

STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY PROGRAM

In Re: Carolyn Adams
PRB File No. 2020-064

PETITION OF MISCONDUCT

In accordance with a finding of probable cause dated May 13, 2020, Disciplinary Counsel formally charges Carolyn Adams (Respondent) with the following violations pursuant to A.O. 9, Rule 11(D)(1)(b) as set forth below.

NOTICE TO RESPONDENT: This is a formal Petition of Misconduct. Pursuant to A.O. 9, Rule 11(D)(3), you are required to file an Answer within 20 days addressed to the Professional Responsibility Program, 109 State St., Montpelier, VT 05609, with copy to Disciplinary Counsel. Failure to file a timely answer may result in the facts and charges being deemed admitted.

Count 1 of 3

In January 2020, Carolyn Adams, a licensed Vermont attorney whose license was suspended by order dated December 31, 2019, failed to timely notify clients and opposing counsel of her suspension and failed to timely return client papers and client property in violation of Supreme Court A.O. 9, Rule 23.

Count 2 of 3

In 2018 and 2019, Carolyn Adams, a licensed Vermont attorney, failed to maintain a proper client trust accounting system and failed to hold property of clients or third persons that was in her possession in connection with a representation separate from her own property; to wit:

- (a) failed to promptly remove earned fees from the client trust account;

- (b) failed to maintain a system showing all receipts and disbursements from her client trust account with appropriate entries identifying the source of the receipts and the nature of the disbursements;
- (c) failed to maintain a record for each client or person for whom property is held showing all receipts and disbursements and carry a running account balance;
- (d) failed to maintain records documenting timely notice to each client or person of all receipts and disbursements from the account or accounts; and
- (e) failed to maintain records documenting timely reconciliation of the trust account, in violation of Vermont Rule of Professional Conduct 1.15(a)(1).

Count 3 of 3

In 2018 and 2019, Carolyn Adams, a licensed Vermont attorney, charged or collected an unreasonable fee, to wit: collected and deposited into trust approximately \$2,400 from MS for the agreed-upon purpose of helping her file for bankruptcy but never commenced a bankruptcy action on her behalf and never returned any portion of the fees or costs collected (aside from the court filing fee), in violation of Vermont Rule of Professional Conduct 1.5(a).

Facts alleged in support of petition

1. Respondent was admitted to practice law in Vermont until she was suspended December 31, 2019 for failure to comply with disciplinary probation terms set out in PRB Decision Nos. 225 and 225-A.
2. Respondent maintained a solo practice in South Rygate. She has over 20 years of general practice experience, including substantial experience in bankruptcy law.

Failure to carry out obligations of a suspended attorney – A.O. 9, Rule 23

3. A suspended attorney is required to notify clients and opposing counsel of her suspension within ten days of the suspension order. A.O. 9, Rule 23.A sets out specific requirements as to the contents and manner of the notice.
4. Under Rule 23.E, a suspended attorney must arrange to deliver client papers and property and call the client's attention to any urgency for obtaining the papers and other property.
5. As a courtesy, I wrote to Respondent on January 8, 2020 regarding her obligations pursuant to A.O. 9, Rule 23. In the letter I stated, in part, as follows:

By order dated December 31, 2019, Decision No. 225-A imposed a suspension of six months on your license. The order was served January 2, 2020, which is the operative date for important A.O. 9, Rule 23 obligations you must fulfill to wind up your law practice. . . . These actions must be completed **by January 16, 2020**. Please be advised that if I do not timely receive a copy of the affidavit required by Rule 23.H, I will petition the Court to have a trustee appointed for your law practice pursuant to A.O. 9, Rule 24.
6. On January 14, 2020, client MS contacted the Professional Responsibility Program. She stated she had not been notified of Respondent's suspension, but found it online when she was looking up Respondent's fax number to send Respondent documents related to her bankruptcy matter. MS further stated she had not received any information from Respondent regarding how to collect her property and client file and was unsure how to proceed.
7. No affidavit of compliance was ever received from Respondent regarding her Rule 23 obligations to clients to wind up her practice. As such, in early February

- 2020, I sought an order to have a trustee appointed for her practice.
8. By order dated February 12, 2020, Caledonia Civil Division appointed Jess Schwidde, Esq. as trustee to take over the duty of returning Respondent's client files, property, and funds held in trust.
 9. From February 12, 2020 to August 10, 2020, Mr. Schwidde worked diligently to obtain Respondent's client records, property and files. He determined there were fifteen matters that required action to wind up or find substitute counsel to take over and carried out the actions required.
 10. Mr. Schwidde has been in contact with every client and no client was timely informed by Respondent of her suspension before Mr. Schwidde informed them.
 11. On April 22, 2020, I received a copy of an email from client LC. LC stated that Respondent had never informed her of the suspension.
 12. Under Rule 23.F, a suspended attorney must "refund within ten days of entry of the order or decision any part of any fees paid in advance which have not been earned."
 13. The December 2019 statement for Respondent's trust account showed the account had a balance of \$14,767.32 as of December 31, 2019.
 14. The February 2020 statement for Respondent's client trust account showed the account had a balance of \$14,767.22 as of February 29, 2020. The \$0.10 differential appears to be related to the bank's automatic transmission of interest to the Vermont Bar Foundation and additional accumulated interest.
 15. No other evidence of activity in the account appeared on the December, January

or February statements.

