

WILLIAM FRANCIS MARKLEY

Order (public reprimand) entered by the Board May 20, 2004.

SUMMARY¹

Count I

On May 10, 1997, the respondent agreed to represent a client in a Chapter 13 bankruptcy matter for \$850. The client paid \$400.00 toward the agreed fee, but very shortly thereafter terminated the respondent's services. When the respondent refused to refund the \$400, the client sued him in small claims court. In the "Answer and Counterclaim" to the small claims complaint filed in early 1998, the respondent revealed confidential information gained in the course of his representation of the client that was not reasonably necessary to the respondent's defense of the small claims action. The client did not consent to the disclosure of confidential information.

By disclosing confidential information that he had learned in the course of his representation of a client, the respondent violated Mass. R. Prof. C. 1.6. The disclosure did not fall into the exception contained in Mass. R. Prof. C. 1.6(b)(2).

Count II

In October 1996, the respondent assumed the representation of a client in an adversary action in connection with a Chapter 7 bankruptcy. At that time, a motion was pending to dismiss the adversary proceeding, filed by the client pro se. The client told the respondent to communicate with him through his wife, as the client was difficult to reach. The respondent, however, failed to return many of the client's wife's telephone calls and was rude and verbally abusive to the client's wife when she attempted to obtain information about the case. A hearing on the motion to dismiss the adversary proceeding was scheduled for September 9, 1998, but the plaintiff in the adversary proceeding dismissed the action without hearing.

On several occasions after the dismissal of the adversary proceeding, the client requested from the respondent a bill for services and an accounting of the retainer. The respondent did not at any time before December 1999 send the client a bill or accounting.

By failing to reasonably return the client's wife's telephone calls, and failing to provide information about the status of the adversary proceeding, the respondent failed to keep his client reasonably informed of the status of a matter, in violation of Mass. R. Prof. C. 1.4(a). The respondent's rudeness and verbal abuse of his client's wife violated Mass. R. Prof. C. 8.4(h). By failing to provide the client with an accounting of his retainer, the respondent violated Mass. R. Prof. C. 1.15(b).

Count III

In June 2000, the client retained the respondent to represent her in a Chapter 7 bankruptcy. The respondent failed to communicate with the client about her bankruptcy from July through early September 2000. The respondent became angry with the client when she called him in early September to inquire about the status of her bankruptcy.

On September 5, 2000, the respondent filed a the bankruptcy petition on behalf of the client. The First Meeting and Examination of Debtor ("341 meeting") was held on October 3, 2000. The respondent intentionally failed to speak to the client at the 341 meeting. During the 341 meeting, the bankruptcy trustee requested verification of the ERISA status of the client's 401(k). The client provided the respondent with documentation that she had cashed in her 401(k). The respondent misplaced the Form 1099 and did not forward it to the trustee.

On March 7, 2001, the trustee filed a motion to dismiss the bankruptcy due to the client's failure to provide documentation of the ERISA status of her 401(k) plan. The respondent did not notify the client of the motion to dismiss; he filed an opposition to the motion to dismiss that admitted all of the trustee's allegations and stated that the debtor had been directed to obtain the necessary documentation. The client, after receiving notice of the motion to dismiss directly from the court, contacted the trustee's clerk, who directed her to send the necessary documentation directly to the trustee. She did so and the trustee withdrew the motion to dismiss.

The respondent's misplacement of the client's Form 1099 constituted an unintentional failure to preserve his client's property, in violation of Mass. R. Prof. C. 1.15, and his failure to adequately defend his client against the motion to dismiss, constituted a failure to seek the lawful objectives of his client, in violation of Mass. R. Prof. C. 1.2(a). The respondent's failure to inform the client that the trustee had filed a motion to dismiss her bankruptcy, and that the trustee had not received the required documentation of the ERISA status of her 401(k), violated Mass. R. Prof. C. 1.2(a), 1.3, and 1.4(a) and (b).

Count IV

On August 18, 1999, the client retained the respondent to file a Chapter 7 bankruptcy petition on her behalf. She signed a fee agreement under which she agreed to pay \$475 plus filing fees and any additional expenses. By late October, the client completed payment of the \$475 fee and the \$175 filing fee. Because of various obstacles that developed, the respondent never filed a bankruptcy petition on the client's behalf.

The respondent received a letter dated December 27, 1999, from a creditor of the client's. The respondent received a second letter from the creditor on or about May 23, 2000. The respondent did not reply to either of the two letters from the creditor. On February 6, 2001, the creditor filed a complaint against the client in district court. The client received a summons and forwarded it to the respondent's office. The respondent did not inform the client that he would not represent her in that matter, but took no action with respect to the pending lawsuit. Thus, a default judgment was entered for the creditor on March 23, 2001.

The creditor then instituted a supplementary process action, and served the client with the summons. The client mailed the supplemental process summons to the respondent. The respondent did not tell the client that he would not represent her in the supplementary process proceeding, but took no action in that proceeding. In July, 2001, the client discharged the respondent and filed a request for investigation of the respondent with the Office of the Bar Counsel. In August 2001, the respondent returned \$200 to the client.

The respondent's failure to file a bankruptcy petition on behalf of the client and his failure to contact the creditor or enter an appearance in the district court matter violated Mass. R. Prof. C. 1.2(a) and 1.3. The respondent's failure to communicate with the client about the status of the matters which he was handling for her, violated Mass. R. Prof. C. 1.3 and 1.4(a) and (b).

This matter came before the Board of Bar Overseers on an agreed recommendation for discipline by public reprimand based on a stipulation of the parties. On May 10, 2004, the Board of Bar Overseers voted to administer a public reprimand to the respondent.

¹ Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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