STATE OF VERMONT
PROFESSIONAL RESPONSIBILITY BOARD

In Re: Jean M. Pagliughi
PRB File No. 2021-101

Decision No. 244

PROCEDURAL HISTORY

Disciplinary Counsel and Respondent, Jean M. Pagliughi, initiated this proceeding by filing a stipulation of facts dated August 13, 2021 for the Hearing Panel's review, along with jointly proposed conclusions of law. Under Administrative Order 9, Disciplinary Counsel can initiate a disciplinary proceeding by filing either a petition of misconduct or a stipulation of facts. *See* A.O. 9, Rule 11(D)(1). Rule 11(D)(5) provides further that:

> [w]here proceedings have been initiated by stipulated facts, the hearing panel shall review the stipulation and either: (i) reject the stipulation, in which case the parties may amend and resubmit it, or disciplinary counsel may reinstitute proceedings by filing a petition of misconduct in accordance with this rule; or (ii) accept the stipulation and adopt it as its own findings of fact, although the panel may take further evidence on the issue of sanctions.

A.O. 9, Rule 11(D)(5)(a).

On November 5, 2021, the Panel issued a ruling rejecting the proposed stipulation. Subsequently, on January 7, 2022, the parties submitted an amended stipulation of facts and amended conclusions of law for the Panel's consideration. In their jointly proposed conclusions of law, the parties maintain that Respondent's conduct in connection with her handling of two real estate transactions violated client trust accounting provisions in the Rules of Professional Conduct.

Pursuant to Administrative Order 9, Rule 11(D)(5)(a), the Panel hereby accepts the amended proposed stipulation of facts and will issue a public reprimand for Respondent's Misconduct. The Panel issues the following findings of fact, conclusions of law and sanction order:

FINDINGS OF FACT

A. Background

1. Respondent, Jean Pagliughi, is a licensed Vermont lawyer who maintains a solo real estate practice in Ludlow, Vermont. She was admitted to practice in New York in November of 1988 and in Vermont in October of 2017.

2. Respondent incorporated in Vermont as a solo practitioner in 2018, as Jean M. Pagliughi, P.C., after relocating from New York. Respondent began practicing initially as a low-pro-bono attorney on a family court matter through the Vermont Bar Association.

3. Beginning in March 2020, Respondent began work in a practice area new to her - real estate transactions.

4. Since September of 2020 to the present, Respondent's P.C. has maintained one IOLTA trust account[1] with Berkshire Bank (hereafter "the IOLTA account").

5. Since March of 2020 Respondent has used QuickBooks to document real estate transactions and organized her QuickBooks for each client as a "subaccount" of the IOLTA account within QuickBooks.

B. The February 25, 2021 Violation

6. In the first real estate transaction Respondent represented the seller of a home. On the

[1] Rules 1.15, 1.15A, and 1.15B of the Vermont Rules of Professional Conduct address trust accounts. An IOLTA account is a pooled interest-bearing trust account for client or third-party funds that are not expected to earn any significant amount of interest because they are "of a small amount or are held for a period of short duration." V.R.Pr.C. 1.15B, Reporter's Notes – 2009 Amendment, at 808. The interest that accrues in an IOLTA account is periodically paid over to the Vermont Bar Foundation "to support legal services for the poor or for public education on the legal system." *Id*.

date of the closing, February 25, 2021, Respondent wired her client the client's entire net sale proceeds in the amount of $410,100.35 from the IOLTA account. This wire left a nominal balance of less than $10 in the account.

7. On the same date, Respondent wrote out check #123 from the IOLTA account in the amount of $27,000.00 to realtor Engel and Volkers-Okemo. *See*, Respondent's Exhibit A. The memo line of the check noted it was for the realtor's sales commission. Respondent did not realize or appreciate that the realtor's commission had already been deducted from the seller's net proceeds by the closing agent.

8. Had Respondent been properly and timely logging transaction details, she would have known that she had wired her client essentially the entire net proceeds of the transaction leaving insufficient funds to cover the $27,000.00 check to the realtor, and accordingly would not have written the bad check.

9. The next morning Respondent hand-delivered the $27,000.00 check to the realtor.

10. At 10:00 a.m. that morning the realtor deposited the $27,000.00 check at Berkshire Bank.

11. At 10:15 a.m., a Berkshire Bank employee called Respondent and told her that the IOLTA account contained insufficient funds to cover the $27,000.00 check. Respondent realized that the realtor's commission had already been deducted from her client's net sale proceeds and that she had made a mistake in writing the check. The Bank employee agreed to place a short hold on all activity to give Respondent an opportunity to sort out the mistake.

12. Respondent immediately telephoned the realtor and explained the mistake. The

realtor immediately walked back to the bank and the $27,000.00 payment was reversed.

