

DOCKET NO. MMX-CV-22-5014533S : **SUPERIOR COURT**
: **J.D. OF MIDDLESEX**
IN RE: CUNHA, NICKOLA : **AT MIDDLETOWN**
: **JUNE 1, 2022**

MOTION FOR DISBURSEMENT OF FUNDS

Undersigned Chief Disciplinary Counsel respectfully requests an order of the court authorizing the court appointed trustee to disburse funds from the IOLTA account of former attorney Nickola Cunha, hereinafter referred to as “respondent”. In support of this motion, the undersigned represents as follows:

On January 28, 2022, the court, Moukawsher J., pursuant to Practice Book § 2-64, appointed Attorney Corrine Boni-Vendola trustee to secure respondent’s IOLTA account. On or about February 4, 2022, the trustee took possession of the balance in the IOLTA account in the amount of \$101,904.67. The court has ordered a full audit of the IOLTA account to be completed by August 1, 2022.

Disciplinary counsel has been able to do a limited audit for the time period December 1, 2021, through February 4, 2022. The beginning balance in December 2021 is \$434.54. There has been only one deposit during this time period in the amount of \$290,241.65. This is a personal injury settlement proceeds for client Paula Moen in the amount of \$290,241.65. A client disbursement sheet was provided to the trustee by respondent (See Exhibit A). The disbursement sheet provides for a deduction of one third attorney fee in the amount of \$96,747.21.¹

¹ The client, Paula Moen believes she signed an attorney fee agreement authorizing one third contingency fee. (See Moen affidavit attached as exhibit B).

Respondent then makes deductions for costs and expenses of \$5,277.66 plus additional costs for family, juvenile, G.A. and summary process matters for a total deduction of costs of \$7,117.63.² Respondent next shows two disbursements in the total amount of \$6,652.96 which were paid from these proceeds and has been substantiated. Total deductions claimed by respondent equal \$110,517.80. This leaves and unaudited net amount to client of \$179,723.85.

The disbursement sheet next reflects that the respondent took \$78,000 attributed to “less attorney fees owed for representation in multiple other matters.” As of the date of this motion the respondent has failed to document authority from the client or any documentation of this claim although she was provided with a specific court date of April 22, 2022 to justify her taking of \$30,000 in violation of the court order. She has testified that she has retainer agreements for each matter but has not produced one. Respondent provided the trustee with the disbursement sheet on April 20, 2022. Undersigned counsel was unaware of the claim for \$78,000 and was under the belief that the additional attorney fees taken by respondent was limited to the \$30,000 that was taken in violation of the court order. Respondent, during examination, under oath, on April 22, 2022, provided vague reference to many cases where she alleges she represented the client pro bono,

This will be substantiated in the full audit. It should be noted that 33.33% of \$290,241.65 is \$96,737.54.

² Respondent has not provided documents substantiating these costs and this will be the subject of the full audit. The exact amount of costs is not significant at this point because the amount on hand is substantially less than the amount that may be distributed to the client.

as justification for taking the \$30,000 but failed to clarify throughout the hearing that the actual amount she took was \$78,000.

She had no authority from the client to take this money. The client, Paula Moen, has provided an affidavit representing, in relevant part, the following (See Exhibit B):

....

6. Ms. Cunha represented me in a car accident case that went to arbitration. I believe I signed a retainer agreement where Ms. Cunha would receive one third of the proceeds as an attorney fee.
7. She contacted me in June 2021 to tell me that the case had settled for \$290,000.
8. I did not hear from Ms. Cunha again until mid-December when she contacted me to indicate she was receiving the checks and would be disbursing the money. I did not sign a settlement check or give anyone permission to do so.
9. Ms. Cunha has never explained to me the costs, expenses, and government liens that would be deducted from the gross settlement and never explained the actual amount I would receive.
10. I did not hear from her again until the beginning of [sic] end of January/beginning of February when I contacted her for legal advice about an education issue. We did not discuss the personal injury settlement at that time.
11. As of the date of this affidavit I have received no money from the settlement.
12. Mr. Staines has advised me that Ms. Cunha testified that she withdrew \$30,000 from my settlement as payment towards previously earned attorney fees.

