

STATE OF VERMONT  
PROFESSIONAL RESPONSIBILITY BOARD

In Re: James M. LaMonda, Esq.  
PRB File No. 2015-087

**Decision No. 200**

Disciplinary Counsel and Respondent have stipulated to all facts in this matter, and jointly request that this disciplinary matter be resolved by Respondent, James M. LaMonda, Esq., receiving a public reprimand. The Hearing Panel concurs that there is clear and convincing evidence that Respondent violated Rules 1.15(a), 1.15(d), and 1.15(e) of the Vermont Rules of Professional Conduct by failing to notify his former Firm that Respondent had collected fees subject to an interest asserted by the Firm, and by failing to segregate and hold those disputed fees in a trust account until the Firm's claim was resolved. The Hearing Panel further concludes that a public reprimand and restitution order are appropriate in this case.

**Findings of Fact**

Complainant is an attorney licensed to practice law in the State of Vermont. At all times relevant to this disciplinary matter, Complainant was a principal of a law firm located in northern Vermont [hereinafter the "Firm"].

Respondent is an attorney licensed to practice law in the State of Vermont. Respondent graduated from law school on May 20, 2006 and was admitted to practice law in Vermont on December 5, 2006.

Complainant hired Respondent to work at the Firm shortly before Respondent's law school graduation. Respondent worked as an associate at Complainant's Firm for almost five

years, beginning on May 10, 2006. During Respondent's tenure at the Firm, Respondent handled a few personal injury cases and other matters.

Respondent left the Firm on April 29, 2011. Respondent's departure from the Firm was not amicable. At the time Respondent left the Firm, Respondent had some open personal injury cases that the Firm was handling on a contingent fee basis. Apparently, Respondent had developed good relationships with two of the Firm's personal injury clients [referred to herein as client AM and client PJ]. Client AM and client PJ wanted Respondent to continue handling their respective cases after Respondent left the Firm, and Respondent was willing to do so. Just before Respondent's departure from the Firm, Complainant informed Respondent that the Firm was asserting a lien for a share of the attorney's fees earned on the contingent fee cases Respondent took with him. Respondent declined to engage in any discussion with Complainant about sharing fees or the lien. When Respondent left the Firm, he took the personal injury files for client AM and client PJ with him.

Respondent opened his own law practice in another geographic area of Vermont. Respondent continued representing client AM and client PJ in their respective personal injury matters.

On May 11, 2011, the Firm sent Respondent a letter setting forth the Firm's proposal for sharing fees generated by the contingent fee cases. The Firm's proposal was for a pro rata share of the attorney's fees earned on each case, based on the number of hours spent on each case. The letter states: "I have enclosed an extra copy of this letter which you should sign to acknowledge and agree to the terms of our fee sharing." Respondent ignored the May 11<sup>th</sup> letter, refusing to sign or return the letter to the Firm. There is no dispute that Respondent knew the Firm was

asserting a lien on the personal injury files Respondent took with him to his new practice. There is also no dispute that Respondent knew that the value of the Firm's lien was based upon the amount of work performed on each case while Respondent was employed by the Firm relative to the total amount of work Respondent performed to obtain a settlement or judgment for the client.

Respondent settled client AM's case on August 14, 2012. Respondent collected and disbursed the settlement funds, retaining all of the contingent fee client AM agreed to pay. Respondent did not inform the Firm about the settlement of client AM's case, nor did Respondent tender a pro rata share of the attorney's fees to the Firm. Significantly, Respondent did not hold the disputed portion of the attorney's fees in escrow.

On December 27, 2012, the Firm wrote Respondent a letter inquiring about the status of the client AM's case. Respondent did not reply to the letter.

On March 8, 2013, Complainant wrote to the insurance company involved in client AM's case for a status update, with a copy to Respondent. On March 21, 2013, insurance defense counsel informed Complainant that client AM's case had settled in August of 2012.

