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Professional Conduct Committee

a committee of the attorney discipline system

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Chadwick, Roger C., Jr. advs. Attorney Discipline Office - #17-044

REPRIMAND AND ORDER ON COSTS

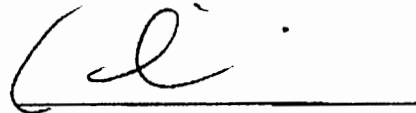
The Professional Conduct Committee (“the Committee”) deliberated each Respondent’s Stipulation as to Facts, Violations and Sanction (“the Stipulation,” attached as **Exhibit A and B**).

The Committee approved the facts as stipulated by clear and convincing evidence. It further found that Mr.  and Mr. Chadwick’s conduct violated Rules of Professional Conduct 1.15; 8.4(a); and Supreme Court Rule 50, as stipulated.

The Committee also concluded that a Reprimand is appropriate. Its sanction is in accord with the purposes of attorney discipline. *See e.g., Conner’s Case* 158 N.H. 299, 303 (2009); *Richmond’s Case*, 152 N.H. 155, 159-60 (2005). The sanction is also in accord with the *ABA Standards for Imposing Lawyer Sanctions* (2005) (“Standards”).

Having approved the stipulated sanction, the Committee approved the agreement that [REDACTED] and Mr. Chadwick shall reimburse the Committee for all costs of investigation and prosecution of this matter.

October 7, 2019



David M. Rothstein
Chair

cc: Elizabeth M. Murphy, Assistant Disciplinary Counsel
Russell F. Hilliard, Esquire
File



NEW HAMPSHIRE SUPREME COURT
PROFESSIONAL CONDUCT COMMITTEE

Chadwick, Roger C., Jr.

advs.

Attorney Discipline Office

#17-044

STIPULATION AS TO FACTS, VIOLATIONS,
AND SANCTION: REPRIMAND

Respondent Roger C. Chadwick, Jr., Esq., and the Attorney Discipline Office (ADO) stipulate as follows:

A. Facts

1. Mr. Chadwick is an attorney licensed to practice law in New Hampshire. Mr. Chadwick was admitted to practice in 1992.
2. Mr. Chadwick was also admitted to practice law in Massachusetts on December 30, 1991. He is currently on retired status for the Massachusetts Bar.
3. At all times material to this proceeding, Mr. Chadwick practiced law at the law firm of Chadwick-Fricano-Weber, PLLC, ("CFW") located at 255 Main Street, Nashua, NH 03060.
4. Mr. Chadwick does not have a previous disciplinary history.
5. This disciplinary matter was initiated by a letter of self-report dated October 10, 2017 ("Self-Report Letter").

6. The Self-Report Letter indicated that the CFW IOLTA account located at Citizen's Bank ("IOLTA Account") had not been reconciled in compliance with Supreme Court Rule 50 and that the IOLTA Account was out of trust.
7. It is not clear when the IOLTA Account fell out of compliance with Supreme Court Rule 50's requirements. In late 2016, CFW was informed that the IOLTA Account was not in compliance by their bookkeeper, Robyn Neveu. Acting upon Ms. Neveu's advice, CFW transferred \$5,740.50 from its operating account into the IOLTA Account to resolve this issue. Several months later and upon Ms. Neveu's advice, CFW switched its accounting software to Cosmolex.
8. After the switch to Cosmolex, Ms. Neveu informed CFW that the IOLTA Account was still not in compliance. CFW conducted a review of the IOLTA Account and in September 2017 deposited an additional \$2,250.00 to correct eight client matters going back three years.
9. Despite Ms. Neveu's purported experience providing bookkeeping services to law firms, she failed to properly reconcile the CFW IOLTA Account.
10. In November 2017, CFW decided to change bookkeepers, lacking confidence in Ms. Neveu's skills to properly maintain the IOLTA Account. CFW stopped making use of Ms. Neveu's services.
11. On November 11, 2017, CFW hired the accounting firm of Melanson Heath to examine the activity in the IOLTA Account from 2014 forward to determine all current trust account balances.

