

ORIGINAL

Louisiana Attorney Disciplinary Board

FILED by: *Donna P. Burgess*

Docket#

Filed-On

18-DB-040

4/29/2019

**LOUISIANA ATTORNEY DISCIPLINARY BOARD**

**IN RE: CONNIE P. TRIEU**

**DOCKET NO. 18-DB-040**

---

**REPORT OF HEARING COMMITTEE #10**

---

**INTRODUCTION**

This attorney disciplinary matter arises out of formal charges consisting of one count filed by the Office of Disciplinary Counsel (“ODC”) against Connie P. Trieu (“Respondent”), Louisiana Bar Roll Number 30312.<sup>1</sup> ODC alleges that Respondent violated the following Rules of Professional Conduct: 1.15(a) (b) & (d).<sup>2</sup>

**PROCEDURAL HISTORY**

The formal charges were filed on May 17, 2018. Respondent filed an answer to the charges on June 12, 2018. After several continuances, the hearing of this matter was held on February 7, 2019. Deputy Disciplinary Counsel Paul E. Pendley appeared on behalf of ODC. Respondent appeared with counsel, Nancy J. Marshall.

For the following reasons, the Committee finds that Respondent was in technical violation of the Rule of Professional Conduct alleged by ODC; which violations the Committee finds were negligent, unintentional, and mitigated.

**FORMAL CHARGES**

The formal charges read, in pertinent part:

The ODC received notice from Gulf Coast Bank on September 20, 2016 that Respondent had overdrawn her IOLTA client trust account on September 12,

---

<sup>1</sup> Respondent was admitted to the practice of law in Louisiana on April 13, 2006. Respondent is currently eligible to practice law in Louisiana.

<sup>2</sup> See the attached Appendix for the text of these Rules.

2016. Notice of the overdraft was sent by the ODC to Respondent on September 22, 2016, as well as the standard request for the prior six months of accounting records.

Respondent responded to the notice and request on October 5, 2016. Respondent submitted the accounting records for March, 2016 to September, 2016, which included bank statements, HUD statements, Closing Disclosure Statements, monthly bank reconciliations, and file balance ledgers. Respondent's law practice appears to consist primarily of real estate closings.

The accounting records submitted by Respondent were audited by ODC Forensic Auditor Angelina Marcellino. The overdraft was the result of a lender who had failed to timely wire funds associated with a real estate transaction. Ms. Marcellino identified multiple running balances that appear to have been improperly held in the trust account and these funds were due to clients or buyers. Although Respondent corrected all of the balances after the audit period, she had still held some buyer and seller funds in her trust account for an extended period of time, in addition to the reported deposit issue.

Respondent's file number 20130602220 settled on September 24, 2013, but \$185.00 remained undisbursed as of September 30, 2016. These funds were owed and due to a real estate seller for a lien placed on November 6, 2013. Respondent finally disbursed the funds on December 20, 2016, over three years after the funds should have been disbursed.

Respondent's file number 2013110291 settled on November 26, 2013. However, \$3,283.04 remained undisbursed as of September 30, 2016. This amount was owed and due to the real estate seller. Respondent finally disbursed the funds to the seller on January 4, 2017, more than three years after the funds should have been disbursed.

Respondent's file number 201320006 settled on February 7, 2014. However, \$14.51 remained undisbursed as of September 30, 2016. These funds were due to the real estate buyer as excess cash for closing costs. The funds were finally disbursed to the buyer on December 20, 2016, almost three years after the funds should have been disbursed.

Respondent's file number 2013120008 settled on January 3, 2014. However, \$1,000 remained undisbursed as of September 30, 2016. These funds were owed and due to the real estate sellers for a lien. The funds were finally disbursed on December 7, 2016, almost three years after the funds should have been disbursed.

Respondent's file number 2015070257 settled on August 28, 2015. However, \$1,000 remained undisbursed as of September 30, 2016. These funds were owed and due to the real estate seller for a damage deposit held in escrow at the time of settlement. The funds were finally disbursed on December 13, 2016, over two years after the funds should have been disbursed. Ms. Marcellino also found other instances wherein Respondent withheld funds in her trust account that were owed and due to other parties. These instances are contained in her audit report.

Respondent's file, designated "Firm-Gulf" had an undisbursed balance of \$274.07 as of September 30, 2016. The Escrow Trial Balance Report reflects a last activity associated with the file was on May 31, 2015. The funds belong to the firm.

Respondent also had other instances of smaller balances that were owed and due to be disbursed but were still being held in Respondent's IOLTA trust account under various file numbers.

Respondent, by engaging in the above listed accounting practices, has violated Louisiana Rules of Professional Conduct Rule 1.15 (a) (b) (d).

### **EVIDENCE**

The evidence submitted and reviewed consisted of thirteen (13) exhibits submitted by the ODC and oral testimony by Respondent and also by ODC's witness, Angelina Marcellino, a forensic accountant who reviewed Respondent's bank accounts and testified as to her findings.

