KURT M. HAYES

PUBLIC REPRIMAND NO. 2012-01

Order (public reprimand) entered by the Board on January 18, 2012.

SUMMARY[1]

The respondent received a public reprimand for two counts of misconduct as set forth below.

In the first count, in March 2005, a woman retained an attorney in Rhode Island to represent her in a claim for personal injuries resulting from a three-car automobile accident that occurred on March 18, 2005,in Massachusetts. Rhode Island counsel handled the matter for about three years but was unable to reach any settlement with the insurers of either of the two other vehicles. In early March 2008, Rhode Island counsel referred the case to the respondent for purposes of filing litigation and on March 14, 2008, the respondent filed a civil claim on behalf of the client in the Bristol County Superior Court.

Prior to the filing of the litigation, unbeknownst to the respondent, one of the defendants had died. On April 24, 2008, the court gave the respondent leave to substitute an executor or administrator. The respondent did not notify the client that he had been given leave to substitute a fiduciary and took no further action in that regard.On July 17, 2008, the court dismissed the defendant from the case without prejudice. The respondent took no further action to effectuate service on an estate.

On June 27, 2008, counsel for the other defendant sent to the respondent interrogatories and a request for production of documents, among other items. On July 28, 2008, the client returned answers to the interrogatories and documents to the respondent. The respondent received the papers but did not prepare or formalize the answers and documents for filing or inform the client that her responses were incomplete or inadequate. Ultimately, the respondent produced late answers to interrogatories to the opposing counsel but not documents. On March 20, 2009, opposing counsel filed with the court her application for final judgment, her memorandum in support, the respondent's late filed answers and the

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

respondent's opposition. On March 31, 2009, the court entered final judgment of dismissal. Notice was sent to the respondent. On April 2, 2009, after the case had been dismissed, the respondent wrote to the client and advised her to obtain other counsel to pursue her personal injury case. At this time, the respondent did not inform the client that her case had been dismissed.

The respondent sought relief from the judgment of dismissal but on September 28, 2009, the court denied the respondent's motion without prejudice.

In March 2011, the client filed a legal malpractice case against the respondent and the respondent is defended by his insurance carrier.

The respondent's failure to provide competent representation, his failure to seek the client's lawful objectives, his failure to act with reasonable diligence and his failure to adequately communicate with his client, were in violation of Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4.

In the second count, the respondent engaged in numerous record-keeping violations in connection with the maintenance and operation of his IOLTA account. Specifically, the respondent made cash withdrawals from his IOLTA account in violation of Mass. R. Prof. C. 1.15(e)(3), made cash withdrawals from his IOLTA account in payment of legal fees, in violation of Mass. R. Prof. C. 1.15(e)(4), made a withdrawal of a legal fee that was not payable to the respondent or his firm, in violation of Mass. R. Prof. C. 1.15(e)(4),maintained an IOLTA account that was in negativebalance for a short time, in violation of Mass. R. Prof. C. 1.15(f)(1)(C), failed to keep an individual client ledger for a client and for bank service charges and fees, in violation of Mass. R. Prof. C. 1.15(f)(1)(C) and (D) and failed to reconcile his IOLTA account not less than each sixty days, in violation of Mass. R. Prof. C. 1.15(f)(1)(E). No client was deprived of funds and after August 2011, the respondent's IOLTA records were in compliance with Mass. R. Prof. C. 1.15.

There were no factors in aggravation or mitigation of discipline.

This matter came before the board on a stipulation of facts and disciplinary violations and a joint recommendation for discipline by public reprimand. On January 9, 2012, the board accepted the parties' recommendation and imposed a public reprimand.