

SUPREME COURT OF VERMONT

In re PRB Docket No. 2013.160

199 Vt. 637 (2015) · No. PRB Docket No. 2013.160; PRB File No. 2013.160 · Decided March 30, 2015

SUMMARY

The Vermont Supreme Court adopted a Professional Responsibility Board decision admonishing an attorney for holding uncashed checks totaling \$124,797.40 in a title-insurance trust account for seven months. The court found that the practice commingled the attorney's funds with third-party funds in violation of Vermont Rule of Professional Conduct 1.15(a)(1), but caused no harm and involved substantial mitigating factors. The sanction was admonition by Disciplinary Counsel.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Vermont
DECIDED	March 30, 2015
DOCKET	PRB Docket No. 2013.160; PRB File No. 2013.160
DISPOSITION	other
PROCEDURAL POSTURE	The Vermont Supreme Court exercised review on its own motion of a Vermont Professional Responsibility Board hearing-panel decision and adopted that decision in its entirety as a final order.
STANDARD OF REVIEW	The Supreme Court reviewed the Professional Responsibility Board decision on its own motion and adopted it in its entirety; no separate standard of review was stated.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion adopting a Professional Responsibility Board decision as a final order.

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QUESTIONS PRESENTED

1. Whether holding uncashed checks payable to the respondent's firm in a title-insurance trust account constituted commingling of the firm's funds with third-party funds in violation of Vermont Rule of Professional Conduct 1.15(a)(1).
2. Whether admonition by Disciplinary Counsel was an appropriate sanction for the negligent trust-account violation in light of the absence of injury and the mitigating and aggravating factors.

HOLDINGS

1. A lawyer's failure to negotiate checks payable to the lawyer's firm, while retaining those checks in a trust account, results in commingling the lawyer's funds with funds of a third party and violates Vermont Rule of Professional Conduct 1.15(a)(1).
2. Admonition by Disciplinary Counsel is an appropriate sanction where the lawyer negligently mishandles property, causes little or no actual or potential injury, and substantial mitigating factors outweigh the aggravating factor of substantial experience.

KEY QUOTATIONS

"Accordingly, the Court orders review of the decision on its own motion, adopts the hearing panel decision in its entirety as a final order of this Court, waives briefing and oral argument, and orders that the decision be published in the Vermont Reports." (199 Vt. 637)

"Respondent's practice of holding checks payable to her firm for premiums owed to the firm without cashing the checks resulted in commingling of her funds with those of a third party in violation of this rule." (199 Vt. 638)

"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." (199 Vt. 638)

FACTUAL BACKGROUND

Respondent, a Vermont attorney, maintained a trust account used for title-insurance transactions. Over seven months, she held uncashed checks payable to her firm totaling \$124,797.40 in that trust account instead of depositing them into the firm's operating account, intending to preserve funds for malpractice insurance and possibly hiring an associate. The practice caused commingling of the firm's funds with third-party funds, but no client or third party suffered injury, and respondent corrected the practice immediately after it was identified during a compliance audit.

PROCEDURAL HISTORY

The respondent and Disciplinary Counsel submitted stipulated facts, recommended conclusions of law, and a recommended sanction to the Professional Responsibility Board panel. The respondent waived specified procedural rights, including an evidentiary hearing. The panel found that respondent violated Vermont Rule of Professional Conduct 1.15(a)(1) by holding uncashed checks payable to her firm in a title-insurance trust account and recommended admonition by Disciplinary Counsel. The Supreme Court reviewed the matter sua sponte, waived briefing and oral argument, adopted the panel decision, and ordered publication.

DISPOSITION

other

CASES CITED

- In re PRB Decision No. 181 (2014)
- In re PRB Decision No. 175 (2014)
- In re PRB Decision No. 115 (2008)
- In re PRB Decision No. 173 (2014)
- In re PRB Decision No. 172 (2014)

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