

DOUGLAS R. MACDONALD

Order (public reprimand) entered by the Board December 22, 2004.

SUMMARY¹

The respondent received a public reprimand for misconduct in two unrelated matters, as well as for failure to cooperate with bar counsel.

In the first matter, the respondent was retained to represent a client on a personal injury claim resulting from a motor vehicle accident that occurred on January 12, 1997. The respondent filed suit on behalf of the client on or about January 11, 2000, and a trial date was scheduled for March 13, 2001.

On August 15, 2000, the defendant's attorney served the client with interrogatories and a request for production of documents by mailing them to the respondent. The respondent failed to advise the client that the interrogatories and document request had been propounded. On December 29, 2000, the defendant's attorney served the respondent with a notice that the defendant would apply for entry of judgment of dismissal under Mass.R.Civ. P. 33(a) if the answers to the interrogatories were not timely received. The respondent sent the interrogatories and the request for production of documents to the client on or about January 20, 2001. He did not advise the client that the responses had to be filed within 30 days of December 29, 2000, or the defendant would apply for dismissal of her claim. The client failed to provide the respondent with the answers to the interrogatories by the due date and the respondent did not contact her to remind her to provide the answers or to offer to assist her in this undertaking.

The defendant's attorney filed a reapplication for entry of a judgment of dismissal on or about February 14, 2001. The respondent was served with a copy of this document but did not notify the client. The client's lawsuit was dismissed on February 26, 2001. The respondent failed to notify the client of the dismissal and failed to take any action to reinstate the case.

In response to the client's subsequent inquiry regarding the status of her claim, the respondent informed her that the case had been dismissed but that he believed that it could be reinstated if the answers to the interrogatories were promptly filed. Between January and March 2002, the client made numerous efforts to contact the respondent regarding the status of her claim. The respondent failed to reply and failed to remind the client that he was waiting for her to provide answers to interrogatories in order to attempt to reinstate the case.

The client retained new counsel to represent her on or about June 12, 2002. She wrote to the respondent to discharge him as her attorney and to request that he forward her file to her new counsel. The respondent sent the file on or about July 15, 2002. Successor counsel wrote to the respondent the following day and requested that the respondent provide him with documents that were missing from the file. The respondent failed to reply. Successor counsel filed a motion to vacate the dismissal of the client's claim on or about October 7, 2002. The motion was denied on December 18, 2002.

The respondent's conduct in failing to promptly forward interrogatories to the client, failing to promptly advise the client of the dismissal of her case, failing to reply to client's telephone messages between January and March 2002, and failing to remind the client that he was waiting for her to provide answers the interrogatories in order to attempt to reinstate the case was in violation of Mass. R. Prof. C. 1.3 and 1.4. His failure to reply to successor counsel's request for information regarding documents missing from the client's file and to locate and provide the missing documents to successor counsel, was conduct in violation of Mass. R. Prof. C. 1.16 (d).

In the second matter, the respondent was retained on or about November 21, 2001, to represent a client in a divorce. The client paid the respondent a retainer in the amount of \$1000.00. On or about November 12, 2002, she wrote to the respondent advising him that she had reconciled with her husband and requested that he provide her with an accounting of his services and a refund of any unearned portion of the retainer. The respondent failed to reply.

The respondent thereafter failed to reply to additional requests by the client for an itemized bill. The client then filed a complaint against the respondent at the Office of Bar Counsel. After being notified of the complaint, the respondent sent the client an accounting on or about September 30, 2003, indicating that he had earned the full fee. The client questioned the respondent's accounting and requested that he provide her with her complete file. The respondent had difficulty locating the file and did not send it to her or reply to her questions until March 12, 2004.

The respondent's failing to reply to the client's communications, to provide her with her file and to provide her with an accounting of his services was conduct in violation of Mass. R. Prof. C. 1.4, 1.15 (b) and 1.16(e).

In addition to his misconduct in both of these matters, the respondent failed to reply to bar counsel's letters concerning both complaints, resulting in the issuance of two subpoenas for his appearance at the Office of Bar Counsel. The respondent's failure to cooperate with bar counsel's investigation was in violation of Mass. R. Prof. C. 8.4 (g) and Supreme Judicial Court Rule 4:01, § 3.

In aggravation, the respondent received an admonition in 2000, 16 Mass. Att'y Disc. R. 458, for inadequate preparation in a domestic relations matter, in violation of Mass. R. Prof. C. 1.1. In mitigation, the respondent was a sole practitioner who had personal problems that contributed to his lack of attention to, and neglect of, the client matters described in the petition. Commencing in 2000, and during the entire period in which the matter was pending, the respondent was involved in personal divorce proceedings that affected his ability to focus on his cases. The respondent closed his law practice in November 2002 in order to accept non-legal employment. As a result of continuing domestic problems, he thereafter had difficulty obtaining access to stored files.

This matter came before the Board on December 13, 2004, on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by public reprimand. The Board accepted the parties' recommendation and imposed a public reprimand.

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