlement agreement in the case. Moreover, when she interviewed for a job with the firm she included her spouse's case in the email that described her pending tort cases and stated that "I like the strength of [the case]." A fair implication of that statement is that there was a potential recovery for the firm if Respondent continued handling the case. Yet Respondent made no mention either in that email or at any other time that there was no fee agreement. Finally, the issue presented in this case concerns Respondent's conduct *after she herself broached the issue with the partners and requested the partners' position* and while the dispute of which all the parties were aware was still pending.

Respondent also maintains that she reasonably believed that the partners had no objection to her delivering the check to the client because none of the partners contacted her to discuss the fee issue between the day of the mediation and the day she received the check. But on the day of the mediation Respondent was twice informed of the partners' position and told by J.S. that he could not negotiate on behalf of the five partners and Respondent should send any counter-proposal to all five partners. Moreover, Respondent knew in any event that the issue was unresolved and, as a practical matter, in the absence of further communication between her and the partners there was no timeline that could tell her with any certainty that the partners no longer wished to pursue the fee dispute. Finally, Respondent's assertion that she believed she had a green light from the law firm to deliver the check the day it was received in the office is not consistent with either her deletion of the electronic record or the failure to deposit the check promptly or the absence of any documentation for these actions. If she felt that she had a green

light, there was no reason to delete the electronic copy of the check and cover letter or fail to document her delivery of the check to her spouse. Respondent's after-the-fact rationalization is not credible.

Respondent's suggestion that she was ethically unconstrained in the absence of a formal demand from the partners is also misguided. Aside from the fact that she initiated the communication with the partners and that J.S. told her on the day of the mediation – in response to her statement that she and her spouse thought a payment to the firm of $8,000 would be fair – that he could not negotiate for the five partners and that she should make a proposal to all of the partners, Respondent fails to address the fact that she was dealing with her colleagues in the same law firm and owed them more forthright conduct. This was especially the case here because Respondent herself had a personal financial interest in the settlement – because she was married to her client – that was at odds with the partners' interests.

Finally, Respondent's conduct cannot be justified as somehow necessary to protect her client. Respondent could have met with the partners to try to persuade them that their position was unreasonable and, absent a resolution of the dispute, she could have pursued a judicial determination on behalf of her client. She had an alternative available – the one suggested to her by her colleague C.R. – and simply decided not to pursue that course of action but rather to engage in self-help.

Nor is it credible that Respondent believed she had to act in this manner to protect her client's interest in the settlement proceeds. Respondent is an experienced attorney and could not reasonably have believed that destroying an electronic copy of the check was somehow necessary or appropriate to protect her client's interests. Moreover, as discussed previously, it is apparent from the evidence that she acted with an intent to conceal and, to a significant degree,

to advance her own financial interest as the spouse of her client. By contrast, in *PRB Docket No. 2007-046*, the Court found no violation of Rule 8.4(c) because the attorneys who surreptitiously tape-recorded a phone conversation with a witness "earnestly believed that their actions were necessary and proper" in the course of representing a client in a criminal case. 2009 VT 115, ¶ 19. Respondent's destruction of the electronic copy of the settlement check cannot be justified.

In sum, the Panel concludes that Respondent's conduct was dishonest and deceitful and reflects adversely on her fitness to practice law and, therefore, violated Rule 8.4(c).

SANCTIONS DETERMINATION

The Vermont Rules of Professional Conduct "are 'intended to protect the public from persons unfit to serve as attorneys and to maintain public confidence in the bar.'" *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 925 A.2d 1026 (quoting *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991)). The purpose of sanctions is not "to punish attorneys, but rather to protect the public from harm and to maintain confidence in our legal institutions by deterring future misconduct." *In re Obregon*, 2016 VT 32, ¶ 19, 201 Vt. 463, 145 A.3d 226 (quoting *In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154, 1158 (1997)).

