Public Reprimand No. 2010-29

JACK McLEAN ATWOOD

Order (public reprimand) entered by the Board October 28, 2010.

SUMMARY[1]

The respondent was admitted to the Bar of the Commonwealth on April 1, 1972. He received a public reprimand for misconduct in three matters.

In the first matter, the respondent began representing a criminal defendant on federal drug charges in the United States District Court for the District of Masssachusetts in late 2004. He met with the client's parents to discuss his fee, but there was no written fee agreement and the respondent did not adequately communicate to the parents the basis or rate of the fee he was charging. The parents paid the respondent $10,000 in December of 2004 and $10,000 in October of 2005.

After the client pled guilty and was sentenced in June of 2006, the client's father requested that the respondent provide an accounting for his fee. By letter dated September 19, 2006, the respondent replied that the representation was on a "per job flat rate" and did not provide an accounting.

In May of 2008, the client's mother requested that the respondent provide an accounting for his services on the case. The respondent replied to this request by sending the same letter as was sent on September 19, 2006. After the mother then filed a grievance with the Office of Bar Counsel against the respondent, the respondent provided an itemized accounting of his time spent on the matter.

The respondent's failure to provide the client's parents with an explanation of what the basis of his fee would be or how it would be determined was in violation of Mass. R. Prof. C. 1.4(b) and 1.5(b). His failure to provide upon the request of the parents an accounting of his services rendered was in violation of Mass. R. Prof. C. 1.4(a) and 1.15(d)(1).

In the second matter, the respondent began representing a client on a will contest in February of 2006. The client was contesting the validity of a will that she claimed deprived her of an inheritance worth approximately $350,000. The respondent agreed to represent the client at an hourly rate of $400 for his time and $250 for the time of an associate. He asked for and received a $5,000 retainer. He also told the client that if the recovery on the case was "decent", he would discuss with her an additional fee "to make both parties happy". There was, however, no written fee agreement and the respondent did not explain to the client what the basis of any additional fee would be or how it would be determined.

The respondent settled the will contest in July of 2008 for $175,000. The client requested a final bill with a breakdown of the charges. In response, the respondent informed the client that legal fees due at the hourly rates were $13,537.50 (net of her retainer) but the respondent did not provide a breakdown or an accounting for the fee. The respondent also proposed to the client that "[g]iven the result, I believe that an additional $15,000.00 is

merited. . . ." In response, the client disputed the respondent's entitlement to any additional fee.

In August of 2008, the client filed a grievance against the respondent with the Office of Bar Counsel. In response, the respondent provided an itemized accounting of his and his associate's time spent on the will contest. The respondent also agreed to hold the full claimed fee in escrow pending the resolution of the fee dispute. The parties have since resolved the fee dispute to their satisfaction.

The respondent's failure to provide the client with an explanation of what the basis of his additional fee would be or how it would be determined was in violation of Mass. R. Prof. C. 1.4(b) and 1.5(b). His failure to provide upon the client's request an itemized bill showing the services rendered was in violation of Mass. R. Prof. C. 1.4(a) and 1.15(d)(1).

In the third matter, in January of 2008, the respondent began representing a client on criminal charges resulting from an altercation with her husband. The respondent informed the client that his fee would be between $10,000 and $15,000, and he asked for and received an initial payment of $5,000. There was, however, no written fee agreement and at no time did the respondent explain to the client what the basis of his fee would be or how it would be determined.

Shortly after the client retained the respondent, she was served with a complaint for divorce. The respondent also agreed to represent her on the divorce. At no time did the respondent tell the client what the fee would be for the divorce, what the basis of the fee would be or how it would be determined.

On the criminal case, the respondent had discussions with the police who had been involved in the client's arrest, representatives of the district attorney and a lawyer representing the client's husband in the divorce. As a result of the respondent's various discussions, the criminal charges against the client were dismissed in April of 2008.

The respondent also had a number of discussions with the husband's lawyer and the client about a number of financial issues in the divorce. The husband agreed to pay the client $45,000 as a "partial divorce settlement" from funds he had taken from joint accounts. The husband provided the respondent with a check in that amount, which the respondent deposited to an escrow account. The respondent then disbursed $35,000 to the client and $10,000 to himself as his fee for the criminal case. The respondent did not provide the client with an itemized bill showing the services rendered.

By the end of April, 2008, the client had discharged the respondent on the divorce and the criminal matter had been concluded. The client requested an accounting for the fee charged by the respondent, including time spent on the case and an hourly rate. The respondent refused at that time to provide an accounting.

In June of 2008, the client filed a grievance against the respondent with the Office of Bar Counsel. In response, the respondent provided an intemized accounting of his time spent on the client's criminal and divorce matters. He also returned the full fee to an IOLTA account to be held pending the resolution of any dispute the client might have about the fee.

The respondent's failure to provide the client with an explanation of what the basis of his fee would be or how it would be determined was in violation of Mass. R. Prof. C. 1.4(b) and 1.5(b). His failure to provide the client with an itemized bill showing the services rendered upon withdrawal of his fee from escrow and upon the client's request was in violation of Mass. R. Prof. C. 1.4(a) and (b), and 1.15(d)(1) and (2).

In aggravation, the respondent had a disciplinary history of an admonition in 2006. Admonition No. 06-20, 22 Mass.Att'y.Disc.R. 892 (2006). In two unrelated matters, the client failed to

maintain adequate communication with an incarcerated client in violation of Mass. R. Prof. C. 1.4, failed to provide a client with file material within a reasonable time of request in violation of Mass. R. Prof. C. 1.16(e) and failed to safeguard file material in violation of Mass. R. Prof. C. 1.15(a) (for conduct prior to July 1, 2004) and 1.15(b)(3).

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 September 13, 2010, 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.