

PAUL E. KELLEHER

Order (public reprimand) entered by the Board August 30, 2010.

SUMMARY¹

In 2008, the client retained Rhode Island counsel to bring suit against a Rhode Island company for injuries suffered by the client while she was shopping at one of the company's stores located in Massachusetts. That lawyer filed suit in Rhode Island, and the defendant was defaulted in June 2008 after failing to file an answer.

In July 2008, the client retained the respondent to represent her in the case. The respondent did not have the client execute a written contingent fee agreement. In addition, he failed to discuss with the client that prior counsel would expect to be paid and whether she or he would be responsible for prior counsel's fee. The respondent also did not obtain the client's consent to the respondent's sharing the fee with prior counsel.

The respondent notified prior counsel that he would be representing the client and requested a copy of the client's file. Prior counsel immediately sent the respondent a copy of the client's file and a notice that he was claiming a lien under the Rhode Island attorney's lien statute for his services on any judgment recovered in the client's case.

In August 2008, the client's claim was arbitrated in Massachusetts, and, in September, the arbitrator issued an award of \$17,750.00. The respondent did not notify prior counsel that there had been an arbitrator's decision awarding the client damages.

The respondent received a check payable to the client, the respondent, and prior counsel in about late September 2008, but he did not notify prior counsel of the receipt of the check or obtain prior counsel's endorsement on the check. The respondent paid his fee and the arbitrator's fee from the check and the balance to the client.

Prior counsel learned of the payment in November, when the defendant moved to dismiss the Rhode Island case. Prior counsel immediately sent the respondent and the client an itemized bill addressed to the client.

When he received no reply, prior counsel requested that bar counsel investigate. The respondent then paid prior counsel's fee from his personal funds.

In mitigation, the respondent's conduct was guided by his belief that the client was responsible for prior counsel's fee. Ultimately, the respondent forfeited most of his fee by paying prior counsel the entire amount that was claimed to be due.

The respondent's failure to have a signed contingent fee agreement with the client violated Mass. R. Prof. C. 1.5(c). His failure to explain to the client prior counsel's expectation of collecting a fee, clarify whether the client or the respondent would be responsible for paying the fee, and obtain the client's consent to splitting the fee with prior counsel violated Mass. R. Prof. C. 1.4(b) and 1.5(e). The respondent's failure to notify prior counsel of the receipt of

the settlement proceeds in which counsel had an interest and either to hold the funds in escrow or turn over the funds promptly to prior counsel violated Mass. R. Prof. C. 1.15(c).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation that the respondent receive a public reprimand. The Board of Bar Overseers accepted the parties' recommendation and imposed a public reprimand on August 16, 2010.

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.