

SCOTT A. LATHROP

Order (public reprimand) entered by the Board November 26, 2008.

SUMMARY¹

Between February 1998 and March 2000, the respondent represented a client in various legal matters relating to the client's termination of employment by a federal agency. The primary legal matter handled by the respondent was a U.S. District Court action that the respondent filed on September 3, 1999, on behalf of the client against his employer.

During the course of the representation, the respondent borrowed \$2,000 from the client. The respondent did not transmit the terms of the loan to the client in writing and did not obtain the client's consent in writing to the transaction. The respondent also did not discuss with the client how the loan would be repaid, and he did not provide the client with a promissory note.

In January 2000, the government and the client agreed to the material terms of a settlement agreement. The agreement included a provision that the government pay \$32,500 in attorney's fees. The agreement was finalized on February 14, 2000, and, on February 15, 2000, the court entered an order dismissing the case, without prejudice to either party to reopen the action within thirty days, for good cause shown, if the settlement was not consummated.

The client objected to the settlement agreement and declined to sign it. On February 25, 2000, the respondent filed a motion on the client's behalf to reopen the matter on the grounds that the settlement had not been consummated. That same day, the respondent moved to withdraw. The court allowed the respondent's motion to withdraw on March 8, 2000.

On May 3, 2000, the respondent filed a notice of lien for \$38,837.75 in the court, based on a quantum meruit claim for reasonable fees and expenses. In calculating the amount of his lien, the respondent credited the client with the \$2,000 that the client had previously loaned him. The respondent did not seek or obtain the client's agreement to credit the unpaid loan against the respondent's claim for unpaid legal fees.

On June 20, 2000, the court ruled, over the client's objection, that the parties had reached a settlement agreement and granted in part the government's motion to enforce the settlement agreement. The client appealed. On October 21, 2001, the United States Court of Appeals for the First Circuit ruled that the parties were bound by the terms of the settlement agreement. On or about April 26, 2002, the government paid the respondent \$32,500 in attorney's fees pursuant to the terms of the settlement agreement.

On July 29, 2002, the client filed a civil claim against the respondent seeking, among other things, repayment of the \$2,000 loan. After a jury trial, the jury found that the respondent owed the client \$2,000 plus interest in repayment of the loan. The respondent thereafter paid the client \$2,000 plus interest.

By entering into a business transaction with a client without transmitting the terms to the client in writing, discussing how the loan would be repaid, giving the client a reasonable opportunity to seek the advice of independent counsel, or obtaining the client's informed consent in writing, and by purporting to repay the loan through a credit on fees charged to the client without the client's prior consent, the respondent violated Mass. R. Prof. C. 1.8(a).

The respondent was admitted to the bar of the Commonwealth on December 16, 1977. In aggravation, the respondent received an admonition in 2000 for failing to credit a client with a \$1,000 payment for costs and expenses and to provide the client with an accurate accounting of funds received from the client in violation of Rule 1.15(a). In addition, in the prior case the respondent failed to promptly return portions of the client's file that the client had paid for, in violation of Rule 1.16(e)(3), and failed to adequately communicate with the client in violation of Rule 1.4. Admonition No. 00-02, 16 Mass. Att'y Disc. R. 448 (2000).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline. The board accepted the parties' recommendation, and on November 10, 2008, the board ordered a public reprimand.

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

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