



Public Reprimand No. 2011-10

Order (public reprimand) entered by the Board on May 25, 2011.

SUMMARY¹

The respondent was admitted to the bar in Massachusetts on June 8, 1977.

In January of 2008, the respondent was retained to represent a client in a contentious divorce from her husband. During the course of the marriage, the husband had permitted the client to use a gasoline credit card in the name of the husband's business for her personal use. The client's continued usage of the credit card was an issue raised by the husband early in the divorce and was a subject of an order of the court in March of 2008 permitting her continued usage.

Beginning in July of 2008 and continuing through July of 2009, the client periodically gave the respondent the gasoline card to use for his own personal use, without the knowledge of her husband or his counsel. The respondent used the card to pay for gasoline for his own automobile at least twenty times. During this same time period, the respondent also knew that the client gave the gasoline card to other people to use without the consent of her husband or his counsel.

The respondent did not advise the client of the risks involved in allowing others to use the gasoline card. The respondent's representation of the client in the divorce was materially limited by his personal interest in using the gasoline card for his own expenses and the respondent did not obtain the consent of the client, after consultation, to the respondent's continuing representation of her in the divorce case.

By September of 2008, the husband and his counsel suspected the gasoline card was being used by persons other than the client. When the issue of possible misuse of the card was raised to the respondent, the respondent did not disclose that he had been using the gasoline card, did not discuss with the client whether such disclosure should be made and did not discuss whether the client should cease allowing others to use the card. The respondent did not withdraw from representing the client in the divorce matter at this time.

By failing to advise the client that allowing others, including himself, to use the gasoline card was creating risks for her, and after the issue was raised by the husband, failing to discuss with the client whether to disclose that he and others were using the card and whether she should cease allowing the respondent and others to use the gasoline card, the respondent violated Mass. R. Prof C. 1.2(a).

By continuing to represent the client in the divorce when the respondent's representation of the client was materially limited by his personal interest in using the gasoline card, the respondent violated Mass. R. Prof. C. 1.7(b).

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

In mitigation, the respondent made full restitution to the husband's business in the amount of \$1,128.89 and there was no harm to the client. The respondent had been given the gasoline card by the client for his use. He believed that withdrawal following his use of the gasoline card would have worked a financial hardship on the client, who was of limited means and whose bill he had reduced by \$11,000.

The matter came before the Board of Bar Overseers on a stipulation of the parties and a joint recommendation for a public reprimand. On May 9, 2011, the board ordered that the respondent be publicly reprimanded.