MARK D. SULLIVAN

Public Reprimand No. 2011-22

Order (public reprimand) entered by the Board on September 21, 2011.

SUMMARY[1]

A client hired the respondent in 2006 on a contingent-fee basis to represent him in a personal injury claim. In August 2009, the client obtained a pre-settlement loan from a litigation funding lender in the net amount of $3,000. The loan was secured by a lien on any proceeds of the tort claim, subject to superior liens existing on the date of the agreement and to payment of the respondent's legal fees and expenses.

According to a schedule established by the lender, the loan payoff amount increased at the start of each quarter during which the loan was outstanding. The loan agreement required the client, among other things, to direct his attorney to notify the lender of any settlement; to pay off the loan within thirty days of receipt of the settlement proceeds; and to make that payment prior to any distribution to the client. The respondent executed an acknowledgement of and agreement to honor those terms.

In November 2010, the respondent settled the client's claim for $50,000 and deposited the proceeds to his IOLTA account. A total of $18,616 was due the respondent from the proceeds for his fee and expenses. The respondent habitually left his fees and funds due him for expenses in the IOLTA account, and he failed promptly to withdraw his entire fee and expense reimbursement from the IOLTA account in this case. He also did not promptly notify the lender of the settlement or pay the off the loan.

In late November 2010, the respondent disbursed $20,500 to the client, leaving $10,884 of the client's proceeds on deposit in the IOLTA account after deductions for his fees and expenses. Under the repayment schedule, the payoff amount on the client's loan was $6,578 if paid by February 28, 2011, and $7,241 if paid between February 29 and May 28, 2011. When he made the disbursement to the client, the respondent informed the client that he would hold the remaining funds in case the Commonwealth had a MassHealth lien and that, if no such lien were asserted after a period of months, he would pay $7,241 to the lender to discharge the loan and remit the balance to the client The respondent did not explain to the client that the loan agreement prohibited any disbursements to the client before the loan was paid off; that, if the client wanted an immediate disbursement, he could pay off the loan and withhold funds from the client's share to cover a potential lien; and that a delay in paying off the loan would increase the eventual payoff amount by $663.

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

By March 2011, the Commonwealth had not asserted a lien on the client's proceeds. The respondent neglected to pay the lender or distribute the balance to the client, who complained to bar counsel that he had not received all of his proceeds. After he was informed of the complaint, the respondent paid $7,241 to the lender in satisfaction of the loan and $3,643 to the client as the balance of the proceeds. In addition, the respondent paid $663 to the client from personal funds as a reimbursement of the additional amount due on the loan.

The respondent's failure timely to notify the lender of the settlement and promptly to pay off the loan violated Mass. R. Prof. C. 1.1, 1.3, and 1.15(c). The respondent's failure to explain to the client that failure promptly to pay the lender violated the loan agreement and that delay in paying off the loan would increase the amount due violated Mass. R. Prof. C. 1.4(a) and (b). His failure promptly to withdraw his fees and expense reimbursements violated Mass. R. Prof. C. 1.15(b)(2).

Between at least January 2009 and July 2011, the respondent failed to maintain required IOLTA account documentation and records including a chronological check register, individual client and bank charge ledgers, and reconciliation reports. He did not reconcile his account. From time to time, the respondent made withdrawals from the IOLTA account in cash.

The respondent's cash withdrawals from the IOLTA account violated Mass. R. Prof. C. 1.15(e)(3). His failure to reconcile and maintain required records for his IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)B-F.

Between March and July 2011, bar counsel asked the respondent to bring his trust account records into compliance with Mass. R. Prof. C. 1.15. In May 2011, the respondent attended bar counsel's trust account training program. In August 2011, the respondent established trust account records in compliance with Mass. R. Prof. C. 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 conditions. On September 12, 2011, the board voted to accept the stipulation and impose a public reprimand, conditioned on the respondent's attendance at a continuing education course designated by bar counsel and on his certification, six months after the imposition of the reprimand, of his compliance with Mass. R. Prof. C. 1.15.