

ADMONITION NO. 21-13

CLASSIFICATIONS:

Creating Negative Balance In Client Ledger [Mass. R. Prof. C. 1.15(f)(1)(C)]

Failure to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

Trust Account Commingling [Mass. R. Prof. C. 1.15(b)(2)]

SUMMARY:

On June 1, 2020, the respondent was conducting a real estate closing. He received an email notification from the lender stating that funds for the closing had been wired to his IOLTA account. However, the respondent did not receive a fax confirmation from his bank that the wire transfer had been received, which was the bank's usual practice. The funds had not in fact been wired to the account. The respondent disbursed the funds for the closing, causing a shortage in his IOLTA account and a subsequent overdraft of approximately \$68,000. Several days later, the lender deposited the funds in the IOLTA account, and the respondent wired replacement funds to the payee of the dishonored check.

Bar counsel had previously warned the respondent that he was responsible for investigating any uncleared checks written from his IOLTA account and for following up with the payees to make sure the funds were disbursed. Bar counsel reviewed the respondent's IOLTA records in 2020 in connection with the above dishonored check notification. Many of the uncleared checks that had been the subject of the prior warning, some of which had been issued as early as 2005 and 2006, were still not cleared. The respondent had also accumulated additional uncleared checks, many of which had been written to the respondent to pay earned fees or to reimburse expenses, and some of which the respondent had failed to negotiate even after several years had passed.

By disbursing funds for a real estate closing before the funds from the lender were deposited in the IOLTA account, and thus creating a negative balance in the account with respect to an individual client or clients, the respondent violated Mass. R. Prof. C. 1.15(f)(1)(C). By allowing checks to remain uncleared for up to fifteen years, the respondent failed promptly to deliver trust property to the persons entitled to receive it, in violation of Mass. R. Prof. C. 1.15(c). By failing promptly to deposit checks written from the IOLTA account to the respondent or to his law firm, the respondent failed to withdraw funds belonging to him at the earliest reasonable time after his interest in those funds became fixed, in violation of Mass. R. Prof. C. 1.15(b)(2)(ii).

The respondent was admitted in 2004 and has no prior discipline. After bar counsel contacted the respondent in 2020, he took steps to resolve the uncleared items. He received an admonition for his misconduct.