

TRACY DORENE DUDEVOIR

Order (public reprimand) entered by the Board July 23, 2008.

SUMMARY<sup>1</sup>

Starting in 1999, the respondent represented a client in a divorce on an hourly fee basis. By the fall of 2003, the client owed the respondent at least \$5,000 for unpaid fees. The respondent and the client had agreed generally that the fees would be satisfied from funds to be paid to the client by her husband, but the client had not agreed to deduction of a specific amount.

In late October 2003, the probate court entered a divorce judgment and approved the parties' separation agreement. The agreement required the husband to pay the client a total of about \$31,500 between November 2003 and April 2004 for the client's share of the proceeds of his sale of the marital home and, if the payments were delayed, a \$500 penalty for each month of delay. The parties also agreed that the client would receive 50% of the husband's pension funds or about \$12,500. The agreement required the husband's lawyer to prepare a Qualified Domestic Relations Order (QDRO) for the pension distribution.

In November 2003, the husband's lawyer sent the respondent checks totaling \$10,000 for the first payment due the client from the sale proceeds. The respondent failed to notify the client promptly of her receipt of the checks. The respondent failed promptly to deposit the checks to a trust account, and they were not then negotiated. The respondent failed promptly to distribute the proceeds due the client. The respondent took no action thereafter to collect the remaining funds due from the husband, obtain the QDRO, or otherwise protect the client's interests.

Between about December 2003 and June 2004, the respondent failed regularly to review all her office mail or respond to all her office telephone messages. The client made repeated inquiries by telephone message to the respondent about the payments due from the husband. The respondent failed to respond to the inquiries. In addition, in early 2004, the husband's counsel notified the respondent that the husband would transfer his entire pension to the client to satisfy his payment obligations, sent the respondent a proposed QDRO for that purpose, and asked her to sign and return the QDRO so that the payment could be made. The respondent failed to return the QDRO or answer counsel's inquiries.

In March 2004, the husband's counsel sent the respondent another check for \$9,500 as a further part payment of the husband's obligations to the client. The respondent failed to notify the client promptly of her receipt of that check, deposit the check promptly to a trust account, and promptly to distribute the proceeds due the client. That check also remained unnegotiated.

By June 2004, the respondent was holding a total of \$19,500 of the client's funds in the form of the unnegotiated checks. The husband then owed the client about \$12,000 for the remaining house proceeds, \$12,500 for the client's share of his pension, and \$1,000 as

penalties for the overdue payments. Although the husband was ready to pay the client in full from his pension funds, the payment could not be made due to the respondent's failure to sign the QDRO.

In June 2004, the respondent deposited the proceeds checks to her IOLTA account. On July 1, 2004, the respondent withdrew and paid herself \$5,000 for outstanding fees due from the client through the entry of the divorce judgment. When she paid herself for her fees, the respondent failed to give the client an itemized bill or other written accounting of the services rendered, written notice of the date and amount of the withdrawal, and a written statement of the balance held after the withdrawal. That same day, the respondent sent the client \$14,500, the balance of the proceeds. The respondent failed to give the client a full accounting of the funds. Shortly after the remittance the client discharged the respondent, notified the respondent that she disputed the \$5,000 fee payment, and asked the respondent to refund the entire payment. The respondent failed to return the \$5,000 to a trust account pending resolution of the dispute.

In the fall of 2004, the client, acting pro se, filed a contempt complaint against her husband for nonpayment. The client was unable to pursue the contempt complaint without assistance. In the spring of 2005, the court appointed a guardian ad litem for the client to execute the QDRO and obtain the pension funds. The guardian ad litem asked the respondent for documentation regarding the house sale, the proceeds, and distribution of the client's share. The respondent failed to provide the documentation. The court approved the QDRO in June 2005, at which time the client received the remaining payment due from the husband.

By failing to represent the client competently and diligently and failing to pursue the QDRO and the payments due from the husband, the respondent violated Mass. R. Prof. C. 1.1, 1.2, and 1.3. By failing to respond to the client's inquiries and keep the client informed of the status of the QDRO and the husband's payments, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By failing to respond to the guardian ad litem's inquiry, the respondent violated Mass. R. Prof. C. 8.4(d).

By failing promptly to notify the client of her receipt of the proceeds checks, the respondent violated Mass. R. Prof. C. 1.4(a) and (b) and Mass. R. Prof. C. 1.15(b) as in effect through June 30, 2004. By failing promptly to deposit the proceeds checks to a trust account, the respondent violated Mass. R. Prof. C. 1.15(d) and (e) as in effect through June 30, 2004. By failing promptly to deliver the proceeds due the client, the respondent violated Mass. R. Prof. C. 1.15(b) as in effect through June 30, 2004.

By failing to give the client an itemized bill or other written accounting of the services rendered, written notice of the date and amount of the withdrawal, and a written statement of the balance held after the withdrawal of the \$5,000 fee payment and failing to render a full accounting upon distribution of the remaining proceeds, the respondent violated Mass. R. Prof. C. 1.15(d)(1) and (2) as in effect since July 1, 2004. By failing to return the disputed fee payment to a trust account pending resolution of the dispute, the respondent violated Mass. R. Prof. C. 1.15(b)(2)(ii) as in effect since July 1, 2004.

In aggravation, the respondent had a vulnerable client who was prejudiced by the substantial delay in receiving the payments due from the husband. In mitigation, between about late 2003 and June 2004, the respondent was away from her office for substantial periods while acting as a caretaker for a family member, and those demands distracted her from her obligations to the client. The respondent has since refunded \$2,500 to the client as compensation for the delayed payment with interest.

The matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by public reprimand. On July 14, 2008, the Board voted to accept the stipulation and impose the recommended discipline.

<sup>1</sup> Compiled by the Board of Bar Overseers based on the record of proceedings before the Board.

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