On March 22, 2013, Complainant wrote Respondent a letter that informed Respondent that the Firm was aware that client AM's case had settled. Complainant's letter asked Respondent to send the firm a pro rata share of the attorney's fees earned in client AM's case. Complainant did not receive no response to the March 22<sup>nd</sup> letter.

Respondent settled client PJ's case on or about April 15, 2013. Respondent collected the settlement funds and promptly disbursed the settlement funds. Respondent retained the contingent fee earned in client PJ's case in its entirety. Respondent did not inform the Firm about the settlement, nor did Respondent tender a pro rata share of the contingent fee to the Firm.

Like client AM's settlement, Respondent did not hold the disputed portion of the contingent fees in escrow.

Complainant learned about the settlement of client PJ's case by checking on the status of the case with the Superior Court Clerk. On July 25, 2013, Complainant mailed Respondent a letter stating:

As you know from correspondence we have copied you on, we have become aware that you have settled both the [client PJ] matter and the [client AM] matter. To date, you have not honored either lien. Would you please get in touch with me at your earliest opportunity to let me know whether you intend to honor these liens.

Respondent agreed to mediation to address and resolve the fee dispute with Complainant. The parties attempted to mediate the dispute through the VBA's Fee Arbitration Committee in 2013, but those attempts fell through. Throughout 2014, another neutral party made substantial efforts to assist the parties in resolving the dispute, but those efforts proved unsuccessful.

With the fee dispute at an impasse, Complainant filed a complaint with Disciplinary Counsel on behalf of the Firm.

Respondent's actions did not cause any harm to his clients. Clients AM and PJ received their respective settlements in a timely manner, as did all other third-party lien-holders. Respondent's refusal or inability to address the Firm's claims caused harm to the Firm, in that the Firm did not receive any portion of the legal fees for these two personal injury matters.

Complainant and Respondent each worked cooperatively with Disciplinary Counsel to review the figures from both settlements. Complainant, Respondent and Disciplinary Counsel agree that the Hearing Panel may enter a restitution order in favor of Complainant's law firm, in the amount of \$9,600. The restitution figure represents the sum of \$3,400 for the Firm's share of



fees from client AM's settlement, and the sum of \$6,200 for the Firm's share of the fees from client PJ's settlement.

On July 14, 2016, Respondent mailed to the Firm a check payable to the Firm in the amount of one thousand dollars (\$1,000.00), as the first installment under the expected restitution order. The Hearing Panel concludes that, as of the date of the parties' Stipulation of Facts, Respondent was indebted to Complainant in the amount of Eight Thousand and Six Hundred Dollars (\$8,600.00).

### **Conclusions of Law**

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, ¶¶ 9-10, 181 Vt. 625, 626-27, 925 A.2d 1026, 1028-29 (citing *In re Berk*, 157 Vt. 524, 532, 602 A.2d 946, 950 (1991) (per curiam)); accord *In re PRB Docket No. 2006-167*, 2007 VT 50, ¶ 9, 181 Vt. 625, 626, 925 A.2d 1026, 1028 (although *Berk* referred particularly to sanctions, it is clear that these are the overarching goals of the rules). The Hearing Panel's findings as to each element of a charge of professional misconduct must be supported by clear and convincing evidence. A.O. 9, Rule 16(C); *In re McCarty*, 2013 VT 47, ¶ 12, 194 Vt. 109, 115, 75 A.3d 589, 593 ("All formal charges of misconduct 'shall be established by clear and convincing evidence.'"). "The burden of proof in proceedings seeking discipline or transfer to disability inactive status is on disciplinary counsel." A.O. 9, Rule 16(D).

If a violation of the Rules of Professional Conduct is proved by clear and convincing evidence, one or more sanctions may be imposed. A.O. 9, Rule 8. 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 (*citing In re Hunter*, 167 Vt. 219, 226, 704 A.2d 1154, 1158 (1997)); *see also In re Neisner*, 2010 VT 102, ¶ 24, 189 Vt. 145, 156, 16 A.3d 587, 594.

