

STEVEN E. MURRA

Order (public reprimand) entered by the Board October 27, 2004.

SUMMARY¹

In 1998, the respondent undertook to represent a married couple in a personal injury case resulting from a motor vehicle accident in which the wife was seriously injured. The respondent and wife agreed that the respondent's compensation would be one-third of any monies recovered. The parties did not execute a written contingent fee agreement. The respondent then filed separate superior court actions on behalf of the wife and husband. The wife sought compensation for her physical injuries while the husband sought compensation for loss of consortium. Both actions sought damages against several defendants

In 2001, the wife requested that the respondent withdraw from representing her in the personal injury action because she had decided to retain new counsel. She retained new counsel in November 2001, and entered into a contingent fee agreement under which new counsel was entitled to 40% of any recovery on the wife's claims. The respondent withdrew from the wife's case shortly thereafter. He did not reach any agreement with the wife or her new counsel about receiving compensation for the time he had invested in her case. After withdrawing from the wife's case, the respondent continued to represent the husband.

In August 2003, the wife's new counsel negotiated a resolution of her claims with all the defendants for \$275,000. On August 7, 2003, the wife's counsel wrote to defense counsel confirming the settlement. The respondent did not participate in the negotiations that led to the settlement of the wife's claims. He considered himself entitled to assert a lien on the settlement, but did not do so.

Following the settlement of the wife's claims, defense counsel contacted the respondent in an attempt to resolve the husband's claims. The respondent indicated to defense counsel that he was considering asserting a lien against the wife's settlement. Shortly after his conversation with defense counsel, the respondent spoke to his client, the husband. Based on that conversation, the respondent erroneously believed that if he could settle the husband's claim for about \$15,000 and if he did not assert a lien on the wife's settlement, the husband would assent to the respondent's retaining the entirety of the \$15,000 as his legal fee on both cases. The husband, however, had not assented to that arrangement.

In the following weeks, the respondent and defense counsel negotiated a settlement of the husband's loss of consortium claim. On September 18, 2003, the husband signed a release in which he agreed to release the defendants from all claims upon the receipt of \$15,000. On October 16, 2003, the respondent wrote to defense counsel, stating that, "[b]ecause of the additional \$15,000 settlement with regard to [the husband's] Howard's claim, I will not be asserting a lien on [the wife's] settlement."

On October 21, 2003, defense counsel sent a check for \$15,000 on the account of the defendants' insurer to the respondent. The respondent retained the entire \$15,000 as his legal

fee. The respondent had no right or authority to deduct his legal fees for work performed on the wife's case from the husband settlement. The fee of \$15,000 was clearly excessive for the respondent's work on the husband's case.

The respondent did not notify the husband of his receipt of the settlement check or provide the husband with a written statement of the outcome of the matter or the disposition of the settlement funds. On November 13, 2003, the husband wrote to the respondent requesting copies of all pertinent documents concerning his case and any payments made by the defendants' insurance company. The respondent did not reply to the husband's letter. On February 23, 2004, the husband filed a grievance with the Office of Bar Counsel. On or about August 5, 2004, the respondent paid \$9400 to the husband, representing \$15,000 minus a one-third contingency fee of \$5,000 and expenses incurred by the respondent on behalf of the husband.

By failing to commit to writing his contingent fee agreement with the husband and wife, the respondent violated Mass. R. Prof. C. 1.5(c).

The respondent's \$15,000 legal fee was clearly excessive, in violation of Mass. R. Prof. C. 1.5 (a).

By failing to notify the husband of his receipt of the \$15,000 check, and failing to provide him, in response to his request, with a full written accounting of his distribution of the \$15,000, the respondent violated Mass. R. Prof. C. 1.15(b).

By failing to provide the husband with a written statement of the outcome of his lawsuit and the disposition of the settlement funds, the respondent violated Mass. R. Prof. C. 1.5 (c)(6).

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

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