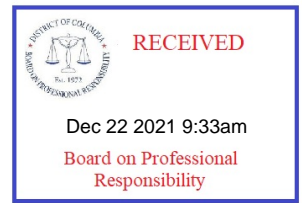


**DISTRICT OF COLUMBIA COURT OF APPEALS
BOARD ON PROFESSIONAL RESPONSIBILITY**



In the Matter of

CATHERINE R. MACK, ESQUIRE

Respondent,

Member of the Bar of the

District of Columbia Court of Appeals

Bar Number: 204149

Date of Admission: January 10, 1975

Disciplinary Docket No. 2018-D053

PETITION FOR NEGOTIATED DISPOSITION

Pursuant to the District of Columbia Court of Appeals Rules Governing the Bar, as prescribed by Rule X and Rule XI, §12.1 (D.C. Bar R.) and Board Rule 17.3, Disciplinary Counsel and Respondent respectfully submit this petition for negotiated disposition in the above-captioned matter. Jurisdiction for this disciplinary proceeding is prescribed by D.C. Bar R. XI, §1(a), because Respondent is a member of the District of Columbia Bar.

**I. STATEMENT OF THE NATURE OF MATTERS
BROUGHT TO DISCIPLINARY COUNSEL'S ATTENTION**

Disciplinary Counsel received an overdraft notice from Respondent's bank.

II. STIPULATION OF FACTS AND CHARGES

Disciplinary Counsel and Respondent stipulate to the following:

The Facts

1. On October 23, 2017, Disciplinary Counsel received notification, dated October 11, 2017, that Respondent's Wells Fargo Interest on Lawyer's Trust Account had been overdrawn. Disciplinary Counsel's investigation reveals commingling and a failure to maintain records, but not misappropriation.

2. A review of the documentary record reveals the following transactions in Respondent's IOLTA before the overdraft. On September 14, 2017, Respondent's account contained \$962.10, which belonged to a client (Client 1). That day, she deposited \$5000 in entrusted funds for a different client (Client 2), raising the IOLTA balance to \$5,962.10. On September 27, 2017, Respondent transferred \$3000 out of her IOLTA to her personal checking account leaving an IOLTA balance of \$2,962.10. In early October 2017, Respondent wrote herself a check for \$3,693.75 from her IOLTA in connection with the Client 2's case. On October 11, 2017, the bank did not honor but returned that check because the IOLTA had insufficient funds to cover that amount, by \$731.65. The bank notified the Office of Disciplinary Counsel.

3. On October 12, 2017, the bank assessed a \$35 overdraft fee, leaving an IOLTA balance of \$2,927.10. On October 16, 2017, Respondent transferred \$3000 online from her operating account into her IOLTA, raising the balance to \$5,927.10. On October 18, 2017, Respondent deposited \$5000 in entrusted funds for a third client (Client 3), raising the IOLTA balance to \$10,927.10; the IOLTA still contained more

than \$2200 of Respondent's own funds. Respondent did not immediately undertake a full accounting to discern the reason for the overdraft. The IOLTA continued to hold hundreds of Respondent's own funds and entrusted funds until at least early November 2017.

4. Respondent's bookkeeper had retired by October 2016, but at the time of the overdraft notification in October 2017, Respondent had not yet hired her replacement. In the interim, she obtained bookkeeping services intermittently but was operating without a bookkeeper providing monthly services, including reconciliation of her trust account. In her own recordkeeping, Respondent misattributed at least one IOLTA withdrawal to work done for Client 2 even though the total amount of funds Respondent claimed she paid herself in connection with that client exceeded the amount she had received from him in that case. Respondent had no explanation or records to explain how she came to attribute this IOLTA disbursement to the wrong client.

5. Respondent has hired a new bookkeeper. Respondent asserts that she has undertaken a "thorough review of [her] bank records and reflected carefully on the procedures" used to manage her IOLTA, and concluded that she "need[ed] to change those procedures. . . ." Respondent provided Disciplinary Counsel with a statement of her revised entrusted funds-handling procedures. She states that, rather than rely exclusively on her own accounting, she now "carefully review[s] each month[,] her

[bookkeeper's] reconciliation of the IOLTA bank account on the spreadsheet" prepared by her bookkeeper.

6. Based on a review of Respondent's billing and invoices, Disciplinary Counsel's investigation does not reveal evidence that Respondent misappropriated entrusted funds or took more money in fees than she was entitled to.

The Charges

7. Respondent violated Rule 1.15(a), because she failed to hold property of clients or third persons in her possession in connection with a representation separate from her own property (commingling), and failed to maintain complete records of fiduciary funds for a period of five years after termination of the representation.

