

JAMES R. TEWHEY

Order (public reprimand) entered by the Board October 30, 2009.

SUMMARY<sup>1</sup>

James R. Tewhey is an attorney duly admitted to the bar of the Commonwealth of Massachusetts on December 20, 1996. The respondent maintains a solo practice in Salem, Massachusetts.

In December 2004, the respondent was retained by a client to represent her in her divorce and to revise her will. The client and the respondent agreed that the respondent would charge \$200 per hour. The client gave the respondent a \$2,000 retainer. The respondent deposited the retainer into his Bank of America business checking account. The respondent, at that time and through May 2005, held personal funds in that account.

During 2005, the respondent requested further payments from the client. The client paid the respondent \$3,000 in January 2005; \$3,500 in March 2005; and \$2,500 in May 2005. On each occasion, the respondent deposited the funds into his business account before he had earned them.

By commingling personal and client funds, the respondent violated Mass. R. Prof. C. 1.15(b)(1).

By depositing client funds into a business account, the respondent misused those funds, in violation of Mass. R. Prof. C. 1.15(b), and 8.4(c) and (h).

Since at least July 1, 2004, the respondent has maintained an IOLTA account at Bank of America. The respondent has at all time since July 1, 2004, held trust property in this IOLTA account. From January 2005 through at least December of 2007, the respondent failed to maintain the following account records required by Mass. R. Prof. C. 1.15(f):

- a. a check register showing 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;
- b. a chronological ledger for each client or third person for whom he 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;
- c. a chronological ledger for his funds deposited to the account to accommodate reasonably expected bank charges showing each deposit and expenditure of her funds and the balance remaining;
- d. reconciliation reports prepared at least every sixty days showing the required reconciliation of check register, individual ledgers, and bank statements;
- e. 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.

By failing to maintain required records of the funds in his IOLTA accounts, the respondent violated Mass. R. Prof. C. 1.15(f).

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. As a condition of the stipulation, the respondent agreed to attend a trust account class sponsored by the Office of the Bar Counsel, and to obtain an audit of his law practice from the Law Office Management Assistance Program, as specified in a separate agreement between the respondent and bar counsel.

On October 19, 2009, the Board of Bar Overseers voted to administer a public reprimand to the respondent.

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

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