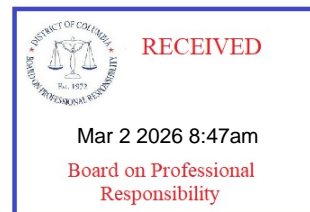


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matters of :

SETH J. PRICE, ESQUIRE, :

Respondent, :

A Member of the Bar of the :
District of Columbia Court of Appeals. :

Bar Number: 455264 :

Date of Admission: November 7, 1997 :

and :

DAVID B. BENOWITZ, ESQUIRE, :

Respondent, :

A Member of the Bar of the :
District of Columbia Court of Appeals. :

Bar Number: 451557 :

Date of Admission: July 12, 1996 :

Disciplinary Docket No.
2020-D072

Disciplinary Docket No.
2021-D212

AMENDED PETITION FOR NEGOTIATED DISPOSITION

Pursuant to D.C. Bar Rule XI, § 12.1 and Board Rule 17.3, Disciplinary Counsel and Respondents respectfully submit this Petition for Negotiated Disposition in the above-captioned matters. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar Rule XI. Pursuant to Rule XI, § 1(a), jurisdiction is found because Respondents are members of the Bar of the District

of Columbia Court of Appeals.

I. Statement of the Nature of the Matter

Disciplinary Counsel docketed these matters for investigation based on a notice that a Maryland Interest on Lawyers Trust Account maintained by Respondents' law firm ("the firm"), account number ending in 7587, at TD Bank was overdrawn. TD Bank sent this notice to Disciplinary Counsel after one of Respondents' clients presented a refund check for payment, which TD Bank honored and paid despite the trust account holding insufficient funds. As part of its investigation, Disciplinary Counsel subpoenaed records from TD Bank relating to the trust account for the period February 1, 2019 to July 30, 2019, as well as records relating to Respondents' operating account for the period February 1, 2019 to April 30, 2020. Disciplinary Counsel also subpoenaed Respondents' own records relating to the trust account for the period January 1, 2019 to April 30, 2020. Disciplinary Counsel also requested that Respondents respond to various written inquiries related to the overdraft and interviewed the firm's finance manager. At Disciplinary Counsel's request, both Respondents provided affidavits regarding how they allocated responsibilities in their firm for management and oversight of the trust account.

Based on its investigation, Disciplinary Counsel determined that a negligent

misappropriation had occurred and that this was due to inadequate supervision of the firm's finance department, as well as the firm's failure to maintain complete and adequate records of the funds deposited into and withdrawn from the trust account. Inadequate recordkeeping prevented Disciplinary Counsel from determining whether earned and unearned fees were commingled. The investigation determined that Respondent Benowitz bore responsibility for the misappropriation, although both Respondents are signatories on the trust account.

II. Stipulation of Facts and Rule Violations

1. Respondent Price is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on November 7, 1997, and assigned Bar number 455264. He is also a member of the Bar of the State of New York.

2. Respondent Benowitz is a member of the Bar of the District of Columbia Court of Appeals, having been admitted on July 12, 1996, and assigned Bar number 451557. He is also a member of the Bar of Maryland and the Virginia State Bar.

3. Respondents co-founded Price Benowitz LLP, which is a law firm with offices in several jurisdictions, including the District of Columbia. Both Respondents work primarily in the firm's D.C. office. Respondent Price has always been the firm's Managing Partner.

4. At all relevant times, the firm maintained an Interest on Lawyers Trust Account, account number ending in 7587, at TD Bank. Respondents were the only attorneys in the firm with signatory authority on the trust account. At all relevant times, Respondent Benowitz exercised day-to-day responsibility for managing the trust account.

5. At all relevant times, in addition to carrying a full caseload of criminal cases and supervising other attorneys, Respondent Benowitz was responsible for executing transfers between the firm's trust account and operating account, with instructions from the firm's finance department. Respondent Price would occasionally sign checks written on the trust account. However, most checks were signed by Respondent Benowitz, following instructions and backup documentation from the firm's finance department. Respondent Benowitz had online access to the trust account (unlike Respondent Price) and regularly reviewed the account.

6. On March 1, 2019, A.D. hired the firm to represent him as the target of a state criminal investigation. The engagement agreement called for a "flat fee" of \$5,000, billed at a rate of \$500 per hour. If criminal charges were filed, then the fees paid would be "deducted against any future representation agreement." A.D. paid the full fee that day by credit/debit card, and it was deposited into the trust account.

7. Four days later, A.D. hired the firm to represent him in a related federal criminal investigation. The engagement agreement called for a “flat fee” of \$155,000, billed at a rate of \$500 per hour. It credited \$5,000 to A.D. as “prepaid from previous retainer agreement.” It also specified that if criminal charges were filed, then the fees paid would be “deducted against any future representation agreement.” A.D. paid \$150,000 by cashier’s check the next day, and the firm deposited the funds into its trust account.

