

ADMONITION NO. 00-19

CLASSIFICATIONS:

Dishonored Check on Trust Account [Mass. R. Prof. C. 1.15(f)]

Trust Account Commingling and Record-keeping [Mass. R. Prof. C. 1.15(a)]

Failure to Maintain Proper Records of Client's Property [DR 9-102(B)(3)]

SUMMARY:

This matter came to Bar Counsel's attention pursuant to Mass. R. Prof. C. 1.15(f) as a result of a receipt of a notice of dishonored check from the bank at which the respondent maintains his IOLTA account. The check in question was for \$2398 and payment would have caused an overdraft of \$761.

The respondent has an active collection practice. He originally believed that the problem stemmed from a late deposit. However, further review of the respondent's trust account records showed various other mistakes that had gone undetected over several years. These problems, all inadvertent, included numerous instances in which costs were paid from the IOLTA account that slightly exceeded the covering deposits and other instances in which deposits were returned for insufficient funds and against which the

respondent had already made disbursements. In one other case, the respondent paid himself fees from a retainer that exceeded the amount of the retainer, and in another, he refunded from the IOLTA account a retainer that he had already disbursed to himself. The total of these errors created a shortfall of over \$5000 in the trust account, most of which was masked by the float. The respondent did not maintain individual ledgers, and did not adequately reconcile the account, and was thus unaware in given cases that disbursements were greater than receipts. The respondent's conduct in these respects constituted inadequate record keeping, in violation of Mass. R. Prof. C. 1.15(a) and former Canon Nine, DR 9-102(B)(3).

In mitigation, the respondent has been a member of the bar since 1981 with no prior disciplinary history. During the period in question, the respondent was involved in several nonlegal volunteer projects that left him short of time for administrative office tasks. The respondent has since deposited personal funds to his trust account to cover the deficiency. He has also undertaken to reconcile the account monthly and to review the transaction history of each claim before making a disbursement.

Under these circumstances, the respondent received an admonition, conditioned upon attendance at a CLE course designated by Bar Counsel.