

IRWIN KWIAT

Order (public reprimand) entered by the Board August 18, 2006.

SUMMARY¹

The respondent received a public reprimand for misconduct in five unrelated matters representing incarcerated clients.

In the first matter, the respondent accepted a retainer of \$2,000 in the spring of 1999 to represent a client on a motion for a new trial. The client had been convicted of first degree murder in 1995, and the conviction had been upheld by the Supreme Judicial Court in 1997. The respondent reviewed a large number of documents on the case, discussed it with trial counsel and presented the client with six potential issues.

In October of 2002, the client terminated the representation and demanded the return of his retainer. The respondent did not withdraw from the representation and did not provide the client with an accounting for his fee. The respondent's failure to withdraw and account for his fee upon termination was in violation of Mass. R. Prof. C. 1.15(b) [as in effect through June 30, 2004], 1.15(d)(1) [effective July 1, 2004] and 1.16(a)(3).

In the second matter, the respondent agreed in February of 2001 to represent a client in seeking to withdraw a guilty plea to drug trafficking and obtain a new trial. The respondent received \$2,000 of an agreed-upon flat fee of \$3,500, reviewed a large number of documents on the case and discussed it with the client's trial counsel.

In January of 2002, the client wrote to the respondent requesting that he withdraw and return any unearned portion of his fee. The respondent did not respond to this letter. The client then contacted the Office of Bar Counsel. After the respondent was contacted in March of 2002 by an ACAP staff person, he met with the client, who agreed to continue the representation.

From May through October of 2002, the respondent did not respond to a number of letters and telephone calls from the client. In August of 2002, the client wrote to the respondent and again terminated the representation and demanded the return of his fee. The respondent did not respond to this letter. The client contacted the ACAP office and a staff person contacted the respondent. The respondent then communicated with the client, who again requested that the respondent continue to represent him.

From February of 2003 through January of 2004, the respondent failed to respond to a number of letters and telephone calls from the client. In February of 2004, the client once again wrote to the respondent terminating the representation and demanding a return of his fee payments. The respondent did not respond to this letter, did not withdraw and did not provide the client with an accounting for his fee.

The respondent's failure to maintain reasonable communications with the client and to

respond to his reasonable requests for information was in violation of Mass. R. Prof. C. 1.4(a). The respondent's failure to withdraw and account for his fee upon termination was in violation of Mass. R. Prof. C. 1.15(b) [as in effect through June 30, 2004], 1.15(d)(1) [effective July 1, 2004] and 1.16(a)(3).

In the third matter, the respondent agreed in March of 2001 to represent a client on a direct appeal from a second degree murder conviction. A payment of \$2,600 was made toward an agreed-upon flat fee of \$5,000. The respondent reviewed the trial record, including transcripts of the trial and a suppression hearing.

From June of 2001 through August of 2002, the respondent did not visit the client in prison and failed to respond to letters and telephone calls from the client. The client wrote to the respondent in August of 2002 terminating the representation and demanding the return of his fee payments and all files and papers related to his case. The respondent withdrew and provided his file material to an attorney appointed by the court to represent the client. He did not provide the client with an accounting for his fee.

The respondent's failure to maintain reasonable communications with the client and to respond to his reasonable requests for information was in violation of Mass. R. Prof. C. 1.4(a). His failure to account for his fee upon termination in August of 2002 was in violation of Mass. R. Prof. C. 1.15(b) [as in effect through June 30, 2004] and 1.15(d)(1) [effective July 1, 2004].

In the fourth matter, the respondent agreed in July of 2001 to represent a client on a direct appeal from a drug trafficking conviction and received a flat fee of \$2,500. The respondent reviewed the trial record and filed a notice of appeal.

Over the spring and summer of 2002, the respondent failed to respond to a number of letters and telephone calls from the client. By letters dated September 13, 2002, and September 27, 2002, the client requested that the respondent withdraw as his attorney, instructed him to take no further action on his case, and demanded an itemization of his actions and a return of his fee. The respondent did not respond to either of these letters. In March of 2003, the respondent received and reviewed transcripts of the client's two-day suppression hearing and two-day trial. In June of 2003, the respondent filed a motion to withdraw, which was allowed.

The respondent's failure to maintain reasonable communications with the client and to respond to his reasonable requests for information was in violation of Mass. R. Prof. C. 1.4(a). His failure to withdraw and account for his fee upon termination in September of 2002 was in violation of Mass. R. Prof. C. 1.15(b) [as in effect through June 30, 2004], 1.15(d)(1) [effective July 1, 2004] and 1.16(a)(3).

In the fifth matter, the respondent represented a client on various criminal charges in superior court from December of 2003 through August of 2004. The respondent received four checks totaling \$16,500 for the representation but did not keep or maintain adequate records concerning his receipt of two of the checks totaling \$8,500.

All charges against the client were resolved with guilty pleas on August 3, 2004. In February of 2005, the client wrote to the respondent requesting his complete file, an itemized bill for services and an accounting of all fees and costs. In June of 2005, the respondent sent most of the file to the client and informed the client that he would deliver a psychologist's report to him in person. On November 1, 2005, the respondent met with the client in prison and delivered the psychologist's report to him. In December of 2005, the respondent provided an accounting for his fee.

The respondent's failure to keep or maintain adequate records of his receipt of funds for the client's representation and to provide a timely accounting for his fee upon request was in violation of Mass. R. Prof. C. 1.15(b) [as in effect through June 30, 2004] and 1.15(d)(1) [for conduct on and after July 1, 2004]. His failure to make the client's file materials available to

him within a reasonable time of his request was in violation of Mass. R. Prof. C. 1.16(e).

In aggravation, the respondent received a private reprimand in 1986 for negligent misuse of escrow funds held back from a real estate sale pending resolution of a broker's claim to a commission. PR-86-26, 5 Mass.Att'y.Disc.R. 465 (1986). In mitigation, although the respondent breached his obligations to communicate with incarcerated clients in a number of cases, he did not otherwise neglect or cause harm to their cases. The respondent adopted office and accounting procedures to facilitate better communication with clients, including information about the fees incurred in the representation.

This matter came before the Board of Bar Overseers on a stipulation of facts and rules violations and a joint recommendation that a sanction of public reprimand be imposed. On August 14, 2006, the Board voted to accept the stipulation of the parties and 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.

Site Index

Please direct all questions to webmaster@massbbo.org.

© 2006. Board of Bar Overseers. Office of Bar Counsel. All rights reserved.