

STATE BAR OF TEXAS



Office of the Chief Disciplinary Counsel

INVESTIGATORY HEARING REPORT

CONFIDENTIAL

Date: December 17, 2018

Case: [REDACTED] - [REDACTED] - [REDACTED]

COMPLAINANT'S ALLEGATIONS:

Complainant is a doctor who provided treatment to two of Respondent's personal injury clients. Complainant alleges Respondent has refused to make payment for medical services provided to her clients under a Letter of Protection. Respondent requested reductions that were approved by Complainant's office in hopes of finalizing these old cases but then failed to make the agreed reduced payments. Respondent only communicated with Complainant's office when he complained to the State Bar.

RESPONDENT'S RESPONSE:

In her response dated [REDACTED], 2018, Respondent states she entered into a verbal contract in [REDACTED] 2018 to pay Complainant \$4,162.00 on the account of [REDACTED] and \$3,727.00 on the account of [REDACTED]. The subsequent nonpayment was an oversight for which she apologizes. Respondent subsequently provided copies of two cashier's checks dated [REDACTED], 2018 payable to Complainant.

When requested, Respondent provided additional information regarding the illness and deaths of both her parents between [REDACTED], 2017 and [REDACTED] 2018 that caused her to travel several times to Indiana and to be away from her office while tending to their illnesses and deaths. After returning to the office, Respondent inadvertently did not calendar the payment owed to Complainant and thereby missed her commitment to pay.

Respondent began looking through her files when she received the grievance and recalled that she did agree to make a payment to Complainant but did not find any evidence that she withheld money to pay Complainant when the two cases settled. Respondent has not been able to find her client files for either case. Respondent explains [REDACTED] was facing a foreclosure when her case settled and Respondent reduced her attorney fees and waived expenses and attempted to expedite payment to [REDACTED] so she could save her home. Respondent explained, "Due to [REDACTED] dire financial situation at the time of her settlement, she did not agree to have any money withheld for medical bills." Respondent provides the affidavit of [REDACTED] to confirm how the settlement funds were handled.

Respondent provides the court docket for [REDACTED], which shows a Motion to Dismiss and

an Agreed Take Nothing Judgment were entered in [REDACTED] 2016, indicating the case was settled near that time. Respondent was asked for records of how that settlement was distributed and requested additional time to respond. Respondent's last communication stated she was retaining counsel on this case. The panel will be updated with any financial records provided by Respondent prior to the hearing.

CASE ANALYSIS AND ISSUES FOR INVESTIGATORY HEARING:

The grievance alleges a failure to pay Complainant for the medical treatment he provided to [REDACTED] and [REDACTED], implicating possible mishandling of settlement funds by Respondent, with possible violations of Rule 1.14(a) and 1.14(b). [REDACTED] was injured in a car accident in [REDACTED] 2010 and her case settled near [REDACTED] 2013. It remains an open question if Respondent deposited the settlement funds in a trust account and/or if she failed to protect the interest of a third party at the time she received and distributed the [REDACTED] settlement, in violation of Rule 1.14 (a) or (b) but the complaint appears to be barred by the four year limitations provision of TRDP 17.06.

The [REDACTED] case was not settled until approximately [REDACTED] 2016 and there is no limitations issue. The panel must determine if Respondent withheld funds from the settlement to pay Complainant and then failed to promptly pay him or possibly converted the funds to another use. If the panel can confirm that no funds were withheld from the [REDACTED] settlement to pay Complainant, the focus then becomes if it was ethical for Respondent to ignore the amounts she knew were owed to Complainant when she distributed the [REDACTED] settlement funds. Some guidance on this issue is provided by the recent Opinion 681 from the the Professional Ethics Committee, which is directory but not binding legal authority.

Exhibits:

- A. Complaint
- B. Response
- C. Explanation of extenuating circumstances
- D. Ethics Opinion 681

Prepared and Reviewed by



Stephanie Strolle
Assistant Disciplinary Counsel

SUPPLEMENTAL INVESTIGATOR'S REPORT

CONFIDENTIAL

Date: February 25, 2019

Case: [REDACTED] - [REDACTED] - [REDACTED]

ADDITIONAL CASE NOTES:

Supplemental information was provided by Respondent after retaining counsel, attached to this Supplemental Report as Exhibit E. It includes a copy of the Settlement Statement on the [REDACTED] case, reflecting Respondent was withholding the reduced amount of \$3,726.15 to pay Complainant, [REDACTED]. (See page 11 of supplement) [REDACTED] signed the Statement on [REDACTED], 2016. Respondent also provides a "Revised Settlement Statement", created recently to more accurately show the distribution of the settlement. (See page 10 of supplement). Respondent's counsel has explained [REDACTED] was listed on the original Settlement Statement but no funds were withheld to pay that provider because it had closed.

Bank statements and the underlying deposit and withdrawal items for Respondent's IOLTA trust account for [REDACTED] through [REDACTED] of 2016 are provided as Exhibit G. The bank records confirm the settlement check was properly deposited into the trust account on [REDACTED], 2016. Respondent paid her fees and expenses and the original net payment to [REDACTED] the same date. Respondent did not pay [REDACTED] the amount withheld from the [REDACTED] settlement in [REDACTED] 2016. Respondent eventually paid Complainant the amount withheld from the [REDACTED] settlement in [REDACTED] 2018, but it was from her own funds as Respondent's trust account balance on [REDACTED], 2016 was only \$229.08. Respondent violated Rule 1.14(a) and 1.14(b) in her handling of the funds due to [REDACTED] from the [REDACTED] settlement. It is also not explained why Respondent gave [REDACTED] \$1,800.00 on [REDACTED], 2016. Respondent's counsel says the second check was to pay [REDACTED], but the Settlement Statement reflects a balance of \$1,500.00 was owed to that provider.

The evidence supports a finding of Professional Misconduct for the manner in which Respondent handled the settlement funds owed to providers in [REDACTED] 2016, a substantial time before the health issues with Respondent's parents that delayed her payment to [REDACTED] in late 2017-early 2018. The panel should include questioning of Respondent to determine the appropriate sanction to be imposed, including an effort to determine the Respondent's state of mind related to the misconduct.

Exhibits:

- E. Additional materials from Respondent
- F. Discovery answers and medical bills regarding [REDACTED]
- G. [REDACTED] IOLTA records [REDACTED] 2016-[REDACTED] 2016

Prepared and Reviewed by

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