13. No client funds were used to cover the erroneously written $27,000.00 realtor commission check.

C. The February 12, 2021 Violation

14. The second error happened in connection with a real estate transaction that closed on February 12, 2021. Respondent represented the buyer of real estate. She wrote check #104 for $1,500.00 from her IOLTA account to Connecticut Valley Title Services, Inc. *See*, Respondent's Exhibit C.

15. On the morning of February 26, 2021, Connecticut Valley Title Services deposited the $1,500.00 check. In the same phone call from Berkshire Bank on February 26, 2021 discussed above, the bank employee told Respondent that this $1,500.00 check had also been presented for payment against insufficient funds.

16. Respondent knew that Connecticut Valley Title Services was entitled to the $1,500.00, so she transferred $1,500.00 from Jean M. Pagliughi, P.C.'s operating account into the IOLTA account to cover that check.

17. Respondent later determined why her IOLTA account contained insufficient funds to cover the $1,500.00 check.

18. No client funds were used to cover the $1,500.00 check.

19. As was the case with the $27,000.00 check, had Respondent timely and accurately logged the transaction details for the closing on February 12, 2021, including the amount of funds and the sources coming into her account for the transaction and the amount of funds

and payees due to go out for the transaction, she would not have written the bad check.

D. Post-Violations Findings

20. Respondent had an existing organizational system for real estate transactions using the QuickBooks software. However, a compliance exam of the trust account for the period of April 1, 2020 through March 30, 2021 showed that her system was flawed because Respondent:

    (a) did not log all transaction details in a timely manner; and,

    (b) did not timely reconcile the QuickBooks system with the bank statements.

21. Respondent recognizes the problems with her systems for maintaining complete and accurate settlement statements, balancing clients' accounts, and reconciling the accounts.

22. To help bring her into compliance and ensure she stays there, Respondent has retained the services of a CPA, who has helped her set up better systems for documenting the receipt and disbursement of funds and worked with her to help her better understand how to perform the required regular IOLTA account reconciliation.

23. The compliance exam did not reveal any evidence that Respondent intentionally took, misused, or lost any client funds.

24. Disciplinary Counsel has not received any client complaints about Respondent.

25. Respondent has no prior disciplinary record.

26. Respondent was forthright and immediately cooperative with disciplinary counsel throughout the compliance examination and investigation. She took full responsibility for her oversight of the accounts and expressed remorse for the

noncompliance.

CONCLUSIONS OF LAW

A. Rules 1.15(a)(1) and Rule 1.15A

As a solo practitioner, Respondent bears the responsibility for maintaining the accuracy and integrity of her law firm's "IOLTA" client trust accounts. Rule 1.15(a)(1) provides, in pertinent part, that "[a] lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in accordance with Rules 1.15A and B." V.R.Pr.C. 1.15(a)(1). Rule 1.15A of the Vermont Rules of Professional Conduct provides, in pertinent part, as follows:

> (a) Every lawyer or law firm holding funds of clients or third persons . . . shall hold such funds in one or more accounts in a financial institution or, in appropriate circumstances, a pooled interest-bearing trust account pursuant to Rule 1.15B. An account in which funds are held that are in the lawyer's possession as a result of a representation in a lawyer-client relationship or a fiduciary relationship shall be clearly identified as a "trust" account or shall be identified as a fiduciary account, such as an estate, trust, or escrow account, to distinguish such funds from the lawyer's own funds …. The lawyer or law firm shall maintain an accounting system for all such accounts that shall include, at a minimum, the following features:
>
> > (2) a record for each client or person for whom property is held, which shall show all receipts and disbursements and carry a running account balance;
> >
> > ***
> >
> > (4) records documenting timely reconciliation of all accounts maintained as required by this rule and a single source for identification of all accounts maintained as required in this rule. "Timely reconciliation" means, at a minimum, monthly reconciliation of such accounts.
> >
> > V.R.Pr.C. 1.15A(a).

Twice Respondent failed to verify that the IOLTA trust account ledger for her client

reflected that the client had sufficient funds to cover checks she wrote from the account on the client's behalf. In sum, Respondent violated Rules 1.15A(a)(2) and (4).

B. Rule 1.1

Rule 1.1 provides: "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." Note 5 to the Rule says, in pertinent part: "Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation".

Respondent violated Rule 1.1 by twice attempting to pay third parties to the transactions who had either already been paid by others, or were to be paid by others. In both cases she did so without ensuring that the IOLTA account had sufficient funds to cover the checks. We find that generally speaking, Rule 1.1 requires a lawyer representing a party to a real estate transaction to keep track of who is paying third parties to the transaction, such as brokers and title insurers, to avoid third parties being paid twice, or not at all. Generally, a real estate transaction should include a settlement statement of some kind reflecting all credits and debits applicable to each party, and all disbursements from the funds held by the settlement agent (often the buyer's lawyer). The stipulated facts here do not indicate whether such a statement was used in either of the real estate transactions that involved errors. In any event, Respondent's error in issuing the two checks was a negligent mistake with the potential to cause harm to Respondent's clients.