### **Rule 1.15 - "Safekeeping Property"**

The violations in Respondent’s case all involve Rule 1.15 of the Vermont Rules of Professional Conduct, which is entitled “Safekeeping Property.” Respondent’s conduct violated three different subsections of Rule 1.15.

#### **Rule 1.15(a)**

Rule 1.15(a) of the Rules of Professional Conduct provides that a “lawyer shall hold property of . . . third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property.” The Rule prohibits lawyers from commingling the lawyers funds with funds belonging to a third party. Under the Rule, a lawyer must hold his/her own funds separate a third party’s funds. Most lawyers often referred to the account holding the lawyer’s funds as the lawyer’s operating account. Under the Rule, a lawyer must deposit and hold the funds of third persons in a trust account. *Id.*

As set forth above, Respondent’s former law firm claimed a right to a pro rata share of attorney’s fees earned in two personal injury cases, being the fees earned in client AM’s and client PJ’s cases. The Firm asserted a lien against the settlements or awards obtained in the contingent fee cases prior to and after Respondent left the Firm. There is no dispute that Respondent had actual knowledge of the Firm’s lien claim.

The lack of a written fee sharing agreement does not effect the decision in this case. Respondent knew the Firm was asserting a legal interest to the fees earned in the personal injury

cases. The Hearing Panel is not required to determine if the Firm had a valid legal or equitable claim to the contingent fees in dispute here to decide this disciplinary case. *See* V.R.P.C. Rule 1.15(e) (when a lawyer holds funds in which two or more persons, one of whom may be the lawyer, claim an interest, the lawyer shall keep the funds separate until the dispute is resolved). As *Comment 4* to Rule 1.15 explains:

Paragraph (e) also recognizes that third parties may have lawful claims against specific funds . . . in a lawyer's custody . . . .  
[W]hen the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

V.R.P.C. Rule 1.15, *Comment 4*. Once Respondent had notice of the Firm's claim to a portion of the legal fees earned in the personal injury cases, Respondent was required to segregate and safeguard the disputed fees. *Id.*

In *Oklahoma Bar Association v. Taylor*, a lawyer received settlement checks from an insurance company on behalf of a client, including checks naming a treating physician's name as co-payee. 4 P.3d 1242 (Okla. 2000), Attorney Taylor's office failed to notify the doctor about the receipt of funds, endorsed the doctor's name on the checks without the doctor's permission, and deposited the checks into Attorney Taylor's account. *Id.* Attorney Taylor then disbursed funds to the client and to himself for his fees. *Id.* Among other things, Attorney Taylor was disciplined for failing to safeguard the property of third parties. *Id.* at 3. The court held that the Rules required Attorney to hold the doctor's funds separate from Attorney Taylor's funds, *Id.* The Oklahoma Supreme Court wrote: "Complete separation of a client's money from that of the



lawyer is the only way in which proper accounting can be maintained.” *Id.* at 4.

#### **Rule 1.15(d)**

Rule 1.15(d) of the Rules of Professional Conduct provides: “Upon receiving funds . . . in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.” As set forth above, Respondent did not notify the Firm when client AM’s case settled or when client PJ’s case settled. Respondent also failed to respond to the Firm’s letters requesting information about the status of those settlements. Respondent violated Rule 1.15(d) by failing to notify the Firm each time Respondent received the fees for which the Firm claimed an interest.

In *Florida Bar v. Silver*, Attorney Silver settled a personal injury case in which some of the client’s medical providers asserted a right to be paid their from the client’s settlement. So.2d 958 (Fla. 2001). Attorney Silver failed to notify the medical providers that the case had settled. *Id.* The Florida Supreme Court disciplined Attorney Silver for failing to notify a client or third person upon receipt of property in which that person claimed an interest. *See also In re Norman*, 708 N.E.2d 867 (Ind. 1999) (attorney’s failure to notify client’s doctor of receipt of settlement funds warranted disciplinary sanction); *In re Kirby*, 766 N.E.2d 351 (Ind. 2002) (attorney’s failure to notify lien holder of the receipt of settlement funds warranted disciplinary action).