12. Melanson Heath prepared a report dated May 4, 2018, detailing the results of the examination. As a result of the examination, CFW learned that they were out of trust in the amount of \$15,012.17. This amount consisted of an accumulation of errors over the years that had gone unnoticed. CFW has since deposited that amount into the IOLTA Account. A copy of the May 4, 2018, report is attached to this Stipulation.
13. Melanson Heath's examination did not identify any illicit commingling of funds or fraudulent activity or instances of assets being intentionally misappropriated.
14. Melanson Heath now performs the monthly reconciliations for the IOLTA Account.
15. After review of the Melanson Heath report and the accounting records provided by CFW, the ADO determined that CFW continued to hold funds for clients whose matters were closed. Some of these funds were earned fees which should have been removed from the IOLTA while others were funds to be refunded to clients. In one case, CFW was holding \$150.00 for a restitution payment to a victim that could not be found. CFW has since resolved all of these issues and is no longer out of trust.
16. Since November 2017, CFW has continued to use the services of Melanson Heath to reconcile the IOLTA Account. The ADO has met with the accountants from Melanson Heath who have been performing

services for CFW and reviewed the monthly reconciliations performed by Melanson Heath, consistent with Rule 1.15 and Supreme Court Rule 50.

B. Disciplinary Rules Violated

17. The parties agree that Mr. Chadwick's conduct in this case involves violations of the New Hampshire Rules of Professional Conduct, as follows:

Rule 1.15: Safekeeping Property and Supreme Court Rule 50

18. The facts set forth above are incorporated by reference.
19. Rule 1.15 states as follows:
- (a) 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, in accordance with the provisions of the New Hampshire Supreme Court Rules. The lawyer shall maintain the minimum financial records with respect to the client and third party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules. Sufficient records of all other property of clients or third persons shall be kept by the lawyer and shall be preserved for a period of six years after final distribution of such other property or any portion thereof. All client and third party property shall be identified as such and appropriately safeguarded.
 - (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount appropriate for that purpose.
 - (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
 - (d) Funds may be disbursed from lawyer trust accounts upon (A) (i) deposit, receipt of which is acknowledged by the receiving financial institution, of cash, bank cashier's check,

certified check, or electronic transfer of funds at least equal to the sum of such disbursements, or (ii) clearance of any other form of deposit by such receiving financial institution, and (B) availability of such funds to the lawyer from the receiving financial institution.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) 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 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.

20. Mr. Chadwick's failure to properly reconcile the IOLTA Account violates Rule 1.15 and Supreme Court Rule 50.

21. Mr. Chadwick's failure to properly reconcile the IOLTA Account resulted in: (1) CFW withdrawing funds from the IOLTA Account for some clients in excess of the amount that the client had in the IOLTA Account, resulting in the IOLTA Account being out of trust; and (2) commingling client funds with earned fees that had not been withdrawn from the IOLTA Account; in violation of Rule 1.15 and Supreme Court Rule 50.

Rule 8.4(a): General Rule

22. Having found the foregoing violation, there is clear and convincing evidence that Mr. Chadwick's conduct, as described herein, violated N.H. R. Prof. Conduct 8.4(a).

C. Recommended Sanction

23. The Attorney Discipline Office and Mr. Chadwick jointly agree that a reprimand is the appropriate sanction in this matter. This sanction would serve the purposes of attorney discipline.
24. Both case law and the American Bar Association's *Standards for Imposing Lawyer Sanctions* (2005) ("*Standards*") support this sanction.
25. The purpose of the Court's disciplinary power is "protecting the public, maintaining public confidence in the bar, preserving the integrity of the legal profession, and preventing similar conduct in the future." *Conner's Case*, 158 N.H. 299, 303 (2009). "The sanction . . . must take into account the severity of the misconduct." *Coffey's Case*, 152 N.H. 503, 513 (2005).
26. Although the Court has not adopted the *Standards*, it looks to them for guidance. *Conner's Case*, 158 N.H. at 303. The *Standards* set forth a four-part analysis for courts to consider in imposing sanctions: "(a) the duty violated; (b) the lawyer's mental state; (c) the potential or actual injury caused by the lawyer's misconduct; and (d) the existence of aggravating or mitigating factors." *Id.* (quoting *Douglas' Case*, 156 N.H. 613, 621 (2007)); *Standards* § 3.0.
27. The first three parts of the analysis create the framework for characterizing the misconduct and determining a baseline sanction. See *Conner's Case*, 158 N.H. at 303 (stating that "[i]n applying these factors, the first step is to categorize the respondent's misconduct and identify

the appropriate sanction”). Once the baseline sanction is determined, the Court then looks to the fourth and final part of the analysis: the existence of any aggravating or mitigating factors, and whether they affect the baseline sanction. *See id.* (stating that “[a]fter determining the sanction, [the Court] consider[s] the effect of any aggravating or mitigating factors on the ultimate sanction”).

