

RUDOLPH F. MILLER

Public Reprimand No. 2014-7

Order (public reprimand) entered by the Board October 2, 2014.

SUMMARY¹

The respondent was admitted to practice in 1994. He practiced in his own firm focusing on criminal defense and civil litigation. Between at least January 2011 and October 2013, the respondent maintained an IOLTA account at Citizens Bank.

From at least January 1, 2011, through October 2013, the respondent failed to keep records for his IOLTA account in compliance with Mass. R. Prof. C. 1.15. The respondent did not keep (1) a check register with a chronological list showing for each transaction the client matter, date, amount, check or transaction number, source or purpose of the deposit or withdrawal, payee, and the balance after each transaction; (2) individual client ledgers for each client matter listing each transaction and a running balance for each client matter; and (3) a ledger of his personal funds for reasonably expected bank charges. The respondent did not perform a three-way reconciliation of the IOLTA account at least every sixty days.

The respondent failed to keep his personal funds separate from client funds on deposit in the IOLTA account. On multiple occasions between January 1, 2011, and October 2013, the respondent (a) deposited earned fees to the IOLTA account; (b) paid personal expenses from his personal funds on deposit in the IOLTA account by drawing checks payable to third parties and not to the respondent or his law firm; and (c) made cash withdrawals from the IOLTA account to remove his earned fees from the account.

This matter came to bar counsel's attention when a check drawn by the respondent on his IOLTA account to pay a non-lawyer contractor was returned for insufficient funds. The respondent did not have sufficient funds on deposit to pay the check to the contractor because the respondent had previously deposited to the IOLTA account a \$500 check for an earned fee from a client that was returned unpaid from the client's bank. Because the respondent was not reconciling his account, he was not aware that the \$500 check had been returned unpaid. After the contractor's check was returned for insufficient funds, the respondent contacted the bank and learned of the problem, and promptly made a deposit of \$500 in personal funds to cover the deficit. The contractor re-deposited the check, and it was paid.

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

On October 15, 2013, the respondent opened a new IOLTA account at Sovereign Bank, and allowed the Citizens Bank IOLTA account to wind down. Since January 2014, the respondent has been maintaining appropriate trust account records for his new IOLTA account.

The respondent's failure to reconcile his IOLTA account and maintain required records for the account violated Mass. R. Prof. C. 1.15(f)(1)(B)-(E). The respondent's failure to hold trust property separate from the lawyer's own property in the IOLTA account violated Mass. R. Prof. C. 1.15(b). By depositing earned fees to the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2). By making cash withdrawals from the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(e)(3). By making withdrawals from the IOLTA account for the purpose of paying fees to the respondent that were not payable to the respondent or his law firm, the respondent violated Mass. R. Prof. C. 1.15(e)(4).

The respondent's trust account violations did not result in any misuse of client funds. After bar counsel began her investigation, the respondent attended trust account school and hired an accountant to assist in bringing his records into compliance. The respondent had received a public reprimand in 2012 for unrelated conduct. See *Matter of Rudolph F. Miller*, Public Reprimand No. 2012-4, 28 Mass. Att'y Disc. R. __ (2012). Although his prior discipline was a factor in aggravation, in mitigation, the respondent addressed his record-keeping deficiencies and had been in compliance for nearly a year by the time the petition for discipline was filed.

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on September 8, 2014.