

MICHAEL S. CALLAHAN

Order (public reprimand) entered by the Board December 8, 2005.

SUMMARY¹

In October of 2003, the respondent undertook to represent a client in a custody case in the probate court. The client paid the respondent a \$2,500 retainer against which the respondent was to bill hourly for services rendered.

The client and his wife had been divorced in July of 1997. In July of 2003, the client filed a pro se complaint for modification of custody of his two minor daughters based upon their allegations that the ex-wife's current husband ("stepfather") had molested them. On July 28, 2003, the court entered a temporary abuse prevention order granting the client sole physical custody of his two daughters (then ages fourteen and ten). At that point, DSS had undertaken an investigation.

On September 24, 2003, the court conducted a review of the temporary orders. Both the client and his ex-wife were seeking sole physical custody of the children. Although DSS had supported allegations of neglect and sexual abuse by the stepfather, the court entered a temporary order granting joint physical and legal custody to the client and his ex-wife. The court's order prohibited the ex-wife from allowing any contact between the minor daughters and the stepfather.

The court scheduled a trial on the client's complaint for modification to be held on January 29, 30, and February 27, 2004. The respondent, however, was admitted to the hospital on January 28, 2004, after falling on ice and injuring his back. The respondent was discharged from the hospital the next day.

Due to the respondent's hospitalization, the court granted the respondent's request for a postponement of the hearing and scheduled a case conference for February 4, 2004. Again on the eve of the February 4, 2004 conference date, the respondent requested a continuance based upon medical reasons. The court granted a second continuance and issued an order rescheduling the trial to February 27, 2004, and March 18 and 19, 2004.

On February 26, 2004, the respondent was again hospitalized, this time for chest pains. The respondent was discharged two days later, on February 28, 2004. On February 26, the respondent requested a continuance of the case for the third time.

The court granted the continuance, but by order dated February 27, 2004, notified the parties that the trial would be held on the remaining scheduled dates, March 18 and 19, 2004, and that no further continuances would be granted. The court's order further stated that "[the client] is put on notice that he may need to obtain back up counsel to represent him at trial." Although the respondent notified the client of the new court dates, the respondent failed to provide him with a copy of the court's February 27, 2004 order or to inform him that no further continuances would be granted or of the court's suggestion that he obtain back-up

counsel.

The respondent again failed to appear in court on March 18, 2004. The respondent did not give notice that he would not appear until the morning of the trial.

When the client appeared in court for trial on March 18, 2004, he was informed that the respondent would not be present. At that point, the client learned for the first time that the court's previous order had instructed him to get back-up counsel and that no further continuances would be granted.

The client filed a pro se motion for a continuance because he could not proceed without counsel. The court granted the client's pro se motion for another continuance. However, the court also entered a temporary order granting the client's ex-wife sole physical custody of the minor daughters. The court's March 18, 2004 order provided the client with visitation only on alternate weekends and reinstated a prior child support order requiring the client to make payments to his ex-wife.

The client discharged the respondent and, by letter dated May 5, 2004, requested an accounting and the return of his retainer. The respondent did not reply. In January of 2005, the client filed a grievance with bar counsel. After bar counsel began an investigation, the respondent refunded the retainer. In 2005, one of the minor daughters began living with the client again and he is continuing to pursue custody of the other minor daughter.

The respondent's failure to diligently pursue the client's claims or to communicate adequately with the client, and his failure to appear in court on March 18, 2004, caused harm to the client, and constituted violations of Mass. R. Prof. C. 1.1, 1.3 and 1.4(a). The respondent's failure to provide the client with a copy or notice of the specific provisions of the court's February 27, 2004 order requiring the client to get back up counsel constituted a violation of Mass. R. Prof. C. 1.1 and 1.3 and failure to obey the rules of a tribunal in violation of Mass. R. Prof. C. 3.4(c). The respondent's failure to account for the client's retainer and return the file to the client promptly upon being discharged as counsel constituted a violation of Mass. R. Prof. 1.15(d) and 1.16(d).

This matter came before the Board on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by public reprimand. There were no factors in mitigation. On November 14, 2005, 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.