

RICHARD JOHN GABRIEL

Order (public reprimand) entered by the Board on February 3, 2011.

SUMMARY¹

The respondent received a public reprimand for negligently issuing checks from his IOLTA account to pay the bills of an estate prior to the deposit of estate funds into the IOLTA account to cover the checks issued.

In February 2007, the respondent was appointed temporary executor of an estate. He opened a checking and a savings account for the estate into which he deposited the estate's funds. Various bills owed by the estate became due, and rather than pay each bill from the estate's checking account, for which the respondent only had a limited number of checks, the respondent transferred funds as needed for the estate's bills into an IOLTA account and paid the bills from the IOLTA account.

On three occasions in April and May 2007, the respondent issued checks from the IOLTA account in payment of estate debts but inadvertently failed to deposit estate checks to his IOLTA account to cover these obligations until shortly after the IOLTA checks had cleared. As a result, the respondent negligently caused funds of other clients to be used to cover estate debts, but with no deprivation resulting.

Again in May and June 2007, the respondent issued four checks from his IOLTA account for estate debts, which were presented for payment and paid from the IOLTA account. He negligently failed to deposit an estate check to the IOLTA account to cover these disbursements until late June. By then, a new special administrator had been appointed for the estate. Unbeknownst to the respondent, the new administrator had arranged to put the estate account in his own name, as a result of which the respondent's estate check was returned unpaid.

The respondent filed his first and final account as temporary executor and had it allowed by the court. The new administrator then reimbursed the respondent for the estate check that had been returned. As a result of the respondent's failure to deposit the estate check to his IOLTA account until late June 2007, and the subsequent return of that check, funds of other clients in the IOLTA account were temporarily used to cover estate debts. No deprivation occurred as a result of the temporary shortage.

The respondent's conduct in negligently issuing checks from his IOLTA account prior to the deposit of funds to cover the checks violated Mass. R. Prof. C. 1.1 and 1.3. The respondent's negligent misuse of funds in his IOLTA account to temporarily pay debts of the estate violated Mass. R. Prof. C. 1.3, 1.15(b) and 8.4(h).

This matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by public reprimand. On January 10, 2011, the board voted unanimously to accept the stipulation and impose the

recommended discipline.

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

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