

ADMONITION NO. 00-10

CLASSIFICATIONS:

Failure to Notify of Receipt or Account to Client or Third Person for Property [Mass. R. Prof. C. 1.15b]
Trust Fund Accounting and Disputes [Mass. R. Prof. C. 1.15c]

SUMMARY:

The respondent represented a client in a protracted civil litigation (cross-petitions to partition and an action for corporate dissolution and accounting) culminating in the buy-out of the client's interest in certain properties including a restaurant. The matter was settled for \$675,000 and the first installment payment of \$37,291 was received by the respondent on behalf of the client in early 1999. The respondent by this juncture claimed to be owed a balance of over \$56,000 in fees and had sent bills (albeit not well-itemized) reflecting this claim. When the initial payment of \$37,291 was received by the respondent, the respondent advised the client of his intent to apply the sum to his fees. The client made various objections relating to his own need for the funds, as well as to the value and quality of the services rendered, and offered to continue to pay \$300 per month. The respondent rejected the client's proposal. After several months of fruitless negotiations, the respondent advised the client that, "lacking any other alternatives," he would apply the \$37,291 to his bill. The respondent at this point in the spring of 1999 wrote himself a check in that amount from his trust account.

After the complaint to Bar Counsel was filed and Bar Counsel intervened, the respondent returned the disputed \$37,291 to an escrow account. The time elapsed was about two months. The client then objected to the lack of detail on the respondent's very general bills. Again at Bar Counsel's instance, the respondent reconstructed his billing and sent itemized bills to the client.

By writing a check to himself for his fees over the client's objections, the respondent violated Mass. R. Prof. C. 1.15(c) by failing to keep the disputed sum separate until the dispute was resolved. In mitigation, the respondent did make some attempts at resolution before taking action unilaterally and he cooperated when Bar Counsel advised him that the funds would have to be returned to escrow. In addition, the respondent's failure to provide an itemized accounting of his services to the client violated Canon Nine, DR 9-102(B)(3) and Mass. R. Prof. C. 1.15(b). However, he did send the client bills very regularly and without complaint until the first installment of the settlement was received.

The respondent received an admonition for the above violations.