SCOTT F. GLEASON

Public Reprimand No. 2012-24

Order (public reprimand) entered by the Board on December 28, 2012.

SUMMARY[1]

On June 17, 2001, during a heavy rainstorm, a large hill of dirt created by several construction companies at work on a new subdivision in Methuen washed down a hill next to the construction site. The landslide left approximately two and one half feet of dirt on the property of a husband and wife who lived below the site. The homeowners promptly notified the general contractor for the project and the City of Methuen of the damage to their property. Neither the contractor nor the City took actions sufficient to redress the harm caused from the construction or to prevent further damage to the properties abutting the site. Subsequent rain storms occurring both before and after July 16, 2001, resulted in additional washouts and further damage to the property.

In June 2002, the homeowners engaged the respondent, a principal of his law firm, to represent them in their claims against the contractor and the City. The respondent agreed to charge a one-third contingent fee, plus a retainer of $2,500, which the clients paid on July 3, 2002. The respondent did not prepare and have a written contingent fee agreement executed by the clients and the firm.

The respondent was primarily responsible to the clients, but he assigned the case to an associate at his firm to handle the initial investigation and prepare a draft complaint. The firm did not have in place measures sufficient to assure proper oversight and that deadlines were met, and the respondent did not personally assure that the associate's conduct conformed to the Rules of Professional Conduct.

M.G.L. c. 258, § 4, required that a written notice of presentment of claim be provided to the executive officer of a municipality within two years of the date the cause of action accrued, and prohibited commencement of an action against the City until after the claim had been denied in writing or the city had not responded for six months after presentment of the notice of claim. Neither the respondent nor his associate presented a notice of claim to the City within two years of the incidents that occurred prior to July 16, 2001. On July 16, 2003, the respondent signed and mailed to the mayor of the City a notice of presentment of claim on behalf of the clients, demanding that the City pay the clients $1,000,000 for physical and emotional damages and damages to their property. The City did not reply. On July 16, 2003, the respondent also notified the contractor that he represented the clients in connection with their claim for damages due to the construction project. Neither the respondent nor his associate informed the clients that the firm had failed to provide a notice of claim to the City within the required time period as to incidents that had occurred prior to July 16, including the June 17th landslide.

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

In about 2004, the associate prepared a draft civil complaint against the contractor and the City alleging damages from the June 17, 2001 landslide as well as the runoffs from additional rainstorms in July 2001 and a fecal contamination problem identified in August 2001. The respondent reviewed the complaint, but he did not take any action to have it corrected or filed before the expiration of the statutes of limitations against either defendant. By the end of 2004, the statutes of limitations expired on any claim for damages that the clients might have had against the contractor or the City.

Between July 2002 and March 2009, the respondent took no further action of substance of the matter. The respondent did not discuss the case with the associate, and he failed to make reasonable efforts to ensure that the associate was handling the matter with reasonable diligence and promptness. Between 2004 and 2009, the respondent occasionally met with the clients. The respondent took no action of substance to determine the actual status of the case, and he therefore failed to notify the clients that the statutes of limitations had expired on their claims and misrepresented instead that a lawsuit had been filed against the contractor and the City and that the case was proceeding. The respondent never checked the file or spoke with the associate to confirm the truth of these statements. In 2007, the respondent met with the clients twice and negligently misrepresented that the case was moving forward, believing incorrectly that progress reported on a second matter being handled for the clients by the associate related to the claims against the City and the contractor.

In about March 2009, the clients checked with the court and learned that no lawsuit had been filed. The clients notified the respondent, who promptly acknowledged that he was responsible for the failure to file suit in a timely manner. In about March 2009, the respondent asked the clients to settle their potential legal malpractice claim against the respondent and his firm for $50,000 less one-third for his attorney's fees, for a total of $34,000. The clients were not represented by counsel at the time. Although the respondent informed the clients orally that they should consider retaining a lawyer, he did not advise them in writing that independent representation was appropriate in evaluating his settlement offer. The clients refused the settlement offer.

By agreeing to charge a contingent fee without preparing and having a written contingent fee agreement executed, the respondent violated Mass. R. Prof. C. 1.5(c). By failing to make reasonable efforts to ensure that the firm had in effect measures giving reasonable assurance that all lawyers in the firm conformed to the Rules of Professional Conduct, the respondent violated Mass. R. Prof. C. 5.1(a). By failing to make reasonable efforts to ensure that another lawyer over whom the respondent had direct supervisory authority conformed to the Rules of Professional Conduct, the respondent violated Mass. R. Prof. C. 5.1(b). By failing to handle his clients' case with the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation; to seek the lawful objectives of his clients; to inform himself as to the actual status of the case; and to act with reasonable diligence and promptness in representing the clients between 2002 and 2009, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3. By failing to keep his clients reasonably informed about the status of their matter and by failing to explain the matter sufficiently to the clients to allow them to make informed decisions about the representation, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By unintentionally misrepresenting

the status of the case, his actions in the case, and the reasons for delay, the respondent violated Mass. R. Prof. C. 1.1, 1.3, 1.4(a) and (b) and 8.4 (h). By attempting to settle his clients' malpractice case against his firm when the clients were not independently represented and without first advising them in writing that independent representation was appropriate, the respondent violated Mass. R. Prof. C. 1.8(h) and 8.4(a).

In aggravation, the respondent was admitted to practice in 1980 and had substantial experience in the practice of law, his misconduct took place over the course of several years, and the clients were harmed by the respondent's failure to attend to their case. In mitigation, the respondent immediately acknowledged his error when it was brought to his attention and cooperated fully with his liability insurer so that the clients were made whole. The respondent had served as a past president of his local bar association and performed pro bono work in his community, especially for veterans and veterans' organizations.

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 December 10, 2012, the board ordered a public reprimand.