

**BRUCE V. KEARY**

Order (public reprimand) entered by the Board August 25, 2005.

**SUMMARY<sup>1</sup>**

Bar counsel opened an investigation as a result of three notices of dishonored checks received from the bank at which the respondent maintained his IOLTA account. The respondent failed to reply to bar counsel's inquiries regarding the matter, necessitating the issuance of a subpoena to compel his appearance at the Office of Bar Counsel on August 13, 2003. The respondent failed to appear pursuant to the subpoena.

Bar counsel telephoned the respondent on or about August 14, 2003. The respondent agreed to and did send the documentation that had been previously been requested. Bar counsel cancelled the subpoena meeting after receiving this information, but sent the respondent a letter requesting additional information and documentation. The respondent failed to reply to this letter and to a follow-up letter sent by bar counsel, necessitating the issuance of a second subpoena for the respondent's appearance at the Office of Bar Counsel on May 24, 2004. The respondent failed to appear pursuant to the subpoena.

Bar counsel telephoned the respondent to advise him that bar counsel intended to file a petition for his administrative suspension from the practice of law based on his failure to appear pursuant to the subpoena. The respondent agreed to and did appear at the Office of Bar Counsel on June 16, 2004, and provided bar counsel with the additional requested IOLTA account information.

The information provided by the respondent showed that his record keeping in his IOLTA account was generally inadequate. Personal funds were commingled with trust funds. Fees were not withdrawn as earned. The respondent used the account to pay personal and business expenses and made withdrawals from the account by using an ATM card. Individual client ledgers were not maintained, and the account was not reconciled.

The respondent's commingling of client funds with personal and business funds and his inadequate and improper record keeping was in violation of Mass. R. Prof. C. 1.15 (a) of the rule in effect prior to July 2004 (now 1.15(b)). His knowing failure without good cause to respond to bar counsel's demands for information and his failure to appear at the Office of Bar Counsel on two occasions pursuant to subpoenas was in violation of Supreme Judicial Court Rule 4:01 § 3 and Mass. R. Prof. C. 8.1(b) and 8.4 (d) and (g).

The respondent has been a member of the bar since 1974. In mitigation, he suffered from depression during the time in which this misconduct occurred. He has now opened a new IOLTA account that is properly maintained in accordance with the amendments to Mass. R. Prof. C. 1.15 that took effect on July 1, 2004.

This matter came before the Board on August 8, 2005 on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by public reprimand. The Board accepted

the parties' recommendation and imposed a public reprimand.

<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

Please direct all questions to [webmaster@massbbo.org](mailto:webmaster@massbbo.org).  
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