

MATTHEW J. McCARTHY

Order (public reprimand) entered by the Board June 27, 2005.

SUMMARY¹

From approximately July 1999 through November 2001, the respondent maintained a designated IOLTA account into which he deposited client or other trust funds and from which he disbursed those funds. Commencing at least as of July 1999 and continuing until after January of 2000, the respondent's record keeping in his IOLTA account was generally inadequate. The respondent's records failed to attribute deposits to and withdrawals from the IOLTA account to specific client matters, and he did not keep a current running balance in the check register. The respondent drew checks on the IOLTA account to himself without attribution to particular client matters, and he did not promptly withdraw his earned fees from the account. The respondent did not maintain individual client account ledgers, and he did not properly reconcile the account.

From approximately July 1999 through January 2000, the respondent issued payments to himself and for the benefit of his office from his IOLTA account. When he made those payments, the respondent intended to draw on the attorney's fees he had left in the IOLTA account. In fact, as a result of his inadequate record keeping, the respondent on occasion negligently used client funds to pay these amounts. The clients, however, were not deprived of their funds.

On January 4, 2000, BankBoston dishonored a check drawn on the respondent's IOLTA account. This check represented a payment to a medical care provider for a client's medical care expenses, and payment would have caused an overdraft. Upon being notified by the bank that there were insufficient funds in the account, the respondent promptly deposited sufficient personal funds to the IOLTA account to pay the medical care provider. The respondent thereafter hired an accountant to reconcile his account records, and brought his account back into order.

The respondent's commingling and negligent misuse of client funds, without intent to deprive and with no deprivation resulting, and his failure to maintain adequate records of those funds violated Mass. R. Prof. C. 1.15(a) of the rule in effect prior to 2004 (now 1.15[b] and [f]).

The respondent was admitted to the Massachusetts bar in 1996. He has received no prior discipline. The respondent closed his solo practice in December 2001, and began to practice with a law firm.

In mitigation, during the time period in question, the respondent was suffering from alcoholism, and his condition contributed to the misconduct in question. He sought professional assistance for his problem, became sober, and continued in counseling.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties'

recommendation and imposed a public reprimand on June 20, 2005, conditioned on the respondent's attendance at a CLE course designated by Bar Counsel.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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