Applicability of the ABA Standards for Imposing Lawyer Sanctions

Hearing panels are guided by the ABA Standards when determining appropriate sanctions for violation of the Vermont Rules of Professional Conduct:

> When sanctioning attorney misconduct, we have adopted the *ABA Standards for Imposing Lawyer Discipline* which requires us to weigh the duty violated, the attorney's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating or mitigating factors.

In re Andres, 2004 VT 71, ¶ 14, 177 Vt. 511, 857 A.2d 803.

"Depending on the importance of the duty violated, the level of the attorney's culpability, and the extent of the harm caused, the standards provide a presumptive sanction. *** This presumptive sanction can then be altered depending on the existence of aggravating or mitigating factors." *In re Fink*, 2011 VT 42, ¶ 35, 189 Vt. 470, 22 A.3d 461.

The Duty Violated

The ABA Standards recognize a number of duties that are owed by a lawyer to his or her client. *See Standards for Imposing Lawyer Sanctions* (ABA 1986, amended 1992) (*"ABA Standards"*), Theoretical Framework, at 5. Other duties are owed to the general public, the legal system, and the legal profession. *Id.* "[T]he standards assume that the most important ethical duties are those obligations which a lawyer owes to clients." *Id.* In this case, Respondent owed a duty to the general public as well as to the legal profession to refrain from engaging in dishonest and deceitful conduct. *See id.* ("The community expects lawyers to exhibit the highest standards of honesty and integrity . . . .").

Mental State

"The lawyer's mental state may be one of intent, knowledge, or negligence." *ABA Standards*, § 3.0, Commentary, at 27. For purposes of the sanctions inquiry, "[a lawyer's] mental state is [one] of intent, when the lawyer acts with the conscious objective or purpose to accomplish a particular result." *Id.*, Theoretical Framework, at 6. The mental state of "knowledge" is present "when the lawyer acts with conscious awareness of the nature or attendant circumstances of his or her conduct [but] without the conscious objective or purpose to accomplish a particular result." *Id.* The mental state of "negligence" is present "when a lawyer fails to be aware of a substantial risk that circumstances exist or that a result will follow, which

failure is a deviation from the standard of care that a reasonable lawyer would exercise in the situation." *Id.*; *see also id.*, at 19 (definitions of "intent," "knowledge," and "negligence").

The Panel concludes that Respondent's state of mind was that of intent. Respondent intentionally removed the settlement check and deleted the electronic copy of the check, without notifying the partners that she was doing so, with an intent to conceal the existence of the settlement check from the partners and prevent the partners from holding the check or some portion of the settlement proceeds pending resolution of the fee dispute.

Injury and Potential Injury

The ABA Standards consider "the actual or potential injury caused by the lawyer's misconduct." *ABA Standards*, § 3.0(c), at 26. The term "injury" is defined as "harm to a client, the public, the legal system, or the profession which results from a lawyer's misconduct. The level of injury can range from 'serious' injury to 'little or no' injury." *Id.*, Definitions, at 9. The term "potential injury" refers to harm that is "reasonably foreseeable at the time of the lawyer's misconduct, and which, but for some intervening factor or event, would probably have resulted from the lawyer's misconduct." *Id.* Under the ABA Standards, "[t]he extent of the injury is defined by the type of duty violated and the extent of actual or potential harm." *Id.* at 6.

There was no financial harm that resulted from Respondent's conduct. The law partners ultimately waived any interest in the settlement proceeds. In addition, there was no financial harm to Respondent's client. However, the misconduct on the part of the Respondent resulted in harm to the law firm by damaging the relationship of trust and honesty between the law firm and Respondent – a relationship of trust and honesty that is essential to the operation of every law firm. In addition, the misconduct was, by its nature, harmful to the reputation of the profession.