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)).

A. 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.

B. 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*. The ABA Standards "assume that the most important ethical duties are those obligations which a lawyer owes to his client." *In re Bowen*, 2021 VT 7, ¶ 30, ___Vt.___, 252 A.3d 300, 310 (quotations omitted).

In this case, with respect to the trust accounting violations, Respondent owed a duty to her clients to safeguard and preserve their property by adhering to the trust account rules. *See, ABA Standards*, Theoretical Framework, at 5 (providing that the "duty of loyalty" includes a duty to "preserve the property of a client"). She also owed her clients a duty to competently handle their real estate transactions that included keeping track of who was paying third parties to the transaction, such as brokers and title insurers, to avoid third parties being paid twice, or not at all.

C. Attorney's 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"). "[A]pplication of these definitions is fact-dependent" and "[t]he line between negligent acts and acts with knowledge can be fine and difficult to discern . . . ." *In re Fink*, 2011 VT 42, ¶ 38.

Absent evidence that a lawyer disregarded information indicating a need to act promptly to prevent loss or potential loss of a client's funds, a lawyer's mental state in trust accounting violation cases is usually negligence. *See, In re PRB No. 2013-145*, 2017 VT 8, ¶ 1, 204 Vt. 612, 621, 165 A.3d 130, 140 (concluding that "Respondent acted negligently when he failed to set up

his Quicken accounting system in accordance with the Rules of Professional Conduct …. Respondent was negligent when he failed to perform timely reconciliations of the IOLTA account").

Disciplinary Counsel stipulated that there was no evidence suggesting that Respondent acted with an improper purpose or with intent to circumvent Respondent's financial obligations. And, based on the compliance examination, it appears that the trust accounting system problems were attributable to lack of experience practicing real estate transactional law, a lack of diligence and disorganization. Similarly, there is no indication that Respondent intentionally paid third parties more than they were entitled to receive. Accordingly, the Panel concludes that Respondent acted negligently and not intentionally.

D. 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.

Here, there was no evidence of actual injury to any client. No client funds were ever lost as a result of the deficiencies in Respondent's trust accounting procedures.

Nevertheless, there was potential for injury to Respondent's clients. Had $27,000.00 or more of any other client's money been in the trust account when the $27,000.00 realtor check

was remitted for payment the check would have been paid by the bank from the funds. Failing to undertake regular reconciliation and, when reconciliation is undertaken, failing to promptly address discrepancies that are presented in the three-way process creates a general risk to client funds that must be considered in the context of determining an appropriate sanction. Here, Respondent did not timely reconcile her accountings. In addition, it has been observed that "lawyer misconduct in handling and protecting client trust accounts [ ] injure[s] both the public at large and the profession by increasing public suspicion and distrust of lawyers." *In re Farrar*, 2008 VT 31, ¶ 8, 183 Vt. 592, 949 A.2d 438 (quoting *In re Anderson*, 171 Vt. at 635, 769 A.2d at 1285).

Presumptive Sanction under the ABA Standards

With respect to the trust accounting violations, ABA Standard 4.13 applies in this case. It provides that "[r]eprimand is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client." *ABA Standards* § 4.13. As discussed above, Respondent was negligent and, while there was no actual injury as a result of Respondent's trust account violations, there was potential for injury. Thus, Standard 4.13 is the proper standard. *See, e.g., PRB No. 2013-145*, 2014 Vt. at 621-622 (applying Standard 4.13 as presumptive standard where respondent failed to reconcile trust account for nine months).

Likewise, ABA Standard 4.53(a) calls for a public reprimand when the lawyer "demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client". *ABA Standards* § 4.53(a). A private admonition is the presumptive sanction when the competency deviation is an "isolated instance of negligence". *ABA Standards* § 4.54. Here there were two bad checks written, one in each of two distinct transactions.

The ABA standards provide that in cases involving multiple misconduct violations "[t]he ultimate

sanction imposed should at least be consistent with the sanction for the most serious instance of misconduct…." *ABA Standards*, Theoretical Framework, at 7. In accordance with this guidance, the Panel concludes that a public reprimand should be the presumptive sanction for this case.

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 public reprimand. 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.

The following aggravating factors under the ABA Standards are present:

§ 9.22(c) (pattern of misconduct) – A pattern of misconduct was present in this case. The violations on the part of the Respondent were repeated on two occasions and involved two different clients.

§ 9.22(d) (multiple offenses) – Respondent's conduct involved two violations of the trust account rules and two violations of Rule 1.1.

