

RICHARD A. DALTON

Order (public reprimand) entered by the Board September 23, 2010.

SUMMARY¹

The respondent is a solo practitioner who was admitted to practice in 1978. From at least January 2007 through June 2009, the respondent held funds for multiple clients in a pooled bank account that was not an IOLTA account (escrow account). During this period, the respondent also (1) deposited personal funds to the escrow account while client funds were on deposit in the account; (2) did not perform a three-way reconciliation of the escrow account at least every sixty days; (3) did not keep a check register for the escrow account with a client identifier after every transaction, a list of every transaction, and a running balance; (4) did not keep individual client ledgers for each client with funds in the escrow account; and (5) did not keep a ledger for all his funds on deposit in the escrow account for bank fees and expenses.

The respondent also maintained an IOLTA account that he did not begin to use until December 2008. From December 2008 through May 2009, the respondent did not (1) perform a three-way reconciliation of the IOLTA account at least every sixty days; (2) keep a check register for the IOLTA account with a client identifier after every transaction, a list of every transaction, and a running balance; (3) keep individual client ledgers for each client with funds in the IOLTA account; and (4) keep a ledger for all his funds on deposit in the IOLTA account for bank fees and expenses.

In 2007, the respondent agreed to represent a client in connection with her post-divorce matter in the Barnstable Probate and Family Court. In May of 2007, the respondent also agreed to act as escrow agent when the client and her ex-husband sold a property that they owned in Maine. On May 23, 2007, the respondent deposited \$171,982.10 in proceeds from the sale of the Maine property to his escrow account. After making authorized disbursements from these funds, the respondent had \$4,600.00 from the real estate proceeds on deposit in the escrow account. Between February and August 2008, the respondent negligently misused a portion of the escrow funds to pay personal or business expenses.

Pursuant to an order of the Probate Court, the escrow funds were to be paid to the client unless her ex-husband commenced a law suit in the District or Superior Court on or before March 14, 2008, against the client regarding damages to the former marital home allegedly caused by the client. On March 14, 2008, the ex-husband filed suit, but never served the client with a summons or complaint. On August 8, 2008, the Probate Court approved the respondent's request for authorization to pay the remaining escrow funds to the client. The respondent paid the funds, but he negligently misused another client's funds to do so. The respondent, however, paid that client the funds he was owed when due, drawing upon fees improperly retained in the IOLTA account.

By holding client funds in a pooled non-IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(e)(5). By failing to perform three-way reconciliations of accounts in which he held

trust funds, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(E). By failing to keep check registers for his escrow and IOLTA accounts with client identifiers after every transaction, lists of every transaction, and running balances, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(B). By failing to keep individual client ledgers for each client matter with lists of every transaction and running balances for his escrow and IOLTA accounts, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C). By failing to keep ledgers for all of his funds for bank fees and expenses on deposit in the escrow and IOLTA accounts, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(D). By failing to hold client trust property separate from his personal property, the respondent violated Mass. R. Prof. C. 1.15(b). By failing to remove earned fees from the IOLTA account at the earliest reasonable time after his interest in the funds became fixed, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii). The respondent's negligent misuse of client funds violated Mass. R. Prof. C. 1.15(b).

The respondent attended a trust account record-keeping class and began reconciling his IOLTA account in May 2009. In about June 2009, the respondent ceased using the escrow account for deposits of personal and client funds and closed the escrow account in October 2009.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for a public reprimand. On September 13, 2010, the board ordered a public reprimand.

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

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