Presumptive Standard under the ABA Standards

ABA Standard § 5.1 applies "in cases with conduct involving dishonesty, fraud, deceit, or misrepresentation."[6] Standard 5.11(b) calls for disbarment when a lawyer has engaged in "intentional conduct involving dishonesty, fraud, deceit, or misrepresentation that *seriously adversely reflects on the lawyer's fitness to practice.*" Standard 5.11(b) (emphasis added). Standard 5.13 provides that a "[r]eprimand is generally appropriate when a lawyer engages in . . . conduct [other than that specified in §§ 5.11 & 5.12] that involves dishonesty, fraud, deceit, or misrepresentation and that *adversely reflects on the lawyer's fitness to practice law.*" Standard 5.13 (emphasis added).[7] The principal distinction between Standards 5.11(b) and 5.13 concerns the degree to which the misconduct adversely reflects on a lawyer's fitness to practice. *In re Strouse*, 2011 VT 77, ¶ 24, 190 Vt. 170, 34 A.3d 329.

The Panel concludes that § 5.13 should be applied. A public reprimand is consistent with the treatment of cases in other jurisdictions where dishonesty is aimed at the firm and no financial harm has resulted. *See, e.g., Huisinga*, 642 N.W.2d at 288 (imposing public reprimand where lawyer inappropriately deposited check in his personal account and attempted to conceal that fact from his partners). Although Respondent engaged in dishonesty, the conduct was far

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[6] Disciplinary Counsel suggests that ABA Standard 7.2 may be applicable. It provides for suspension "when a lawyer knowingly engages in conduct that is a violation of a duty owed as a professional and causes injury to a client, the public, or the legal system." While some jurisdictions have applied this standard in circumstances where lawyers have engaged in deceit directed at their law firms, those cases tend to involve conduct that is more egregious than the conduct presented here. *See, e.g., Florida Bar v. Kossow*, 912 So.2d 544, 546 (Fla. 2005) (lawyer represented clients and received remuneration from outside cases while using firm resources and attempted to conceal his conduct). The Panel concludes that Standard 5.1 presents the best fit for this case. *See also In re Strouse*, 2011 VT 77, ¶ 22 (addressing scope of Rule 7.1 and declining to apply it in case involving lawyer's concealment of relationship with senior partner's client's husband that resulted in a conflict of interest).

[7] Standard 5.11(a) and 5.12 call for disbarment and suspension, respectively, in the context of serious criminal conduct or other criminal conduct that seriously adversely reflects on a lawyer's fitness to practice. Disciplinary Counsel does not contend that any criminal conduct took place.

less serious than the type of conduct that has typically merited disbarment under Standard 5.11(b). *See Strouse*, 2011 VT 77, ¶ 25 (distinguishing cases where disbarment held to be the presumptive sanction). The conduct did not involve any financial injury to a client or third person. Respondent's conduct is arguably no more serious than the concealment that occurred in *Strouse*, in which the Court applied Standard 5.13. Accordingly, the Panel concludes that a public reprimand is the appropriate presumptive sanction.

Aggravating and Mitigating Factors Analysis

Next, the Panel considers any aggravating and mitigating factors and whether they call for increasing or reducing the presumptive sanction of suspension. Under the ABA Standards, aggravating standards are "any considerations, or factors that may justify an increase in the degree of discipline to be imposed." *ABA Standards*, § 9.21, at 50. Mitigating factors are "any considerations or factors that may justify a reduction in the degree of discipline to be imposed." *Id.* § 9.31, at 50-51. Following this analysis, the Panel must decide on the ultimate sanction that will be imposed in this proceeding.

(a) Aggravating Factors

The following aggravating factors are present:

§ 9.22(b) (dishonest or selfish motive) – While the nature of Respondent's conduct might be viewed as having served Respondent's client's interests in the settlement proceeds, the fact is that Respondent also stood to gain financially from her misconduct – because her client was her spouse. Based on all the evidence, the Panel concludes that Respondent did act, in some significant part, with a selfish motive of maximizing her own personal financial interest in her spouse's recovery. However, Respondent did act – albeit wrongly – at least in part to advance her client's interests. She was acting in her client's interests when resisting the law firm's

request for payment of one-third of the settlement. Because of the presence of mixed motives, the Panel does not assign significant weight to this factor.

