



**JEFFREY N. FORMICA**

**Public Reprimand No. 2015-6**

**Order (public reprimand) entered by the Board on August 12, 2015.**

**SUMMARY**<sup>1</sup>

From on or before June 2007 until on or after December 2012, the respondent was engaged in the practice of law concentrating in real estate closing transactions. The respondent maintained an IOLTA account and used the account primarily for the deposit of funding proceeds and the payment of disbursements required to complete each real estate transaction. The respondent maintained separate individual ledgers within the IOLTA account corresponding to each real estate transaction he handled for a client. In 2007, the respondent created a ledger identified as C07-398, for deposits and disbursements related to a real estate transaction that was completed in or about August 2008. At the time the transaction was completed, the respondent properly disbursed funds from the account to his client but failed to withdraw his earned fees from the ledger. The respondent retained his earned fee in his IOLTA account and attributed that fee to the C07-398 ledger.

From July 2008 through 2012, the respondent retained a substantial amount of earned fees in excess of \$500,000 in his IOLTA account and attributed them to the C07-398 ledger. He also attributed to the ledger unresolved set-asides and unnegotiated checks (checks that had been tendered but not presented for payment). During the relevant time, the respondent failed to research the reasons for the unnegotiated checks attributed to the C07-398 ledger with reasonable promptness and held the uncleared transactions in his IOLTA account for more than a short period of time. The respondent made disbursements from the C07-398

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

ledger, all of which were recorded. The vast majority of the disbursements were for business or personal purposes unrelated to any specific real estate transaction or client matter.

After the matter was brought to the attention of bar counsel in March 2013, the respondent diligently worked on researching or resolving the uncleared transactions, removed any earned fees from the IOLTA account, opened a new IOLTA account and set up new auditing protocols to assure that proper withdrawal and segregation of earned fees occurs timely.

For the tax years of 2008 through 2011, the respondent's earned fees retained in his IOLTA account were not included on his income tax returns. The respondent retained tax counsel, fully disclosed the issue to the Internal Revenue Service and Massachusetts Department of Revenue, and filed amended returns. The respondent has paid all back taxes to the Massachusetts Department of Revenue, made substantial payment of back taxes to the Internal Revenue Service and is in the process of entering into a payment plan for remaining amounts due to the Internal Revenue Service.

The respondent's conduct of retaining earned fees in his IOLTA account is conduct in violation of Mass. R. Prof. C. 1.15(b). The respondent's failure to diligently research the reasons for the uncleared transactions and his failure to resolve the unpaid items with reasonable promptness, holding the funds in his IOLTA account long term, is conduct in violation of Mass. R. Prof. C. 1.3 and 1.15(e)(5).

In aggravation, the respondent was inexperienced in the subject area of the law involved. In mitigation, the respondent hired a bookkeeper and voluntarily took steps to engage a consultant to conduct periodic accountings of transactions in respondent's IOLTA account in accordance with rule 1.15.

The respondent was admitted to the bar of the Commonwealth on December 17, 1991, and has no prior discipline. This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for a public reprimand. On July 13, 2015, the board voted to accept the recommendation.