Public Reprimand No. 2011-23

Order (public reprimand) entered by the Board on October 6, 2011.

SUMMARY[1]

Starting in February 2008, the respondent represented a client in defense of a contempt complaint filed by the client's ex-wife. The complaint alleged that the client had failed to make child support payments and had failed to make mortgage payments on the home conveyed to the client in the divorce proceeding on the condition that he protect the ex-wife from liability on the mortgages encumbering the property. The respondent had represented the client in the divorce.

In October 2008, the respondent assisted the client in entering into a use and occupancy agreement with a potential purchaser of the home providing that the purchaser would pay $1,000 per month with a credit toward the purchase price of the house. By January 2009, the client had turned over to the respondent $1,000 received pursuant to the agreement. The respondent had intended to collect the payments and apply them to discharge a sewer betterment lien on the property. However, because the client was in arrears on his support obligations, the respondent used the money to pay the client's child support.

The trial of the contempt matter occurred in January 2009. Prior to the trial, the respondent's client completed and signed a probate court financial statement that required the client to disclose all income and receipts from all sources. The financial statement the respondent filed with the court did not list the use and occupancy payments because the respondent mistakenly considered the payments as an escrow and not as income. Additionally, because he had paid all of the funds received from the prospective purchaser to the wife as child support, the respondent considered the escrow to have no value. The respondent signed the required "statement by attorney" at the end of the financial statement that he had "no knowledge that any of the information contained herein is false" and filed it with the probate court.

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

The trial on the contempt matter did not conclude in January and was continued to June 2009. By that time, the respondent had received another $6,000 from the client representing payments pursuant to the use and occupancy agreement and had applied the funds to make additional child support payments totaling $4375.

On the day the contempt trial resumed, the husband completed and signed a new probate court financial statement. The respondent continued to characterize the payments pursuant to the use and occupancy agreement as an "escrow" and calculated its value as $725 when he in fact was holding $1,725. This error arose from the respondent's failure to perform a three-way reconciliation of his IOLTA account and to keep a proper running balance in his client matter ledger. The respondent again signed the required "statement by attorney" on the financial statement that he had "no knowledge that any of the information contained herein is false."

The ex-wife's counsel called the respondent's client as a witness at the contempt trial and asked him whether he was receiving rent for the former marital home. The client testified truthfully about his receipt of the use and occupancy payments. The court entered a judgment of contempt against the husband in July 2009. Among other findings, the court determined that the husband had improperly failed to report the use and occupancy income from the prospective purchaser on his financial statements. The respondent did not take note of these findings.

Later that month, the respondent received and deposited in his IOLTA account two additional use and occupancy payments of $1,000 each. In early September, the respondent paid $1,704.19 to the Massachusetts Department of Revenue for the benefit of the ex-wife. In October, the respondent sent checks totaling $1,727.91 to the ex-wife for child support arrearages.

In July and November 2009, the ex-wife filed new contempt actions against the respondent's client alleging that he was in arrears on his child support payments. The court scheduled a trial on the contempt complaints for late December 2009. On the day of the trial, the client completed and signed a new probate court financial statement that again characterized the use and occupancy payments as an escrow instead of as income. The respondent did not cause the additional $2,000 received from the prospective purchaser in July to be reported as income on the client's financial statement, and he showed the value of the escrow as $725 instead of $292.90, which was the actual amount he was holding. The

respondent signed the required “statement by attorney” at the end of the husband’s financial statement and filed it with the probate court.

The respondent’s conduct in signing and filing inaccurate financial statements with the court constituted a failure to provide competent representation and lack of diligence in violation of Mass. R. Prof. C. 1.1 and Mass. R. Prof. C. 1.3, and interfered with the administration of justice in violation of Mass. R. Prof. C. 8.4(d). The respondent’s conduct in failing to perform regular three-way reconciliations of his IOLTA account violated Mass. R. Prof. C. 1.15(f)(1)(E). The respondent’s conduct in failing to keep an accurate individual client ledger for each client matter with a list of every transaction and running balance violated Mass. R. Prof. C. 1.15(f)(1)(C).

The matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for a public reprimand. The board accepted the parties’ recommendation, and on September 12, 2011, voted unanimously to accept the stipulation and impose a public reprimand with the requirement that the respondent attend trust account training.