

2024 NCPO Workshop

Virginia Beach, Virginia

Vignettes

(You Make the Call)

Vignette 1

Sanctions/Smanctions

Attorney Abigail Anderson (Anderson) represents Client Cliff Carter (Carter) in a divorce case. Anderson files pleadings and attends depositions and some court hearings, but during all of Carter's interactions with her, Anderson seems inebriated, hungover, or otherwise distracted and unable to pay attention to Carter's concerns. The representation deteriorates and Carter finds himself before the court with Anderson, both facing a motion for sanctions for failing to appear for a hearing. Carter claims Anderson never told him about the hearing. Anderson tells the court that she is in the middle of her own divorce, that she had been locked out of her office for not paying rent and was unable to collect her mail or access her computer. She claims she therefore did not have actual knowledge of the hearing that she and Carter missed. The Court nevertheless sanctions Anderson and Carter jointly (\$1,000). Carter pays the entire \$1,000 sanction. Carter fires Anderson and hires another lawyer to complete his divorce. Anderson's license is later revoked for her lack of diligence, failure to communicate, and her failure to refund unearned fees in Carter's and six other clients' matters. (Violations of ABA Model Rules 1.3 (Diligence); 1.4(a) (Communication), and 1.16(d) (Declining or Terminating Representation)).

After Anderson's license is revoked, Carter files a Clients' Protection Fund claim and requests reimbursement of the \$5,000 fee he paid Anderson to handle his divorce, the \$1,000 sanction he paid, and the \$5,000 he paid to his new attorney to complete his divorce case.

- Would your fund reimburse the entire \$5,000 fee Carter paid for attorney's fees, even though Anderson did some work in the matter?
 - If your fund would not reimburse the entire amount, how would you evaluate the amount to be reimbursed?
 - Would your fund reimburse the \$1,000 sanction the Client paid?
 - Would your fund reimburse the \$5,000 fee Carter paid his new attorney?
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Vignette 2

Bad Brad

Lawyer Lisa Letterman's (Letterman) trusted bookkeeper of 10 years, Brad Bostic (Bostic), writes checks from the firm trust account to pay his mortgage and take lavish vacations. Letterman does not discover Bostic's theft until her interview with a bar investigator, who is investigating Letterman's second trust account overdraft notification in two years. Letterman expresses concern about the misuse of her trust account but takes no action to report Bostic to the criminal authorities, nor does she terminate Bostic's employment. Letterman makes no effort to replenish the trust account. Letterman is subsequently disbarred for trust account violations. (Violations of ABA Model Rules 1.15 (Safekeeping Property) and 5.3 (Responsibilities Regarding Non-Lawyer Assistants)). Local media carry news of Bostic's theft, and six former clients file Clients' Protection Fund claims, contending that they should receive reimbursement for fees they paid to Letterman. Letterman objects to reimbursement of these claims because her trust account woes were caused by Bostic's embezzlement, not by any dishonest conduct by Letterman herself.

- Would your fund reimburse the claims?
 - Does it make a difference that the bookkeeper, Brad, not the lawyer for whom Brad worked, misused the trust account funds?
 - What difference, if any, does it make that Letterman did not lodge criminal charges against Brad?
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Vignette 3

Purloined Personal Injury Proceeds

Petitioner Priscilla Pendleton (Pendleton) contends in her petition to the Clients' Protection Fund that her personal injury lawyer Peter Ingram (Ingram) settled her case without telling her and that she had never received the settlement funds, and that she recently discovered Ingram had been disbarred. Pendleton further claims that Ingram had lied to her for years that he was negotiating a settlement of her case, and that her case was still pending long after it had actually been settled. The grounds for Ingram's disbarment were his misrepresentations to other clients that their cases were being negotiated when they had, in fact, been settled and that he had used the settlement funds for his own purposes. (Violations of ABA Model Rules 1.4(a) (Communication); 1.5(c) (Fees) and 1.15(d) Safekeeping Property).

Pendleton's petition to the Fund seeks reimbursement of \$50,000, the amount for which she contends Ingram settled her case. Pendleton says that she contacted the insurance adjuster, who sent her a copy of a settlement check made payable jointly to Ingram and Pendleton, but Pendleton swears she did not know of the settlement or receive any proceeds; she denies that it is her endorsement on the check. Since his disbarment, Ingram has gone "off-the-grid" and does not respond to the petition, so the investigation cannot ascertain how he handled the settlement funds.

- Would your fund approve the claim?
 - If the claim is approved, would your fund deduct Ingram's contingency fee from the reimbursement amount?
 - Is there a presumption against Ingram because of his failure to contribute to the investigation?
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Hypothetical 4

Prison Payee

Petitioner Paul Perry (Paul) is incarcerated. The Fund approved Paul's claim arising out of an unearned fee for a case in which the disbarred attorney represented Paul in a criminal matter. During the investigation of the claim, Paul's sister, Sarah, stated that she paid the attorney's fee. Fund staff have mailed Subrogation/Assignment forms to both Paul and Sarah. Paul requests that staff send the reimbursement check to his prison account. Sarah, however, states that she should receive the entire disbursement because she alone paid the legal fees on which the petition is based.

- How would your Fund resolve the dispute?
- Does your jurisdiction require that the parties work out disputed claims to the reimbursement, or does your Fund decide?
- Do you have all the information necessary to resolve this dispute?
- If you need additional information, what information does your jurisdiction require before writing a check?