

SCOTT D. KUHN

BBO # 689094

Public Reprimand No. 2024-11

Order (public reprimand) entered by the Massachusetts Board of Bar Overseers of the Supreme Judicial Court on July 24, 2024.

The respondent stipulated to a public reprimand for engaging in a conflict of interest and neglecting a matter with no harm resulting to the clients.

SUMMARY¹

In July 2021, the respondent began representing a client who had been served with a complaint for protection from harassment filed by the building manager of the rental community where the client resided. The client, an adult, resided in the rental property with his mother, who received housing assistance to pay the rent, and his minor sibling. In the complaint, the building manager alleged that the client had harassed her on three separate occasions.

While the harassment prevention proceeding was ongoing, the rental community sent the respondent, the client, and the client's mother a lease violation letter describing the three incidents and a fourth incident, all alleged to have been committed by the complainant.

The respondent negotiated a settlement of the harassment prevention matter, whereby the client would keep his distance from the building manager. Shortly after settlement of the harassment prevention matter, the rental community sent a second lease violation letter alleging a fifth violation committed by the client.

The rental community then sent a Notice to Quit to the client and his mother stating that it would evict all occupants of their unit if they did not move out within 30 days (the "Eviction Matter"). The respondent reviewed the Notice to Quit in the Eviction Matter and discussed it with both the client and his mother. Neither the client nor his mother moved out pursuant to the Notice to Quit.

On or about October 8, 2021, the rental community served an eviction complaint on the client and his mother seeking to evict all the occupants of the rental unit. The grounds for eviction were solely based on the alleged behavior of the client as described in the lease violation letters.

At this time, the respondent knew that the interests of the client and his mother were, at least, potentially in conflict given that the mother's primary goal was to protect her tenancy and housing assistance, which goal might be furthered by disassociating herself from her adult son whose alleged behavior was the only grounds for eviction. The respondent, however, failed to discuss any potential for conflict with the client or his mother.

¹ Compiled by the Massachusetts Board of Bar Overseers' Office of General Counsel based on the record of proceedings before the board.

On October 25, 2021, the rental community filed the eviction complaint seeking to evict the client, his mother, and his minor sibling for the client's alleged behavior. The respondent told the client that he would file an answer and counterclaims, but never did. The respondent advised the client's mother on the potential impact of an eviction on her housing assistance and stated that the rental community might allow her and her minor child to remain, if the client moved out.

The respondent agreed to appear at a status conference and mediation on behalf of both the client and his mother (together, "clients"). In doing so, the respondent engaged in a concurrent conflict of interest. Specifically, there was a significant risk that his representation of each client in the Eviction Matter would be materially limited by his representation of the other given that the mother could be evicted due to the sons' alleged behavior and could potentially settle the matter to her benefit if the son agreed to move out. The respondent, however, did not obtain either client's informed consent, confirmed in writing, to the conflict.

Mediation was unsuccessful because the son refused to move out. The respondent informed the court that he would enter an appearance on behalf of the clients and file an answer to the eviction complaint and counterclaims. Accordingly, the court set deadlines for the answer and counterclaims, as well as discovery requests and responses. The court also scheduled the filing of a joint pretrial memorandum by January 21, 2022, a pretrial conference on January 24, 2022, and trial on January 31, 2022.

The respondent never filed an answer or counterclaim on behalf of his clients in the Eviction Matter, either by the court's deadline or at any time thereafter. By failing to do so, the respondent effectively waived all of their claims and defenses.

The respondent received discovery requests from the rental community which sought specific information from each client individually. The respondent asked the son to draft responses to the discovery requests. The respondent never obtained consent from the mother to delegate her discovery responses to the son.

Between January 10, 2022 and January 18, 2022, counsel for the rental property contacted the respondent at least four times asking the respondent to confirm his role in the matter, as he had not yet entered an appearance, and to participate in the preparation the joint pre-trial memorandum. The respondent did not reply, nor did he participate in drafting the pretrial memorandum. Counsel for the rental property filed a pre-trial memorandum noting that the respondent had not returned his attempts to contact him.

On January 21, 2022, four days before the pre-trial conference, the respondent finally entered his appearance on behalf of his clients.

By the time he entered his appearance, the respondent considered the mother to be his "primary" client because she was the head of household, the recipient of the housing assistance, and the mother of a minor child who would be most harmed by an eviction. By the time he entered his appearance, the respondent could not have reasonably believed that he could provide competent and diligent representation to each client when he considered his duty to one to be

subordinate to his duty to the other. The respondent never discussed this conflict with either client. The respondent did not withdraw from the matter.

By the date of the trial, the respondent had not completed tasks that he had promised his clients including filing an answer and counterclaim and pursuing discovery of recordings pertaining to the incidents alleged in the eviction complaint. Prior to completion of the trial the parties settled the matter with the son agreeing to move out. After the settlement the son asked for documents from his file, which the respondent never provided.

By failing to communicate with his clients regarding various aspects of the matter, the respondent violated Mass. R. Prof. C. 1.4(a)(2) and (b). By representing clients when there was a significant risk that the representation of one or more clients would be materially limited by the lawyer's responsibilities to another client, without obtaining informed consent confirmed in writing, the respondent violated Mass. R. Prof. C. 1.7(a)(2); 1.7(b); and 1.4(a)(1). By failing to withdraw when the respondent could not reasonably believe that he could competently and diligently represent both clients, the respondent violated Rule 1.16(a)(1). By failing to, *inter alia*, file an answer; timely enter an appearance; propound and respond to discovery; respond to reasonable requests from opposing counsel; and participate in the drafting of the pretrial memorandum; the respondent violated Mass. R. Prof. C. 1.3. By failing to provide the client file after termination and upon request, the respondent violated Mass. R. Prof. C. 1.16(d).

The respondent was admitted to practice in 2013. The respondent received an admonition in 2021 for neglect of a client matter without any resulting harm.

This matter came before the Board of Bar Overseers on a stipulation of the parties and an agreed recommendation for discipline in the form of a public reprimand. On July 8, 2024, the Board of Bar Overseers voted to accept the stipulation and to administer a public reprimand to the respondent.