

**RUDOLPH F. MILLER****Public Reprimand No. 2012-4****SUMMARY**¹

Between January 2007 and December 2011, the respondent engaged in the practice of law as a solo practitioner and employed no associates. During that period, the respondent held himself out to the public as practicing law under the following law firm names: R.F. Miller & Associates; R.F. Miller & Associates, P.C.; Miller Law group; and Miller Law Group, LLP. By using law firm names that falsely implied that he practiced in a partnership or other organization of lawyers, the respondent violated Mass. R. Prof. C. 7.1, and 7.5(a) and (d).

In about January 2007, the respondent agreed to represent a client charged with intent to distribute a class B substance, drug possession in a school zone, and conspiracy to violate drug laws. The client agreed to pay the respondent a fee of \$10,000 for his representation through trial in the Superior Court. The client eventually paid the respondent \$7,000. On October 29, 2008, the client was convicted after a jury trial. On November 3, 2008, the respondent represented the client without additional compensation on an additional charge of possession with the intent to distribute cocaine, subsequent offense. The client was convicted after a bench trial, and was sentenced to a house of correction for a term of five years.

On November 6, 2008, the respondent filed a notice of appeal on the client's behalf. Although the respondent did not intend to represent the client on his direct appeal, the respondent did not withdraw his appearance after filing the notice of appeal. In November 2008, the respondent met with the client twice at the house of correction, and informed the client that he had filed a notice of appeal on his behalf. The respondent did not sufficiently explain to the client that he would not be representing him on the direct appeal, and that the client should seek new counsel to represent him on the appeal. The respondent agreed to pursue a motion for a new trial for the client without additional compensation. The respondent explained to the client that the motion for a new trial could not move forward until the transcript was received, and that it would take some time for the transcript to be prepared.

Beginning in about May 2009 and continuing through at least September 2010, the client attempted to telephone the respondent and left messages asking the respondent to contact him about the status of the appeal. The respondent did not reply to the client, and did not inform him that the transcript was still being prepared.

On June 25, 2009, the Supreme Court issued its decision in *Melendez-Diaz v. Massachusetts*, 129 S.Ct. 2527, 174 L.Ed.2d 314 (2009), which the respondent considered relevant to the client's case. The respondent did not contact the client to discuss whether a motion for new trial should be filed based on *Melendez-Diaz* without waiting for the completion of the trial transcripts.

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

The respondent did not visit the client at the house of correction or otherwise communicate with him between November 2008 and January 2011. In about October 2009, the respondent moved his law office to a new address in Boston, but he did not inform the client of his new address. On March 10, 2010, the client wrote to the respondent asking for information about the status of his appeal, sending a copy of his letter to his former counsel, who immediately forwarded the letter to the respondent. The respondent did not reply.

On September 13, 2010, the client filed a request with the office of bar counsel to investigate the respondent's conduct. Shortly thereafter, the transcripts and the record were assembled by the Superior Court, and on December 9, 2010, the client's appeal was entered in the Appeals Court. On January 21, 2011, the respondent filed a motion in the Appeals Court to enlarge the time to file a brief on behalf of the client, and wrote to the client to update him on the status of his case. On March 25, 2011, after meeting with his client and obtaining his authorization, the respondent filed a motion for a new trial on his behalf based *Melendez-Diaz*. On August 15, 2011, the Superior Court denied the motion for a new trial. On September 14, 2011, the respondent filed a notice of appeal from the denial of the client's motion for a new trial.

After the motion for a new trial was denied, the respondent did not take prompt action to pursue the direct appeal on the client's behalf, and he did not file a motion to withdraw so that the client could seek appointment of new counsel to represent him on his appeal until December 9, 2011. On January 17, 2012, the Appeals Court allowed the respondent's motion to withdraw and stayed the appellate proceedings pending action on the client's motion for appointment of counsel.

By failing to keep his client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to inform his client of his change of address, the respondent violated Mass. R. Prof. C. 1.4(a). By failing to sufficiently explain to his client that he would not be representing him on his direct appeal and that he should seek new counsel to represent him, and by failing to promptly explain to his client the availability of an appellate issue based on a recent Supreme Court decision, in order to allow the client to make informed decisions regarding the representation, the respondent violated Mass. R. Prof. C. 1.3 and 1.4(a) and (b). By failing to act with reasonable diligence and promptness in pursuing his client's appeal and motion for a new trial, the respondent violated Mass. R. Prof. C. 1.3.

The respondent was admitted to practice in Massachusetts on June 30, 1994. In aggravation, the respondent received an admonition in 2004 for similar misconduct involving his failure to promptly notify his client that his MCAD claim had been dismissed, in violation of Mass. R. Prof. C. 1.4(a). *Admonition No. 04-43*, 20 Mass. Att'y Disc. R. 741 (2004).

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 February 27, 2012, the board ordered a public reprimand, subject to conditions that the respondent, within ten days of the entry of the public reprimand, contact the Director of the Law Office Management Assistance Program (LOMAP) and make arrangements for LOMAP to inspect and audit the respondent's law office practices within six months from the date of the reprimand.