28. Under the first prong of the analysis, Mr. Chadwick violated duties owed to clients by failing to properly reconcile the IOLTA Account. *See Standard §4.1.*
29. With respect to Mr. Chadwick’s mental state under the second prong of the sanction analysis, the parties agree that Mr. Chadwick’s mental state was negligent.
30. The third prong of the sanction analysis requires an assessment of the actual or potential injury caused by Mr. Chadwick’s misconduct.
31. Mr. Chadwick’s conduct caused potential injury to his clients by failing to properly reconcile the IOLTA Account; and by withdrawing funds from the IOLTA Account for some clients in excess of the amount that the client had in the IOLTA Account, resulting in the IOLTA Account being out of trust, putting the funds of other clients at risk.
32. Mr. Chadwick’s 1.15 rule violation implicates Section 4.1 of the *Standards*. That Section provides:

Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property:

- 4.11 Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
- 4.12 Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.
- 4.13 Reprimand [Public Censure] is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.
- 4.14 Admonition¹ [Reprimand] 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.
33. Mr. Chadwick's conduct in this matter, when considered under *Standard* 4.13, would call for a baseline sanction of a public censure.
34. The baseline sanction must be considered in light of any aggravating and mitigating factors. *E.g., Conner's Case*, 158 N.H. at 303.
35. In this case there is one aggravating factor present, Mr. Chadwick's substantial experience in the practice of law. *See Standards* § 9.22.
36. Mitigating factors include the absence of prior disciplinary record, absence of a dishonest or selfish motive, full and free disclosure to disciplinary board, a cooperative attitude toward the disciplinary proceedings, and a good faith effort to rectify the consequences of misconduct by hiring the accounting firm of Melanson Heath to review their accounts. *See Standards* § 9.32. Although not a recognized mitigating factor under the Standards, the ADO considered the fact that

¹The term "admonition," as used in the *ABA Standards*, is analogous to a reprimand in New Hampshire. The term "reprimand," as used in the *ABA Standards*, is analogous to a public censure in New Hampshire.

Mr. Chadwick self-reported the firm's out of trust situation to the ADO to be highly mitigating.

37. The parties agree that given the baseline sanction, and consideration of aggravating and mitigating circumstances, that a downward departure from the baseline sanction to reprimand will serve the purposes of discipline and is an appropriate sanction in this case.
38. The Attorney Discipline Office would typically seek a period of monitoring to ensure compliance with Rule 1.15 and Supreme Court Rule 50 in the future. However, given that CFW and Melanson Heath have provided monthly reconciliations since January 2018 to the ADO to review, the ADO believes that there is no need to further monitor compliance. The Melanson Heath accountants have also discussed the matter with the ADO and made available their work product for ADO review.

D. Costs

39. Subject to the PCC's approval of Mr. Chadwick's Stipulation, Mr. Chadwick agrees to pay the costs incurred by the ADO in the investigation and enforcement of this disciplinary matter. See Supreme Court Rule 37(19). His agreement to pay the costs incurred by the ADO is the subject of a separate agreement signed by Mr. Chadwick.

E. Effect of Stipulation

40. Mr. Chadwick understands that this Stipulation represents a recommended disposition, and that the PCC may accept, reject, or conditionally accept the Stipulation pursuant to Rule 37A(III)(aa)(1).

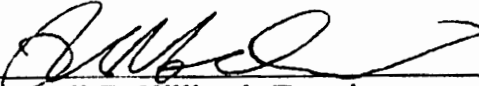
41. Mr. Chadwick acknowledges that the admissions of misconduct and the proposed disposition contained in this Stipulation are freely, knowingly, and voluntarily submitted; that he is not entering this Stipulation as a result of any threats, coercion, or duress, or of any promises or inducements not set forth in the Stipulation
42. Mr. Chadwick has been represented by counsel in reaching this Stipulation and he is fully aware of the consequences of the Stipulation.
43. Mr. Chadwick knowingly and intelligently waives his right to a hearing.