III. STATEMENT OF PROMISES MADE BY DISCIPLINARY COUNSEL

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. AGREED UPON SANCTION AND RELEVANT PRECEDENT

The agreed-upon sanction in a negotiated disposition case must be (a) justified; and (b) not unduly lenient, taking into consideration the record as a whole, including the nature of the misconduct, any charges or investigations that Disciplinary Counsel has agreed not to pursue, the strengths or weaknesses of Disciplinary Counsel's

evidence, any circumstances in aggravation and mitigation (including Respondent's cooperation with Disciplinary Counsel and acceptance of responsibility), and relevant precedent. Board Rule 17.5; D.C. Bar R. XI, §12.1(b)(1)(iv). A justified sanction does not have to comply with the sanction appropriate under the comparability standard set forth in D.C. Bar R. XI, §9(h). Board Rule 17.5(a)(iii).

Agreed-Upon Sanction

Disciplinary Counsel and Respondent agree that (a) beginning immediately on the date the Court issues its Order (or on a date otherwise specified by the Court), and (b) ending one year from that date, the sanction to be imposed is:

1. a public censure by the Court;
2. one year's unsupervised probation, on the condition that Respondent not be the subject of a disciplinary complaint that results in a finding that she violated the disciplinary rules of any jurisdiction in which she is licensed to practice during the probationary period;
3. that Respondent will (a) take the new admittees continuing legal education (CLE) course at any time before the Court acts on this Petition but not later than 30 days following entry of the Court's acceptance of this Petition, and (b) provide Disciplinary Counsel proof of attendance at the CLE within 30 days;
4. that Respondent will notify Disciplinary Counsel promptly of any ethics complaint against her and its disposition;
5. that Respondent will consult with Dan Mills, Esquire, and the D.C. Bar's

Practice Management Advisory Service to conduct a review of her practices surrounding how to handle – and document processing of – entrusted funds, waive confidentiality regarding all aspects of that review, and may do so at any time before the Court acts on this Petition but not later than 30 days following entry of the Court’s acceptance of this Petition; and,

6. that within 30 days of the Court’s order of public censure, Respondent will notify Disciplinary Counsel in writing of all jurisdictions in which she is or has been licensed to practice.

Effect of Respondent’s Failure to Comply with Probation Conditions

If Respondent fails to meet any of the conditions set forth above, she agrees that the Office of Disciplinary Counsel may docket an investigation whether Respondent has seriously interfered with the administration of justice in violation of Rule 8.4(d).

Relevant Precedent

Disciplinary Counsel and Respondent agree that the foregoing sanction is justified under the Court’s jurisprudence for her commingling and failure to maintain complete records of her handling of entrusted funds in violation of Rule 1.15(a). *See, e.g., In re Thomas- Edwards*, 967 A.2d 178 (D.C. 2009) (public censure for failing, *inter alia*, to keep complete financial records); *In re Mott*, 886 A.2d 535 (D.C. 2005) (public censure for failing, *inter alia*, to keep complete financial records); *In re Graham*, 795 A.2d 51 (D.C. 2002) (public censure

for commingling over several months and failure to promptly disburse entrusted funds); *In re Osborne*, 713 A.2d 312 (D.C. 1998) (censure for depositing attorney's funds in firm trust account and failing to supervise staff; however, bookkeeper kept "careful records of all funds"). *See also In re Klass*, 13-BD-041 (BPR Dec. 22, 2014) (reprimand for commingling fee advance with operating funds and failing to maintain complete trust account records).

***The Sanction is Justified Considering
Relevant Precedent and the Record as a Whole***

Public censure with necessary correctives to Respondent's practice (1) falls within the range of sanctions for Respondent's commingling and failure to maintain accurate financial documents sufficient to provide a full accounting of her handling of her IOLTA, (2) gives appropriate weight to Respondent's cooperation with Disciplinary Counsel's investigation, and (3) reflects that there is no evidence Respondent prejudiced any clients by her handling of her entrusted funds account.

A. Evidence in Aggravation to Be Considered

Disciplinary Counsel has no evidence in aggravation.

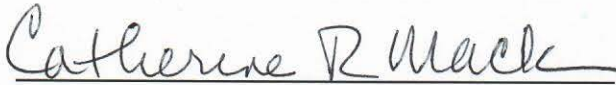
B. Evidence in Mitigation to Be Considered

In mitigation, Respondent (1) has taken responsibility for her misconduct in that she acknowledges that she violated the Rules as set forth above, (2) has cooperated with Disciplinary Counsel's investigation, (3) has not prejudiced her clients by her mishandling of her IOLTA, (4) has agreed to undertake the

specified corrective measures to ensure that she does not continue to make such errors in the future, and (5) has no prior discipline.

V. **RESPONDENT'S AFFIDAVIT**

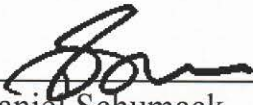
Accompanying this Petition in further support of this Petition for Negotiated Disposition, is Respondent's affidavit pursuant to D.C. Bar R. XI, §12.1(b)(2).



Catherine R. Mack, Esquire
Respondent



Hamilton P. Fox, III
Disciplinary Counsel



Daniel Schumack
Counsel for Respondent



Traci M. Tait
Assistant Disciplinary Counsel