

VALERIANO DIVIACCHI

Order (public reprimand) entered by the Board June 21, 2007.

SUMMARY¹

The respondent was admitted to the bar on June 14, 1990. The respondent maintained an IOLTA account at the Bank of America until March 30, 2007, when he closed the account. From July 1, 2004 through March 30, 2007, the respondent failed to maintain a check register in the form required by Mass. R. Prof. C. 1.15(f)(1)(B); failed to maintain individual client records in the form required by Mass. R. Prof. C. 1.15(f)(1)(C); failed to maintain a ledger of bank fees and charges, as required by Mass. R. Prof. C. 1.15(f)(1)(D); and failed to produce reconciliation reports at least every sixty days, as required by Mass. R. Prof. C. 1.15(f)(1)(E).

In December 2005 and January 2006, the respondent deposited personal funds in excess of \$10,000 into his IOLTA account. The personal funds were substantially more than and not intended to pay bank charges. During January and February 2006, the IOLTA held both personal and client funds. During December 2005 and January 2006, the respondent wrote a number of checks on his IOLTA account in payment of personal expenses, directly to his creditors.

During January 2006, the respondent wrote a check on his IOLTA account for \$30,000, representing the settlement of a claim against a client of the respondent's. As a result of the respondent's failure to maintain adequate records of his IOLTA account, and his use of the account to pay personal expenses, the account contained insufficient funds to pay the check. The check was dishonored by the bank for insufficient funds, re-deposited by the payee, and dishonored a second time. The respondent then deposited personal funds into his IOLTA account sufficient to cover the check. The check was deposited a third time and paid.

By commingling personal and client funds in his IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b). By writing checks on his IOLTA account in payment of personal expenses, directly to his creditors, the respondent violated Mass. R. Prof. C. 1.15(e)(4). By failing to maintain a check register and individual client records in the form required by Mass. R. Prof. C. 1.15(f)(1)(B) and (C); failing to maintain a separate ledger of bank fees and charges; and failing to create reconciliation reports at least every sixty days; the respondent violated Mass. R. Prof. C. 1.15(f)(1).

The matter came before the Board of Bar Overseers on an agreed recommendation for discipline by public reprimand based on a stipulation of the parties. On June 11, 2007, the Board of Bar Overseers voted to administer a public reprimand to the respondent.

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

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