16. Respondent's written statements to the trustee support that some of the money in trust was earned fees that needed to be withdrawn from the account and some money belonged to others and needed to be returned.
17. The essentially unchanged bank statement amounts taken in conjunction with Respondent's own statements show that Respondent was holding funds belonging to clients at the time of her suspension and she took no action to return any of the funds.
18. Trustee Schwidde spent considerable time figuring out which fees were earned and which had to be returned for each client. This process proved difficult due to Respondent's lack of any organized invoicing or trust accounting system.

Lack of trust accounting system – Rule 1.15(a)(1)

19. When Trustee Schwidde began the process of inventorying Respondent's client files and winding up her practice, he requested records from Respondent that would show who her clients were, their contact information, and the status, amount, and purpose of their funds held in trust. Respondent was unable to produce any organized record to show client contact information or how much she held for each client. There were no invoices or bills produced. For some clients, but not all, she was able to produce a fee agreement.
20. She instead produced for the Trustee a brief written narrative for each client and matter as to funds taken in, work performed, and estimated funds to be returned,

which the Trustee then discussed with each client to hear their perspective and whether they agreed or disagreed.

21. There was no evidence of any system showing a record of receipts and disbursements and timely notice to clients of receipts and disbursements.
22. There was no evidence of regular timely reconciliation of the client trust account.
23. Bank statements and Respondent's own narrative description of client funds and work performed showed that Respondent had a routine practice of leaving earned fees in her trust account for months and in some cases years, thereby failing to hold her own property separate from client property.
24. For example, in reporting on the status of a closed guardianship matter to the trustee by email dated April 14, 2020, Respondent noted that she placed \$6,000 in to her trust account in 2016 and "took \$3500 immediately in 2016, but left the rest as earned income in the trust. This was not forgotten by me, but left for realization p.r.n. or when the whole matter was complete." Although the matter had been closed for several months, as of Respondent's April 14, 2020 email, there was \$2,490 still remaining in her trust account associated with the matter, which she claimed were earned fees.

Unreasonable fee for bankruptcy action for client MS – Rule 1.5(a)

25. MS hired Respondent in September 2018 to help her file for bankruptcy.
26. At the time, MS was also involved related divorce and child custody proceedings that needed to be addressed first and for which she retained other counsel.

27. MS borrowed \$2,400 from relatives to pay Respondent upfront the estimated costs and legal fees of what would be required to assist with the bankruptcy matter. MS understood that this was the estimated complete expense to her for this service.
28. In 2018, Respondent deposited the \$2,400 into her trust account.
29. Respondent helped MS by informing her of what documents she would need to gather, what debtor courses she would need to complete in anticipation of filing, and how to handle calls from creditors, including advice on which bills to continue paying. Respondent also met MS twice in person.
30. Due to her other family court matters taking priority, MS was not able to have all the required documentation for a bankruptcy petition complete until around October 2019.
31. In October and November 2019, MS requested that Respondent initiate her petition with the documents she had given Respondent. Respondent replied by telling MS she needed to pay an additional \$400. MS declined to pay as requested.
32. Around that time, MS requested an accounting for how the \$2,400 was used. Respondent never provided MS with any accounting or bill or initiated a bankruptcy petition.
33. Respondent's license was suspended in December 2019, but she did not tell MS or take any action to protect MS's immediate interests.
34. On January 14, 2020, Bar Counsel received a complaint from MS's relative

related to Respondent not having helped MS filed for bankruptcy as she was retained and paid to do.

35. The same day, Bar Counsel telephoned and spoke to MS. In early January 2020, MS had again been requesting that Respondent go forward with filing on her behalf and had found on the web the record of the December 31, 2019 suspension order, which Respondent had not informed her of as required by Rule 23.
36. No invoice, billing statement or accounting was ever provided to MS by Respondent, and none of her fees were ever returned, however she did receive a refund of \$335 which had been designated as anticipated court filing fees.
37. MS did receive her client file from Respondent. However, the file consisted mostly of copies of documents MS had provided. There was nothing of value in the file MS could take to another lawyer to help finish, such as any sort of initial draft filing or meaningful analysis.
38. MS eventually obtained new counsel, paid additional legal fees of approximately \$1,500, and filed for bankruptcy in July 2020.

DATED: August 26, 2020



Sarah Katz, Disciplinary Counsel