Respectfully submitted,


Dated: _____ 2019

Roger C. Chadwick, Jr., Esquire
Respondent

Dated: 10/4 2019


Russell F. Hilliard, Esquire
Counsel for Respondent


Dated: 10/4 2019


Elizabeth M. Murphy, Esquire
Assistant Disciplinary Counsel

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Respectfully submitted,

Dated: 10/4/ 2019



Roger C. Chadwick, Jr., Esquire
Respondent

Dated: _____ 2019

Russell F. Hilliard, Esquire
Counsel for Respondent

Dated: 10/4 2019



Elizabeth M. Murphy, Esquire
Assistant Disciplinary Counsel

Personal and Confidential

May 4, 2018

Roger Chadwick, Esq.
[REDACTED]
[REDACTED]

Chadwick-Fricano-Weber, PLLC
255 Main Street
Nashua, NH 03060

Additional Offices:

Andover, MA
Greenfield, MA
Manchester, NH
Ellsworth, ME

RE: IOLTA Account Investigation

Attached is our report of the Interest on Lawyer Trust Accounts (IOLTA) investigation dated May 4, 2018.

Our engagement was conducted in accordance with attestation standards for agreed-upon procedures engagements of the American Institute of Certified Public Accountants (AICPA). Chadwick-Fricano-Weber, PLLC (CFW) was solely responsible for the sufficiency of the agreed-upon procedures. Therefore, we make no representations as to the sufficiency of the procedures as described in the following report or for any other purpose. The specific procedures are outlined in the following pages.

The report reflects the outcome of the investigation, including the proper three-way reconciliation of the IOLTA account balances through December 31, 2017. In order to complete our investigation and reconcile the IOLTA accounting, we obtained various CFW documents including, but not limited to:

1. QuickBooks accounting software records from March 2011 through February 2017
2. Clio Law Practice Management trust accounting records from January 2014 through February 2017
3. Cosmolex Legal Practice Management trust accounting records from March 2017
4. Various billing records/meeting notes
5. Various bank statements
6. Various CFW prepared bank reconciliations

Our report and final balances are contained in the following pages. If you have questions, please do not hesitate to call.

Sincerely,

Karen Boulay

Karen Boulay, CFE, CPA, CVA
Melanson Heath

Background

On October 10, 2017 [REDACTED] and Roger (Rusty) Chadwick, Esq. (the attorneys) of Chadwick-Fricano-Weber P.L.L.C., through their attorney, Russell F. Hilliard of Upton Hatfield, self-reported to the NH Attorney Discipline Office (ADO) that their firm's trust account (IOLTA) had certain instances in which it was out of compliance with Supreme Court Rule 50. Trust Accounts. Shortly thereafter, our firm was contacted to discuss the examination and reconciliation of the IOLTA accounting from July, 1 2014 to current. We were engaged on November 11, 2017.

CFW had previously retained the services of an accountant who purported to specialize in trust accounting for attorneys. She worked with CFW from approximately 2015 to 2017. After an initial period of accounting issues and a change in software packages, as outlined by Attorney Hilliard in the self-reporting letter, the attorneys were given monthly IOLTA reconciliations by the accountant and were told that the three-way reconciliation was being properly conducted and appropriate records were being kept. As recently as September 2017, the accountant assured the attorneys the proper reconciliations were being completed. In late-2017 the accountant began telling the attorneys there were discrepancies in the trust accounts and that money needed to be replenished from the CFW operating account. It was at this time that the attorneys realized the IOLTA trust accounts were in fact not going through the proper three-way reconciliation process. We met with the attorneys in early December 2017 and began the agreed-upon procedures to investigate and reconcile the IOLTA accounting.

Scope

The objective of the fraud examination team was as follows:

- Examine the clients' trust fund activity from 2014 forward to determine appropriately reconciled, current trust account balances. This is to be completed in two stages, the first of which will be completed with the intent of CFW self-reporting the findings to the ADO. The first phase includes reconciliation of all client data and balances through December 31, 2017. The second phase includes reconciling the accounts through April 28, 2018 (most-current month end).

