ROBERT K. CABANA
Public Reprimand No. 2013-7

Order (public reprimand) entered by the Board on April 30, 2013.

SUMMARY[1]

In the spring of 2010, a client hired the respondent to obtain a modification of her home mortgage loan. Over the next year, the respondent handled other matters for the client but took no action of substance to investigate or initiate a loan modification on her behalf. The respondent failed to inform the client that he was taking no substantial action to have her loan modified. The client learned from her lender in the summer of 2011 that that no loan modification application had been submitted by the respondent, and she made application on her own. The respondent's failure to investigate or pursue a loan modification for the client violated Mass. R. Prof. C. 1.1 and 1.3.

From about 2007 through 2011, 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).

Between 2007 and the fall of 2011, the respondent deposited earned fees and other non-trust funds to the IOLTA account in excess of what was reasonably sufficient to pay bank charges and failed promptly to withdraw all his earned fees and expense reimbursements. He also made cash withdrawals from the IOLTA account to pay client obligations and to pay himself for earned fees and expense reimbursements. The

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

respondent's deposit of excess non-trust funds to his IOLTA account and failure promptly to withdraw from his IOLTA account all his earned fees and expense reimbursements violated Mass. R. Prof. C. 1.15(b)(2). The respondent's cash withdrawals from his IOLTA account violated Mass. R. Prof. C. 1.15(e)(3). His withdrawals in cash to pay earned fees and expense reimbursements violated Mass. R. Prof. C. 1.15(e)(4).

In the fall of 2011, after receiving notice of bar counsel's investigation, the respondent stopped using his existing IOLTA account and opened a new account. The respondent brought his trust account records into compliance in 2012.

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 malpractice insurance and accounting conditions. The respondent was also required to attend a course on ethics and law office management. In April 2013, the board voted to accept the stipulation and to impose a public reprimand on the agreed conditions without further proceedings.