§ 9.22(i) (substantial experience in the practice of law) – At the time of the incidents in question Respondent had practiced law for fifteen years. The courts recognize experience exceeding ten years to be substantial. *See, e.g., In re Disciplinary Proceeding Against Ferguson*, 246 P.3d 1236, 1250 (2011) (respondent's 11 years of practice was sufficient basis for "substantial experience" aggravating factor).

(b) Mitigating Factors

The following mitigating factors are present:

§ 9.32(a) (absence of prior disciplinary record) – Respondent has no prior record of any disciplinary action having been taken against her.

* * *

(c) Weighing the Aggravating Mitigating Factors

The aggravating factors do not substantially outweigh the mitigating facts, either by number or qualitatively. The Panel concludes that, in the absence of any prior record of discipline or additional aggravating factors, no adjustment of the presumptive sanction is appropriate.

* * *

Having in mind that "[i]n general, meaningful comparisons of attorney sanction cases are difficult as the behavior that leads to sanction varies so widely between cases," *In re Strouse*, 2011 VT 77, ¶ 43, 190 Vt. 170, 34 A.3d 329 (Dooley, J., dissenting), the Panel has nevertheless considered as a final step whether past disciplinary determinations are consistent with the imposition of a public reprimand. Although the facts in *Strouse* are not identical, that case offers

a helpful comparison because it involved a lawyer concealing information from a partner in the law firm. In imposing a public reprimand (as opposed to suspension), the Court observed that the harm to the firm's client and the law firm was short-lived and that the respondent's limited experience and lack of a prior disciplinary record supported a reprimand.

Here, Respondent's conduct was an isolated act of dishonesty with no financial harm resulting to either the client or the law firm. Moreover, the circumstance of Respondent representing her own spouse was a factor that clouded her judgment and, therefore, that calls for at least some consideration. *Cf. Strouse*, ¶ 34 (concluding that respondent's selfish motive entitled to some mitigation because respondent acted as well for romantic reasons). Respondent's conduct was no more serious than the conduct at issue in *Strouse* and the analyses of the aggravating and mitigating factors in the two cases, respectively, are fairly comparable.

By contrast, cases in which the Supreme Court has imposed suspensions for dishonest conduct reveal far more serious conduct and/or aggravating factors. For example, in *In re Neisner*, 2010 VT 102, 189 Vt 145, 16 A.3d 587, the respondent was suspended following a felony conviction for lying to police officer. *Id.*, ¶ 13. In *In re Blais*, 174 Vt. 628, 817 A.2d 1266 (2002), the respondent was suspended based on multiple incidents of neglecting client matters and misrepresentation. In addition to having engaged in a pattern of misconduct, the respondent had two prior instances of discipline on his record, along with an unmitigated selfish motive, and twenty-five years of experience as aggravating factors. *Id.* at 630; 817 A.2d at 1269. Respondent's misconduct was not in the same class.

In sum, the Panel concludes that issuance of a public reprimand is the appropriate sanction.

ORDER

Based on the Panel's Findings of Fact and Conclusions of Law, it is hereby ORDERED, ADJUDGED and DECREED as follows:

(1) Respondent, Stacey Adamski, Esq., is publicly reprimanded for engaging in dishonest and deceitful conduct toward her law firm, in violation of Rule 8.4(c) of the Rules of Professional Conduct; and

(2) Count 1 of the Petition of Misconduct, alleging a violation of Rule 8.4(c) and Rule 5.3(c)(1) of the Rules of Professional Conduct in connection with the notarization of documents, is hereby DISMISSED.

Dated this 23 day of January of 2019.

Hearing Panel No. 4

Jill Lanman Broderick, Esq., Chair

Mary K. Parent, Esq., Member

David Tucker, Public Member