

ANNE L. BERGER

Order (public reprimand) entered by the Board March 10, 2008.

SUMMARY¹

At all times relevant to this disciplinary proceeding, the respondent has engaged in the practice of law, maintained an IOLTA account, and used the IOLTA account for deposits and withdrawals of client or other trust funds. After the death of the respondent's husband (who was also her law partner), she inherited an accounting system created by him that was handled solely by him and the firm's bookkeeper. The respondent continued to use the system that was in place.

From July 1, 2004 through about April 2007, the respondent at times deposited advance payments of fees ("retainers") to her IOLTA account.

During this time period, the respondent failed to prepare and maintain the following account records required by Mass. R. Prof. C. 1.15(f):

- a. the respondent's failure to maintain a check register recording in chronological order the date and amount of each deposit; the date, amount and payee of each disbursement; the identity of the client matter to which each deposit and disbursement pertained; and the balance after each deposit and disbursement violated Mass. R. Prof. C. 1.15(f)(1)(B);
- b. the respondent's failure to maintain a chronological ledger for each client or third person for whom she received trust funds showing each related receipt and disbursement; the identity of the client matter for which each sum was deposited or disbursed; and the balance held for the client or third person violated Mass. R. Prof. C. 1.15(f)(1)(C);
- c. the respondent's failure to maintain a chronological ledger for her funds deposited to the account to accommodate reasonably expected bank charges showing each deposit and expenditure of her funds and the balance remaining violated Mass. R. Prof. C. 1.15(f)(1)(D);
- d. the respondent's failure to maintain reconciliation reports prepared at least every sixty days showing the required reconciliation of check register, individual ledgers, and bank statements violated Mass. R. Prof. C. 1.15(f)(1)(E);
- e. the respondent's failure to maintain account documentation including all bank statements, canceled checks and other transaction records returned by the bank, and records of all deposits separately listing each deposited item and the client or third person for whom the deposit was made violated Mass. R. Prof. C. 1.15(f)(1)(F).

During this time period, the respondent periodically issued payments to herself, as earned fees, from her IOLTA account, believing that she was drawing upon retainers from clients. Because of the respondent's inadequate record keeping, on occasion the clients' retainers were inadequate to cover the fee payments, resulting in the temporary misuse of the funds of other clients to cover the payments, without intent to deprive and with no deprivation resulting, in violation of Mass. R. Prof. C. 1.15.

Between November 2006 and May 2007, and despite repeated requests from bar counsel, the respondent failed to bring her records into full compliance with Rule 1.15. In about June of 2007, the respondent began maintaining her IOLTA account and account records in full compliance with Rule 1.15.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. On January 16, 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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