

WILLIAM E. FALLON, ESQ.

Public Reprimand No. 2013-4

Order (public reprimand) entered by the Board on April 2, 2013

SUMMARY¹

The respondent paid his annual bar registration fee by a check issued from his IOLTA account. The respondent had earned fees in the account, but instead of withdrawing his funds by check made payable to him or his law firm, he made the check payable to the Board of Bar Overseers. The respondent's conduct in paying his registration fee directly from his IOLTA account violated Mass. R. Prof. C. 1.15(e)(4). In addition, the respondent failed promptly to withdraw all his earned fees and expense reimbursements in violation of Mass. R. Prof. C. 1.15(b)(2).

Between July 2004 and 2012, the respondent failed to make and maintain all records required for his IOLTA account necessary to a proper reconciliation, including the following:

- a chronological check register with 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;
- a chronological ledger for each client matter or third person for whom trust funds were held showing each related receipt and disbursement; the identity of the client matter for which each sum was deposited or disbursed; and the balance held in each client matter;
- a chronological ledger for non-trust funds deposited to the account to accommodate reasonably expected bank charges showing each deposit and expenditure and the balance remaining; and
- reports prepared at least every sixty days and showing the required reconciliation of check register, individual ledgers, and bank statements.

During that period the respondent failed to reconcile his IOLTA account by comparing and reconciling the account's register balance, the adjusted bank statement balance, and the total of all client matter balances. The respondent's failure to reconcile his IOLTA account and maintain required records for that account violated Mass. R. Prof. C. 1.15(f)(1)(B)-(E).

On several occasions between about 2005 and 2009, the respondent held back funds from the proceeds of his clients' personal injury claims to pay medical bills and failed promptly to remit the funds to the providers. Due to his failure to keep adequate records and reconcile the IOLTA account, the respondent was unaware that he had not made the intended disbursements and that he continued to hold the undisbursed funds. The respondent retained those funds in his IOLTA account until 2012. His failure promptly to remit the undisbursed funds to the medical providers violated Mass. R. Prof. C. 1.15(c).

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

After receiving notice of bar counsel's investigation, the respondent began an audit of his IOLTA transactions dating back to July 2004 and identified the cases in which he was holding undisbursed funds. The respondent subsequently remitted the undisbursed funds to the clients. The respondent stopped using his existing IOLTA account and opened a new account for which he established and maintained records in compliance with Rule 1.15.

The 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 with accounting conditions. In March 2013, the board voted to accept the stipulation and to impose a public reprimand on the accounting conditions without further proceedings.