#### **Rule 1.15(e)**

Rule 1.15(e) of the Rules of Professional Conduct states:

When 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 until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.



V.R.P.C. Rule 1.15(e). As previously noted, Rule 1.15(e) provides that, as long as the claim to property is not frivolous, the lawyer is not permitted to determine the validity of the claim.

V.R.P.C. Rule 1.15, *Comment 4* (a lawyer should not unilaterally assume to arbitrate a disputed claim to property, but the lawyer may file an action asking a court resolve the dispute).

Respondent and his former law Firm both claimed an interest in the personal injury settlements Respondent collected for his clients. The amount of the Firm's claim was a sum certain. The Firm claimed its interest pro rata share could be determined by dividing the number of hours Respondent worked on the claim while an employee of the Firm, by the total number of hours worked on the personal injury claim. Accordingly, Respondent should have segregated the disputed portion of the settlement funds in each of the personal injury cases and held those disputed funds in a trust account until the fee disputes were resolved. Respondent did not do so. Respondent distributed all of the settlement funds to himself and his client. Respondent's failure to segregate and safeguard the disputed funds in a trust account constituted a violation of V.R.P.C. Rule 1.15(e).

In the case of *In re Barrock*, the Supreme Court of Wisconsin found Attorney Barrock violated the Rules of Professional Conduct by failing to hold a portion of a personal injury settlement in Attorney Barrock's trust account. 727 N.W.2d 833 (Wisconsin 2007). The court found Attorney Barrock knew another lawyer was asserting a lien on the settlement funds Attorney Barrock collected. *Id.* Like Respondent, Attorney Barrock was a member of a law firm, representing a client with a personal injury claim. Attorney Barrock left his firm and took the client and the personal injury claim with him to a new law practice.. Attorney Barrock and his former firm engaged in negotiations to resolve the firm's assertion of a lien on the settlement.

The parties never reached an agreement about the lien. Attorney Barrock was clearly on notice that his former firm claimed an interest to a portion of the fees earned in the personal injury case. Once the personal injury case settled, Attorney Barrock paid the settlement funds to the client and to himself, without notifying his former firm. Attorney Barrock did not segregate the disputed portion of the fees, nor hold those disputed fees in a trust account for safekeeping. The Court concluded that Attorney Barrack violated the rule requiring him to hold the disputed portion of the settlement funds in his trust account, until such time as the dispute was resolved. *Id.*

In a number of reported cases, attorneys have segregated and held disputed funds in a trust account for safekeeping pending resolution of the dispute. *E.g., Wallace v. Hinerman*, 2016 WL 1411731 (West Virginia, Apr 7, 2016) (Attorney left firm, taking several contingent fee cases with him and, when firm and lawyer could not resolve dispute over firm's entitlement to share of fees, the departing lawyer placed the disputed fees in an escrow account and filed a civil case to resolve the dispute.)

The Hearing Panel concludes, based upon clear and convincing evidence, that Respondent violated Rules 1.15(a), 1.15(d), and 1.15(e) of the Vermont Rules of Professional Conduct by failing to notify his former Firm that Respondent had collected fees subject to an interest asserted by the Firm, and by failing to segregate and hold those disputed fees in a trust account until the Firm's claim was resolved.

### **Applicability of the ABA Standards for Imposing Lawyer Sanctions**

The Vermont Supreme Court has ruled:

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, 513, 857 A.2d 803, 807. Accordingly, the Hearing Panel employed the *ABA Standards* as a tool to determine if a public reprimand and restitution are the appropriate sanction in Respondent's case.