8. On March 19, 2019, A.D. signed another engagement agreement with the firm regarding the federal criminal investigation, which replaced the first agreement on this issue. This engagement agreement increased the “flat fee” from \$155,000 to \$250,000, again billed at a rate of \$500 per hour. It again provided that if criminal charges were filed, then the fees paid would be “deducted against any future representation agreement.” It credited \$155,000 to A.D. as “prepaid from previous retainer agreement,” and he paid the balance (*i.e.*, \$95,000) by cashier’s check, which the firm deposited into its trust account. At this point, the firm had received a total of \$250,000 from A.D.

9. The firm did not maintain contemporaneous records detailing the work performed on A.D.’s matters. However, as indicated in paragraph 17 below, the assigned attorney calculated at the conclusion of the representation in December 2019 that the firm had earned \$3,125 for work performed, including an

office meeting with the client on April 23, 2019. A.D. has not disputed this amount, and Disciplinary Counsel has no reason to conclude that the amount is unreasonable.

10. On July 10, 2019, A.D. requested a refund of \$150,000. Respondent Benowitz approved the request after discussion with the attorney responsible for the matter and the firm's finance department, and he signed a check written on the trust account for the "return of unused legal fees." The firm mailed the refund check to the client.

11. The following day, the balance of the firm's trust account was \$219,150.17. A.D. had not yet negotiated his refund check, so the trust account should have held at least an amount equal to the funds paid by A.D. that the firm had not earned, which totaled at least \$246,875.¹

12. On July 19, 2019, pursuant to instructions from the firm's finance department, Respondent Benowitz authorized three electronic transfers from the trust account to its operating account in the amounts of \$47,933.53, \$47,500.00, and \$4,305.00. The trust account balance fell to \$126,536.64 following these

¹ This amount reflects the total paid by A.D. less the amount the firm earned by the conclusion of the representation. The firm's records are unclear regarding what portion of the \$3,125 had been earned prior to the overdraft. Even if one assumes that the full \$3,125 had been earned prior to the overdraft, the trust account did not hold the full remaining unearned balance of A.D.'s funds at the time of the overdraft.

transfers.

13. On July 22, 2019, A.D. deposited the refund check at his bank. Despite the trust account holding insufficient funds, TD Bank honored the check and paid out \$150,000.00. The balance of the trust account then fell to negative \$21,038.36.

14. On July 23, 2019, the firm received an overdraft notice from TD Bank and notified the Maryland Bar of the overdraft the same day. Maryland Bar Counsel did not investigate the overdraft.

15. The same day, Respondent Benowitz authorized two electronic transfers from the operating account to the trust account in the amounts of \$47,933.53 and \$47,500. This brought the balance of the trust account to \$75,395.17. However, it should have held at least an amount equal to the funds paid by A.D. that the firm had not earned, which then totaled at least \$96,875.

16. Respondents could not explain either of the two \$47,000+ electronic transfers that occurred on July 19 and 23, 2019. The firm's records likewise do not explain these transfers. Disciplinary Counsel has been unable to determine the source of those funds, their purpose, or to whom they belong.

17. Eventually, A.D.'s criminal matters were resolved without charges. On November 20, 2019, the firm issued a refund of unearned fees in the amount

of \$50,000, paid from its operating account. On December 23, 2019, the firm issued him another refund of unearned fees in the amount of \$46,875, again paid from its operating account. The final refund was determined based on the attorney responsible for the matter's calculation that the firm had earned \$3,125 while working on A.D.'s matters.

18. The firm's records do not indicate that any of A.D.'s funds were ever transferred from the trust account to the operating account. The records do not indicate why the refunds were issued from its operating account, and Respondents have not otherwise been able to explain this.

19. At the time of the overdraft, Respondents failed to ensure that their firm kept and maintained complete records of all entrusted funds received and disbursed from its bank accounts, which would allow Disciplinary Counsel to audit the handling of entrusted funds. In particular, the ledgers maintained by the firm did not provide adequate detail regarding the nature, purpose, and source of funds, or adequately document the transfer of funds out of the trust account. Disciplinary Counsel accordingly cannot determine whether unearned and earned fees were ever commingled.

20. At all relevant times, Respondent Benowitz was the attorney in charge of supervising the firm's finance department and its handling of the firm's

trust account. In that role, he was responsible for ensuring that the finance department's practices and procedures complied with applicable ethical rules, including how they instructed him to transfer funds in and out of the trust account. However, he failed to provide adequate oversight of these practices. This—along with the firm's failure to maintain proper recordkeeping—led to the overdraft, misappropriation of A.D.'s funds, and both Respondents' inability to explain the various transactions relating to the trust account detailed above.

21. No client or third party has complained to Disciplinary Counsel regarding Respondents' handling of entrusted funds.

22. The overdraft on July 22, 2019, is the only instance Disciplinary Counsel is aware of in which the trust account has gone into a negative balance.