### **FINDINGS OF FACT**

The Committee finds that the allegations of rule violations were proven; however, the Committee also found the Respondent credible with her passionate explanations of the reasons for her actions and found no malice, no self-dealing, or fraudulent or improper motivation for her actions.

### **RULES VIOLATED**

The Committee finds that the Respondent violated Louisiana Rules of Professional Conduct, Rule number 1.15 (a) (b) and (d).

### **SANCTION**

Louisiana Supreme Court Rule XIX, §10(C), states that when imposing a sanction after a finding of lawyer misconduct, a committee shall consider the following factors:

- (1) Whether the lawyer has violated a duty owed to a client, to the public, to the legal system, or to the profession;
- (2) Whether the lawyer acted intentionally, knowingly, or negligently;
- (3) The amount of the actual or potential injury caused by the lawyer's misconduct; and
- (4) The existence of any aggravating or mitigating factors.

Here, Respondent violated duties owed to the profession and to the general public. She acted negligently in her actions which resulted in the violation. Respondent's misconduct caused potential harm by retaining funds indefinitely in her trust account and negligently managing oversight of such account.

The *ABA Standards for Imposing Lawyer Sanctions* suggest that suspension is the baseline sanction for Respondent's misconduct. The ABA Standards direct that imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors: (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. Here, the defendant failed to fully disburse funds held in her trust account for a substantial period of time after the closing of the associated transaction. Respondent's practice consists almost entirely of real estate transactional matters and the funds held in her trust account are associated with sales and purchases of real estate for which she was engaged to facilitate. The Committee found, after testimony and evidence presented that the actions of the Respondent were not as a result of malicious or criminal intent, were done with good intentions, but were negligently not dutifully attended to and resulted in the Rules violations. Ultimately, Respondent returned all of the funds to parties to whom they were due, but due to a series of communications failures and failure to dutifully attend to the remittance of funds held, Respondent's actions resulted in money being held in her trust account for a significant amount of time following the closing of the associated transaction. The Committee finds that the Respondent is a sole practitioner and manages her office affairs almost entirely on her own in addition to maintaining her transactional practice. The ODC cites *In Re Lon Roberson*, 2009-1741 (La. 1/8/10), 26 So. 3d 124 and the closest in factual similarity as the present matter. In that case, the lawyer failed to pay a third party medical provider, eventually owing more than

\$25,000, but made full restitution after the complaint was filed. The lawyer admitted to the misconduct and demonstrated that his filing and accounting systems were inadequate. The mitigating factors were found to be an absence of any prior disciplinary record, absence of any dishonest or selfish motive, a timely good faith effort to make restitution, full and free disclosure to the disciplinary board and a cooperative attitude toward the proceedings. In *In Re Johnson*, 225 So.3d 1057 (La. 9/6/17), the facts indicated a similar, but much more severe violation of Rule 1.15, with the court finding that the lawyer's actions resulted in actual harm, with the sanction imposed being a one year and one day suspension, fully deferred, with two years of supervised probation. In the instant case, the Committee finds that while the Rule violation occurred, the same was unintentional, negligent as a result of the lack of oversight of the respondent's office management and records keeping, that the Respondent's actions did not cause her clients any actual damage other than time and that Respondent's actions did not benefit her in any way and the retention of client funds in her trust account until they could be returned to the proper parties was not done with any negative intention. Respondent has practiced law for eleven (11) years and there was no prior disciplinary action or complaint about her activities until an inadvertent overdraft notice was received by the ODC, (notably, not a subject of these proceedings, or, to the best of the Committee's knowledge, information and belief, any proceedings). Respondent cooperated fully with the investigation and acknowledged, with explanation, all of the charges. The Committee found her sincere and remorseful and as a result finds that the Rules violations have been proven, but recommends suspension from the practice of law for six (6) months, fully deferred and further recommends that Respondent attend an IOLTA account management course during such deferral period. If any additional violation is found to have occurred during the suspension period, such suspension should be executory as of the date of such finding.

## CONCLUSION

The Committee finds that the ODC has proven the Rules Violations and Respondent has acknowledged or admitted to each factual allegation asserted with explanations as to why such Rule violation was unintentional. The Committee finds the Respondent to be sincere in her remorse and truthful in her explanation and notes that the ODC did not make any assertion that her actions were anything but negligent.

This opinion is unanimous and has been reviewed by each committee member, who fully concur and who have authorized Scott A. Umberger, to sign on their behalf.

New Orleans, Louisiana, this 29<sup>th</sup> day of April, 2019.

**Louisiana Attorney Disciplinary Board  
Hearing Committee #10**

**Scott A. Umberger, Committee Chair  
Sandra D. Guidry, Lawyer Member  
Chad M. Rachel, Public Member**

BY:



**Scott A. Umberger, Committee Chair  
For the Committee**

## APPENDIX

### Rule 1.15. Safekeeping Property

(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. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer's primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(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 or obtaining a waiver of those charges, but only in an amount necessary for that purpose.

\*\*\*

(d) 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. For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property. 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.

\*\*\*