### **The Duty Violated**

In Respondent's case, the duties violated involved the duty to preserve client property in which two of more parties claimed an interest. *See ABA Standards* §4.1. A lawyer owes certain duties to his clients, including the duty to preserve client property. Section 4.1 of the *ABA Standards* requires a lawyer to preserve the property of clients, and does not specifically mention property of other persons. The Vermont Rules of Professional Conduct impose upon the lawyer to be as diligent preserving and safekeeping the property of third persons, as it does the property of clients. V.R.P.C. Rule 1.15. The *ABA Standards* provide a guideline for imposing sanctions when a violation of Vermont Rules of Professional Conduct is established. Accordingly, §4.1 of the *ABA Standards* is similar enough to V.R.P.C. Rule 1.15 to provide guidance here.

### **Mental State**

The second factor to consider under the *ABA Standards* is the lawyer's mental state. The *ABA Standards* specify three mental states: intent, knowledge, and negligence to consider when imposing disciplinary sanctions. The *ABA Standards* define these three terms as follows:

Intent is the conscious objective or purpose to accomplish a particular result.

Knowledge is the conscious awareness of the nature or attendant circumstances of the conduct but without the conscious objective or purpose to accomplish a particular result.



Negligence is the failure of a lawyer to heed 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.

*ABA Standards, Section III, Definitions.*

Here, the parties have stipulated that Respondent's mental state was one of negligence. Respondent acted appropriately as to his clients' interests. When Respondent collected the settlement money in each personal injury case, Respondent promptly paid his clients their shares of the settlement proceeds. While Respondent and the Firm parted ways on less than amicable terms, the Hearing Panel cannot infer from this limited information that Respondent acted with intent or knowledge to deprive the Firm of its share of the fees. Respondent participated in mediation, and, ultimately, acknowledged that the Firm was entitled to a share of the fees earned in the contingent fee cases. Respondent also began paying the Firm its share of the contingent fees. Respondent also agreed that the Hearing Panel may order Respondent to pay restitution to the Firm. Accordingly, the Hearing Panel finds Respondent's mental state was one of negligence.

### **Injury and Potential Injury**

The *ABA Standards* require the Hearing Panel to consider the level of injury and potential injury a client suffers as a result of the attorney's conduct. The Vermont Rules of Professional Conduct, however, impose a duty on lawyers not to cause injury to persons who are not clients. See e.g., Rule 1.15 (duty to segregate, preserve and safeguard property of a non-clients); Rule 1.18 (duty to protect the confidences of prospective clients); Rule 4.1 (duty of honesty owed to others). To apply the *ABA Standards* in Respondent's case, the Hearing Panel construes the *ABA Standards* use of the term "client" to mean both clients and non-clients.



Respondent did not cause actual or potential injury to a client. Except for the Firm, there is no evidence Respondent's conduct caused injury or potential injury to any other person. Respondent caused actual injury to the Firm. Respondent was initially unresponsive to the Firm's attempts to resolve the fee dispute. When Respondent received settlement funds, Respondent did not notify the Firm that Respondent was in possession of the disputed fees. Respondent's conduct resulted in delay in resolving the dispute and paying the Firm its share of the fees. Once Respondent and the Firm resolved their dispute, Respondent did not pay the Firm its share of the fees promptly. Respondent must make installment payments, apparently because Respondent failed to segregate and safeguard the disputed fees as required by Rule 1.15.

#### **Presumptive Sanction Under the ABA Standards**

When a lawyer violates §4.1 of the *ABA Standards* in a case like Respondent's, there are two possible presumptive sanctions. These presumptive sanctions are:

- 4.13 Reprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition 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.

The presumptive sanction in Respondent's case is public reprimand, pursuant to §4.13. As set forth above, Respondent's negligent conduct caused the Firm actual injury because Respondent did not promptly pay the Firm its share of the attorney's fees.

