

JOHN J. McCARTHY

Order (public reprimand) entered by the Board April 30, 2008.

SUMMARY¹

Between 2006 and the present, the respondent operated his own law office as a sole practitioner, and concentrated his practice on care and protection cases for the Committee for Public Counsel Services (CPCS). The respondent maintained both an IOLTA account and a business account. The respondent seldom was required to hold trust funds and was not holding trust funds during the periods of time in question.

In 2006 and 2007, the respondent routinely deposited checks that he received from CPCS for his earned fees to the IOLTA account. The respondent made disbursements from the IOLTA account to pay his personal and business expenses, using the earned fees that he had deposited to the IOLTA account. In a number of instances, the withdrawals were payable to vendors or other third parties, and were not payable to the respondent or his law firm. The personal funds that the respondent retained in the IOLTA account were substantially more than necessary to pay bank charges for the account.

On or about December 28, 2007, the respondent drew a check in the amount of \$132 from the IOLTA account to pay a bill for a title examination. At the time, there were no client funds on deposit in the account. The respondent was not aware that there were insufficient funds in the account at the time to pay the check. On January 3, 2008, the check was presented for payment, causing an overdraft in the amount of \$39.24. The check was dishonored on January 3, 2008. The same check was presented for payment again on January 8, 2008, and was dishonored a second time.

By letters dated January 4, 2008, and January 9, 2008, the respondent's bank notified the respondent and the Office of Bar Counsel that a check had been dishonored on the respondent's IOLTA account. On January 16, 2008, bar counsel notified the respondent that a file had been opened to investigate the matter. On about February 21, 2008, the respondent sent the title examiner a new check for \$142. to pay the amount owed on the bill, and to reimburse the title examiner for a \$10 fee that his bank charged him for the returned check. In March of 2008, the respondent closed the IOLTA account.

By depositing his business and personal funds to the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2). By withdrawing fees from the account through issuing checks payable to his creditors from the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(e)(4).

The respondent was admitted to practice in 1991. In mitigation, the respondent used the IOLTA account through ignorance and for convenience, not to evade creditors. He attended a training session on trust account maintenance. The respondent also closed the IOLTA account because he did not plan to handle any client funds in the future. In aggravation, the respondent received an admonition on December 19, 2005, for neglect of a client's two

personal injury cases and for failing to adequately communicate with his client. As a condition of the admonition, he was required to attend a CLE course on law office management and legal ethics. The respondent also agreed to limit his practice. See Admonition No. 05-41, 21 Mass. Att’y Disc. R. 770 (2005).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. On April 14, 2008, the Board voted to accept the parties’ stipulation and to impose a public reprimand.

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

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