23. The evidence does not show that the misappropriation in this matter was intentional or reckless.

24. Respondent Price's conduct violated Rule 1.15(a) of the District of Columbia Rules of Professional Conduct, in that he failed to ensure that the firm maintained complete records of entrusted funds.

25. Respondent Benowitz's conduct violated the following District of Columbia Rules of Professional Conduct:

a. Rule 1.15(a), in that he negligently caused a misappropriation

of entrusted funds;

- b. Rule 1.15(a), in that he failed to ensure that the firm maintained complete records of entrusted funds; *and*
- c. Rule 5.3(b), in that he failed to adequately supervise nonlawyer employees in the firm's finance department so as to ensure that their transfer instructions to him, and other practices and processes, were compatible with the duties under Rule 1.15(a) to track and safeguard entrusted client funds.

III. Statement of Promises Made by Disciplinary Counsel

In connection with this Petition for Negotiated Disposition, Disciplinary Counsel agrees not to pursue any charges arising out of the conduct described in Section II other than those set forth above or any sanction other than that set forth below.

IV. The Agreed-Upon Sanctions

A. Agreed Sanctions

Disciplinary Counsel and Respondents agree that the sanctions to be imposed in this matter are as follows:

- 1. Respondent Price will receive a public censure. He must attend the "Managing Money" course taught by the DC Bar's Practice

Management Advisory Service within six (6) months of the Court's final order of discipline and provide Disciplinary Counsel with proof of completion.

2. Respondent Benowitz will be suspended from the practice of law for six (6) months. In order to minimize disruption to the representation and defense of his clients, the period of suspension will begin sixty (60) days after the Court's final order of discipline. Respondent Benowitz may choose to begin the period of suspension earlier by informing Disciplinary Counsel, the Board, and the Court in writing, with fourteen (14) days' notice, of the date on which he has elected to start the period of suspension. He must also attend the "Managing Money" course taught by the DC Bar's Practice Management Advisory Service within six (6) months of the Court's final order of discipline and provide Disciplinary Counsel with proof of completion.

B. Relevant Precedent

Under Board Rule 17.5(a)(iii), the agreed-upon sanction in a negotiated discipline case must be "justified, and not unduly lenient, taking into consideration the record as a whole." However, a justified sanction "does not have to comply with

the sanction appropriate under the comparability standard set forth in D.C. Bar Rule XI, § 9(h).” Board Rule 17.5(a)(iii).

The normal sanction imposed for negligent misappropriation is a six-month suspension. *In re Robinson*, 74 A.3d 688, 697 (D.C. 2013); *see also In re Edwards*, 870 A.2d 90, 94 (D.C. 2005). Public censure is an appropriate sanction for the failure to maintain complete records of entrusted funds. *See In re Clower*, 831 A.2d 1030, 1035 (D.C. 2003); *see also In re Dorsey*, 274 A.3d 316, 317 (D.C. 2022) (negotiated disposition); *In re Iwuji*, 223 A.3d 108 (D.C. 2020) (negotiated disposition).

C. Circumstances in Aggravation and Mitigation

There are no aggravating circumstances. Mitigating circumstances include that each Respondent: 1) acknowledges his misconduct, 2) has fully cooperated with Disciplinary Counsel, 3) has expressed sincere remorse, and 4) has no disciplinary history. Additionally, since the overdraft and to improve his management of the trust account and the firm’s finance department, Respondent Benowitz has completed over 600 hours of study in accounting through the University of Maryland, Global Campus, and the University of Pittsburgh. The firm also spent considerable funds and undertook extensive efforts, both before and after the overdraft, to address deficiencies in the records and processes associated with

the trust account. These efforts included: hiring a part-time CFO and external consultants whose mandates encompassed improving the firm's financial record-keeping, transfer processes, and accounting practices for entrusted client funds; engaging an independent forensic accounting firm that worked with outside counsel to correct the firm's record-keeping in connection with ODC's investigation; and implementing and training staff to use CLIO, a legal practice management program that integrates with the firm's accounting software to improve recordkeeping.

D. Justification of Recommended Sanction

Disciplinary Counsel has considered the resources required to prosecute these matters and the likelihood of prevailing on the merits if they went to hearing and believes that negotiated dispositions are warranted. Respondents have considered the resources necessary to defend these matters and the possibility of greater sanctions if they went to hearing. Considering the misconduct along with the mitigating factors, the parties submit that the agreed-upon sanctions are justified and not unduly lenient.

V. Respondents' Affidavits

In further support of this Petition for Negotiated Discipline, attached are Respondents' Affidavits pursuant to D.C. Bar Rule XI, § 12.1(b)(2).

Conclusion

Respondents and Disciplinary Counsel request that the Executive Attorney assign a Hearing Committee to review the Petition for Negotiated Discipline pursuant to D.C. Bar Rule XI, § 12.1(c).

Respectfully submitted,

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