#### **Aggravating Factors**

Section 9.22 of the ABA Standards sets forth a list of aggravating factors that the Hearing Panel should consider. The parties have stipulated that there is one aggravating factor present in

Respondent's case. Respondent has previously received two private admonitions. Respondent received a private admonition for a violating Rule 1.4 for failure to keep a client reasonably informed about the client's matter. PRB Decision No. 159 (June 2013). Respondent also received a private admonition for violating V.R.P.C. Rule 1.7, for failure to recognize a conflict of interest between two criminal defense clients. PRB Decision No. 160 (June 2013).

## **2. Mitigating Factors**

Section 9.32 of the ABA Standards sets forth a list of mitigating factors that the Hearing Panel should consider in determining the appropriate sanction. The parties have stipulated to two mitigating factors. First, Respondent has agreed to a restitution order, and second, Respondent has cooperated with Disciplinary Counsel and the disciplinary process.

### **Aggravating & Mitigating of Equal Weight**

Respondent's two prior admonitions, occurring relatively close in time to the events at issue here, cause significant concern. Respondent was admitted to the Vermont Bar in December 2006, and by 2015 has been the subject of three disciplinary proceedings. The Hearing Panel recognizes the prior violations did not involve the same conduct present here. Respondent has, however, resolved the fee dispute, acknowledged he violated the Rules of Professional Conduct, cooperated with the disciplinary process and agreed to a restitution order. Accordingly, the Hearing Panel concludes there is no basis to vary from the presumptive sanction of reprimand.

### **Restitution Under the ABA Standards**

Section 2.8 of the *ABA Standards* addresses the availability of other sanctions and remedies in attorney disciplinary matters. Section 2.8(a) provides that restitution is a remedy that may be imposed in a disciplinary case, along with whatever other discipline the sanctioning

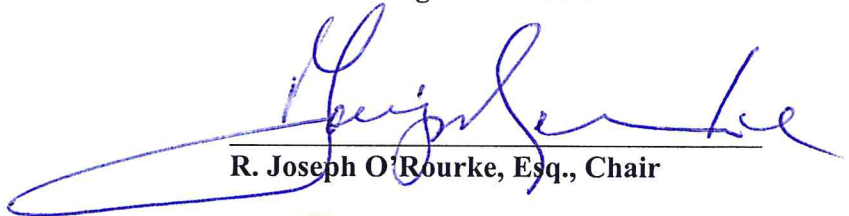
authority deems appropriate. The commentary to §2.8 describes restitution as one of several methods of carrying out the goals of the disciplinary system. The commentary encourages the sanctioning authority to be creative and flexible in cases where a severe sanction is not required.

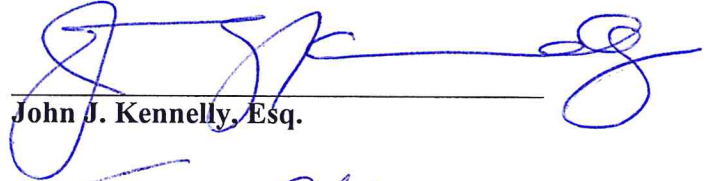
### ORDER

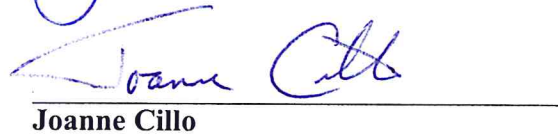
The Hearing Panel hereby publicly reprimands **James M. LaMonda, Esq.**, Respondent, for violating V.R.P.C. Rules 1.15(a), 1.15(d), and 1.15(e) for the reasons set forth herein. Attorney LaMonda is hereby ordered to pay restitution in the amount of Nine Thousand Six Hundred and no/100ths (\$9,600.00) to Complainant's firm, consistent with the terms of Respondent's and Complainant's payment agreement. Respondent shall receive a credit for restitution payments made to Complainant's Firm prior to the entry of this Order.

Dated: December 19, 2016

Hearing Panel No: 1

  
R. Joseph O'Rourke, Esq., Chair

  
John J. Kennelly, Esq.

  
Joanne Cillo