Approach

Examination Team Members

Karen Boulay, CFE, CPA, CVA, Melanson Heath; Samantha Binning, Supervisor, Melanson Heath

Procedures

As part of the examination on this matter, the team took the following actions:

- Obtained, reviewed, and analyzed QuickBooks trust accounting records through February 28, 2017, the last date the software was utilized by CFW
- Obtained, reviewed, and analyzed Clio Law Practice Management trust accounting records through February 28, 2017, the last date the software was utilized by CFW
- Obtained, reviewed and analyzed Cosmolex Legal Practice Management trust accounting records from March 1, 2017 to December 31, 2017

- Analyzed the trust bank account held at Citizens Bank to verify the balance of \$117,851.77 reconciled at February 28, 2017 to the QuickBooks accounting records. This reconciliation ensured us that all transactions were accounted for in QuickBooks through this timeframe.
- Exported all QuickBooks trust account transactions to an excel database. The prior accountant had booked the majority of transactions to one trust liability account. There were names associated with specific transactions. We utilized these names to separate out the trust account activity by client and obtain client trust account balances at February 28, 2017.
- Exported all Clio transactions into an excel database. We utilized a pivot table to compare the client trust account balances in QuickBooks versus the client trust account balances in Clio.
- For every client trust balance that did not match between QuickBooks and Clio, we examined the individual transactions to determine discrepancies.
- Every discrepancy was investigated through one or more of the following methods:
 - Tracing of the transaction in the Citizens bank statement records
 - Verification of the transaction against CFW's monthly billing records
 - Inquiry of the attorneys regarding client activity
- We investigated the "Unknown" and "Due from Operating" general ledger accounts contained in QuickBooks. The prior accountant used these accounts to 'reconcile' the trust account balance in QuickBooks, instead of investigating the discrepancies and allocating them to the proper client account(s).
- We provided the attorneys with a preliminary list of client balances at February 28, 2017. For any client balance that appeared to be negative, information was included regarding the transactions that occurred to make the account negative.
- The attorneys reviewed the February 28, 2017 balances for any known issues or discrepancies. If an attorney felt there was a discrepancy, that discrepancy was investigated and the balances was adjusted, if there was documentation to back up the change.
- Exported all Cosmolex Legal Practice Management trust accounting records between March 1, 2017 and December 31, 2017. All transactions were reconciled between the source billing documents provided by CFW and the bank statements. These reconciled transactions were added to the clients' February 28, 2017 trust account balances to determine the client balances at December 31, 2017.
- Each attorney was provided with the detail behind the each client trust account balance for review and verification.

Findings

Based on the documents reviewed, information collected, and interviews conducted during the course of the examination, the team has created a proper three-way reconciliation of the IOLTA client trust fund balances as of December 31, 2017.

We did not identify any illicit comingling of funds or fraudulent activity. Throughout the course of our investigation, the IOLTA account always maintained a substantial positive balance and we found no instances of money being transferred out of the IOLTA without corresponding client activity (i.e. did not find instances of assets being intentionally misappropriated).

Impact

The reconciled bank balance at December 31, 2017 is \$182,793.11. The client trust fund liability balance at December 31, 2017 is \$197,805.28. CFW will replenish the trust fund for \$15,012.17, the discrepancy between the bank balance and the actual client liabilities.

Based upon the examination and reconciliation, Chadwick-Fricano-Weber, P.L.L.C. is in compliance with Supreme Court Rule 50 at December 31, 2017.

We are attaching a summary of client balances at 12/31/17 (Exhibit 1) and account activity for each client (Exhibit 2). We understand that because this is an Attorney Discipline Office (ADO) process, it is acceptable to include client names in the attachments, and such confidentiality extends to the ADO.

Follow-up/Recommendations

The team has discussed with CFW the need for proper three-way reconciliations to be conducted going forward. In December, the attorneys set into place internal control procedures for ensuring that the accounts are reconciled at least monthly. To ensure the balances are up to date currently, CFW has agreed to engage us to reconcile the client balances through April 28, 2018 and conduct an on-site review of their internal control and IOLTA accounting procedures, focusing specifically on verifying that they are completing the proper three-way reconciliation and complying with Supreme Court Rule 50. We anticipate the follow-up to be completed May 31, 2018.