

## **ADMONITION NO. 00-17**

### **CLASSIFICATION:**

IOLTA Violation [Mass. R. Prof. C. 1.15(e)]

### **SUMMARY:**

This matter came to Bar Counsel's attention as a result of the receipt of two notices of dishonored checks from the bank in which the respondent maintained a trust account.

The respondent is a conveyancer. One check was returned unpaid because the respondent was unaware that the lender had not wired the mortgage funds to his trust account. The second check was returned unpaid because the mortgage funds had inadvertently been deposited to a different trust account.

More critically, however, Bar Counsel's review of the respondent's records showed that one of the trust accounts that he was using for conveyancing was a pooled interest-bearing account with interest paid to the respondent. Most of the loans that the respondent closed through this account were referred to him by two different mortgage broker clients. The actual lenders were banks or mortgage companies. In each instance, the respondent had an agreement with the mortgage broker that he could retain the interest earned on the mortgage proceeds in exchange for lower costs.

The mortgage broker in these circumstances is not the "person or entity on whose behalf [the] lawyer or law firm holds funds in trust" and thus is not in fact the client as that term is used for purposes of Mass. R. Prof. C. 1.15. However, the respondent could not personally retain the interest earned even if he had the consent of the underlying lenders and borrowers. The proceeds of each mortgage are held short-term and thus must be deposited either to an IOLTA account or (where the conveyancing account exception applies and a lending bank so directs) to a non-interest-bearing conveyancing account in the lending bank for that bank's loans only. The respondent's conduct in depositing trust funds to an account other than as specified

above was in violation of Mass. R. Prof. C. 1.15(e).

In addition, a small percentage of the loans closed through this trust account did not originate with either of the mortgage brokers who had consented to the respondent's retaining the interest earned. The mortgage proceeds for these closings clearly should have been deposited to an IOLTA account and the respondent's failure to do so again violated Rule 1.15(e). The respondent subsequently reimbursed the IOLTA Committee for the amount of interest earned on closings for which there was no semblance of client consent.

The respondent has now agreed to close all loans through his IOLTA account. Under these circumstances, he received an admonition for the above violations, conditioned upon attendance at a CLE course designated by Bar Counsel.