

**DOUGLAS W. SEARS**  
**Public Reprimand No. 2016-13**  
**Order (public reprimand) entered by the Board on September 30, 2016.**  
**SUMMARY**<sup>1</sup>

The respondent received a public reprimand for his conduct as follows.

On or about June 10, 2014, an elderly man was arrested after an altercation when he refused to leave the premises of a business. The man was charged in the Waltham District Court with engaging in disorderly conduct, assault and battery on a police officer, and resisting arrest. On or about June 23, 2014, the respondent met with the man and agreed to represent him on a *pro bono* basis.

Over the next three weeks, the client was charged with additional criminal misconduct, including a charge of open and gross lewdness. The client also received notice that he was facing eviction for non-payment of rent. On July 18, 2014, the respondent met with the client and agreed to represent him in all of his pending criminal matters and the eviction matter, and to assist the client with his finances. The respondent told the client that he would have to charge the client for his services, but the client would only have to pay what he could afford. The respondent did not inform the client in writing of the basis or rate of his fee. The client signed a durable power of attorney appointing the respondent as his attorney in fact, and authorized the respondent to make withdrawals from the client's bank accounts for his fees and the client's expenses.

In August 2014, a complaint issued in a different court charging the client with leaving the scene of an accident after causing property damage. The respondent also filed an appearance in that matter.

Between June 23, 2014, and September 30, 2014, the respondent undertook to represent the client in each of his matters. At the client's direction, the respondent also transferred about \$4,000 from the client's bank account to the respondent's IOLTA account. The respondent used these funds to pay about \$2,000 in expenses on behalf of the client, and to pay himself about \$2,000 in fees for his legal services. With the client's consent, the client's brother also paid the respondent \$1,500 for his legal services.

The respondent did not maintain contemporaneous records for his IOLTA account showing each receipt and disbursement of funds on behalf of the client, and the balance remaining after each transaction. On or before the dates when he withdrew the client's funds from the IOLTA account to pay his fees, the respondent did not deliver written notices to the client accounting for the services rendered, the amount and dates of the withdrawals, and the balance of the client's funds remaining after each withdrawal.

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

On about September 30, 2014, the attorney/client relationship broke down. The client requested that the respondent return his power of attorney and his file, and also provide an itemized accounting regarding his funds. The respondent returned the file and the power of attorney within a reasonable time after the request, but did not render an accounting.

On about October 1, 2014, the respondent learned that the client was planning to make allegations against him at upcoming hearings and had contacted bar counsel to complain about him. The respondent promptly withdrew from the eviction matter. The respondent then filed motions to withdraw in each of the criminal matters. His motions were allowed. In his affidavits filed in support of his motions to withdraw, the respondent revealed confidential information that was not reasonably necessary to establish a defense to the client's allegations. The confidential information included that the client "plays the sick old man game" to avoid responsibility for his actions, and that he "continues to get in motor vehicle accidents" with the result that the respondent "cannot in good conscience argue that he is not a danger to himself and others as a licensed driver of a motor vehicle."

On or about October 9, 2014, the respondent received a call from the victim witness in the open and gross lewdness case. She reported that the client had appeared at her boarding house and was harassing her and she feared for her safety. The respondent sent an email to the district attorney in which he revealed, among other things, that the client was continuing to contact the victim, including telephoning her and appearing at her rooming house, and that the client had sent the victim a text proposing marriage in the expressed belief that marriage would prohibit her from testifying against him. The respondent wrote that "[t]his possible witness tampering appears in blatant disregard of the No Contact Order ...." No additional charges were brought against the client based on the respondent's email. In August 2015, the leaving the scene of an accident case was dismissed upon request of the Commonwealth. In May 2016, the remaining criminal matters were disposed of by placing the client on pre-trial probation for five months.

From at least January 2010 through March 2016, the respondent failed to maintain required records for his IOLTA account, including a chronological check register, ledgers for each client matter and his own funds, and reconciliation reports. During this period the respondent also failed to reconcile his IOLTA account at least every sixty days. The respondent attended a program on trust account record-keeping and sought assistance from the Law Office Management Program (LOMAP), and brought his records into compliance with the rules.

By revealing confidential information relating to the representation of his client without consent after consultation, the respondent violated Mass. R. Prof. C. 1.6(a), as in effect prior to July 1, 2015. By failing to communicate to his client in writing before or within a reasonable time after commencing the representation the scope of the representation and the basis or rate of the fee and expenses for which the client would be responsible, the respondent violated Mass. R. Prof. C. 1.5(b). By failing to promptly render a full written accounting regarding the lawyer's handling of a client's trust property upon request by the client, the respondent violated Mass. R. Prof. C. 1.15(d)(1). By withdrawing funds from his IOLTA account to pay his fees without delivering to his client in writing (i) an itemized bill or other accounting showing the services rendered, (ii) written notice of the amount and date of the withdrawal, and (iii) a statement of the balance of the client's funds in the trust account after the withdrawal, the respondent violated Mass. R. Prof. C. 1.15(d)(2). 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 was admitted to practice in 1987, and had received no prior discipline.

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 12, 2016. The public reprimand was conditioned on a requirement that the respondent attend a continuing legal education course on the subject of legal ethics and law office management.