§ 9.22(i) (substantial experience in the practice of law) – Respondent had practiced law for approximately thirty-two years at the time of the violations.

(b) Mitigating Factors

The following mitigating factors under the ABA Standards are present:

§ 9.32(a) (absence of prior disciplinary record) – Respondent has no record of having been professionally disciplined before.

§ 9.32(b) (absence of dishonest or selfish motive) – There is no evidence before the Panel

indicating that Respondent took or misused client funds or otherwise engaged in any dishonest conduct, or that she sought to advance her own interests.

§ 9.32(d) (good faith effort to rectify the consequences of misconduct) – Once Respondent was notified by the bank that the trust account contained insufficient funds to cover the two bad checks she promptly took steps to correct the situation.

§ 9.32(e) (full and free disclosure to disciplinary board or cooperative attitude toward proceedings) – Respondent was cooperative during the course of the compliance examination and Disciplinary Counsel's investigation. However, this factor is not entitled to significant weight because Respondent has a duty under V.R.Pr.C. 8.1(b) to cooperate in connection with any disciplinary investigation. *See, In re Bowen*, 2021 VT 7, ¶ 45 ("[B]ecause attorneys have an independent professional duty to cooperate with disciplinary investigations under Rule 8.1(b), this factor is afforded little weight.).

§ 9.32(l) (remorse) – The parties have stipulated that Respondent has taken full responsibility for the deficiencies in the management of her trust account and that she has expressed remorse for her violations.

(c) Weighing the Aggravating & Mitigating Factors

The mitigating factors are approximately equivalent to the aggravating factors and cause the Panel to conclude that the presumptive sanction of public reprimand should be imposed. Based on the fact that Respondent has had no prior disciplinary infractions over the course of a long career and the absence of any dishonest or selfish motive, the Panel is convinced that a reprimand will suffice in this case to protect the public.

Having in mind that "[i]n general, meaningful comparisons of attorney sanction cases are difficult as the behavior that leads to sanctions varies so widely between cases," *In re*

Strouse, 2011 VT 77, ¶ 43, 190 Vt. 170, 34 A.3d 329 (Dooley, J., dissenting), the Panel must nevertheless consider whether imposing a public reprimand is consistent with past disciplinary determinations.

This case is somewhat unusual because it involves not only a failure to maintain a proper trust accounting system but also a failure to competently administer real estate conveyances so as to protect client funds. There are many cases imposing public reprimands for failing to maintain a proper trust accounting system. *See, e.g.*, *In re Watts*, PRB Decision No. 224 (2019) (imposing public reprimand where violations were extensive and lawyer had substantial experience in the practice of law); *In re Hibbitts*, PRB Decision No. 145 (2011) (imposing public reprimand based even though there was no prior record and no fraud and the respondent cooperated in Disciplinary Counsel's investigation and promptly hired an accountant to put a fully compliant accounting system in place). However, this case involves additional violations of Rule 1.1 beyond the trust accounting rules.

In re Nawrath, 170 Vt. 577, 749 A.2d 11 (2000), presents the best guidance for this case in light of a strikingly similar set of facts and legal analysis. In that case, a respondent whose practice consisted largely of handling real estate transactions neglected a number of client matters. His violations included failing to promptly issue final title insurance policies and otherwise neglecting components of real estate transactions. In addition, he was found to have mismanaged his client trust account. His violations extended to several clients and several matters. The injury to one client was minimal and promptly remedied; there was only potential injury to the remaining clients. Despite the fact that a pattern of misconduct was found to be present, the Court recognized multiple mitigating factors: no prior record; a cooperative attitude, a good-faith effort to rectify the consequences of the conduct; the absence of a selfish motive;

and the fact that stress and depression had impacted respondent's work. Based on these considerations, the Court imposed a public reprimand in combination with a period of probation during which the respondent was required to work with a mentoring attorney. These circumstances track the circumstances in the present case.

The Panel concludes that a similar approach is warranted here – a public reprimand. The Panel concludes that a mentoring attorney is not required because after the violations in this case the Respondent made improvements to her trust accounting practices. She has also gained more experience in real estate conveyancing and now understands the need to meticulously keep a settlement statement of some kind reflecting all credits and debits applicable to each party, and all disbursements from the funds held by the settlement agent. Based on the Panel's findings of fact and conclusions of law, Respondent is hereby **publicly reprimanded** for having violated Rules 1.15(a)(1), 1.15A, and 1.1 of the Vermont Rules of Professional Conduct.

Dated: February 17, 2022 **Hearing Panel No. 4**

By:_____
Mary K. Parent, Esq., Chair

By:_____
Cara L. Cookson, Esq.

By:_____
Thad Richardson, Public Member