13. I never spoke to Ms. Cunha about her doing this and she did not ask for permission to take this money.
14. Ms. Cunha has done a lot of work for me going back about ten years, pro bono, and I was always hoping to be able to give her some money should I have a recovery on one of my cases. We never spoke about an exact amount or that she would be taking it from these funds.
15. I believe I am due about \$200,000 from the car accident case minus reasonable costs and expenses of the lawsuit.

....

Moen believed that after deducting a one third attorney fee she would be receiving about \$200,000. It is clear that the respondent did not have authority to take an additional \$78,000 of the client's money. What is suspicious is that the respondent did not deduct this amount from the settlement proceeds as a part of payment of the earned attorney fee - one check in the amount of \$174,747.21 (\$96,747.21 + \$78,000.00). In fact, nowhere in the bank records does it show separate disbursements for \$96,747.21 or \$78,000 payable to respondent. Review of the bank statement discloses possible serious misuse of the IOLTA account by respondent.

What is undisputed is that the beginning balance in December 2021 is \$434.54 and the only deposit to the IOLTA account is Moen's funds of \$290,241.65.

From the Moen funds the respondent issued a check payable to "Lettick & Lettick, P.C." in the amount of \$41,666.67 for the Estate of Tony Goncalves. Undersigned has confirmed that this arises out of \$50,000 settlement proceeds for

the estate that was deposited into respondent's IOLTA account on September 29, 2021. The respondent was authorized to take an attorney fee of \$8,333 which she did on September 30, 2021. The balance of \$41,333.67 was property of the estate and should have been delivered to Attorney Lettick forthwith. However, these remaining funds were withdrawn from the IOLTA account on September 30, 2021 (\$35,000.00) and other various dates and amounts until the IOLTA account balance was \$434.54. The IOLTA account never had funds to make the transfer to the estate until Moen's funds were deposited and the respondent paid the estate \$41,333.67 on December 16, 2021 from the Moen funds.

Additionally, the respondent also wrote from Moen's funds a check to "DV"³ on January 24, 2022 in the amount of \$35,032.26 with the check indicating "for settlement D/A: 10/18/2017." Undersigned has been unable to substantiate the reason for this payment from the Moen funds.

Based upon my examination of the IOLTA account bank records, my discussions with the client Moen, and limited information from the respondent, it appears that Ms. Moen is due a minimum of \$179,723.85 as net proceeds from her personal injury settlement. It further appears that the amount of \$101,470.13 held by the trustee is remaining proceeds from the Moen settlement and should be paid to her. I arrived at this number by taking the current balance of \$101,904.67 and deducting the December 2021 beginning balance of \$434.54. To be clear, I am making this request to make the funds available to the client. This in no way

³ Until the payee of this check can be identified and the purpose of the payment can be determined the individual is being referred to by his or her initials.

justifies, confirms or accepts the purported costs, expenses and attorney fees as submitted by the respondent nor does it accept or approve her taking, without authority, \$78,000 for previous pro bono work. All fees, costs, expenses and disbursements must be documented by respondent during the course of the audit.

WHEREFORE, The Office of Chief Disciplinary Counsel requests that the court approve disbursement from the trustee to Paula Moen the amount of \$101,470.13 from the respondent's IOLTA account.

Respectfully submitted,
Office of Chief Disciplinary Counsel

By:



Brian B. Staines, Juris No. 401079
Office of Chief Disciplinary Counsel
Juris No. 422382
100 Washington Street
Hartford, Connecticut 06106
Brian.Staines@jud.ct.gov

ORDER

The foregoing Motion having been heard, it is hereby ORDERED:

THE COURT

BY _____

CERTIFICATION

I hereby certify that a copy of the foregoing was emailed this 1st day of June, 2022, as follows:

Attorney Corrine A. Boni-Vendola
corrine@cbvdivorcelaw.com

Pattis & Smith, LLC
npattis@pattisandsmith.com

Attorney Norman Alexander Pattis
npattis@pattisandsmith.com

By  _____
Brian B. Staines
Commissioner of the Superior Court

EXHIBIT A

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REDACTED

PAULA MOEN

Date of Accident: 8/9/2017

TOTAL ARBITRATION AWARD:		\$290,241.65
LESS:		
ATTORNEY'S FEE @ 1/3:	\$ 96,747.21	
COSTS: (Civil)	5,277.66	
COSTS: (Family, Juvenile, GA matter)	1,698.47	
COSTS: (Summary Process/Eviction)	<u>141.50</u>	
	\$ 103,864.84	<u>(103,864.84)</u>
LESS ████████ LIEN:		
Reimbursement Accident Related Medicals:	\$ 1,040.82	<u>(1,040.82)</u>
Paid and check cleared		
	\$5,612.14	<u>(5,612.14)</u>
LESS ████████ LIEN:		
Reimbursement Accident Related Medicals:		
Paid and check cleared		
		<u>(\$110,517.80)</u>
INITIAL DEDUCTIONS:		
(not including attorney fees owed for multiple matters)		
NET AMOUNT BEFORE DEDUCTION OF ATTORNEY FEES OWED FROM MULTIPLE MATTERS		
TOTAL		\$179,723.85
LESS ATTORNEY FEES OWED FOR REPRESENTATION IN MULTIPLE OTHER MATTERS		<u>(78,000.00)</u>
TOTAL AMOUNT DUE FOR DISBURSEMENT TO CLIENT:		\$101,723.85

EXHIBIT B

EXHIBIT B

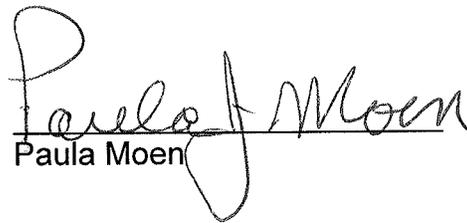
EXHIBIT B

May 25, 2022

Affidavit of Paula Moen

1. This affidavit is made based on my own personal knowledge, and I understand the obligation of an oath.
2. I am over 18 years of age and competent to testify to the matters stated in this affidavit.
3. On May 19, 2022, I was contacted by phone by Brian Staines who introduced himself as Chief Disciplinary Counsel and explained to me that my former lawyer, Nickola Cunha, was disbarred.
4. Mr. Staines explained to me that he did not represent me and could not give me legal advice.
5. I provided him the following information which he has prepared into this affidavit.
6. Ms. Cunha represented me in a car accident case that went to arbitration. I believe I signed a retainer agreement where Ms. Cunha would receive one third of the proceeds as an attorney fee.
7. She contacted me in June 2021 to tell me that the case had settled for \$290,000.
8. I did not hear from Ms. Cunha again until mid-December when she contacted me to indicate she was receiving the checks and would be disbursing the money. I did not sign a settlement check or give anyone permission to do so.
9. Ms. Cunha has never explained to me the costs, expenses, and government liens that would be deducted from the gross settlement and never explained the actual amount I would receive.
10. I did not hear from her again until the beginning of end of January/beginning of February when I contacted her for legal advice about an education issue. We did not discuss the personal injury settlement at that time.
11. As of the date of this affidavit I have received no money from the settlement.

12. Mr. Staines has advised me that Ms. Cunha testified that she withdrew \$30,000 from my settlement as payment towards previously earned attorney fees.
 13. I never spoke to Ms. Cunha about her doing this and she did not ask for permission to take this money.
 14. Ms. Cunha has done a lot of work for me going back about ten years, pro bono, and I was always hoping to be able to give her some money should I have a recovery on one of my cases. We never spoke about an exact amount or that she would be taking it from these funds.
 15. I believe I am due about \$200,000 from the car accident case minus reasonable costs and expenses of the lawsuit.
 16. In addition to this car accident case, Ms. Cunha is representing me in a medical malpractice claim and a claim against a police department.
- I certify under the penalties of perjury that the statements above are true, complete and accurate to the best of my knowledge and belief.


Paula Moen

STATE OF CONNECTICUT)
COUNTY OF) Enfield ss.
(Town)

Subscribed and sworn to before me

This 25th day of May, 2022



Brian B. Staines
Commissioner of the Superior Court