MARTHA L. MORRILL

Public Reprimand No. 2012-10

Order (public reprimand) entered by the Board on May 24, 2012.

SUMMARY[1]

In 2007 and 2008, the respondent represented a husband in a contested divorce action. The trial in the divorce action occurred in August 2008. The parties stipulated at trial to the amount of the wife's average weekly compensation from her employer. The court entered a judgment of divorce *nisi* in January 2009, with an absolute date in April 2009. The judgment included orders as to custody, child support to the wife, and a division of marital assets.

In November 2008, prior to the issuance of the divorce judgment, the wife's employer terminated her employment. In return for the wife's agreement not to accept a position with the employer's competitor, the employer agreed to pay the wife severance compensation in an amount equivalent to the wife's weekly base pay for thirteen weeks. The employer paid the wife in February 2009. The wife also liquidated her retirement account with the employer and received the proceeds some time in 2009.

In about November 2009, the respondent's client learned about the wife's receipt of severance compensation. The client informed the respondent about the payment to his ex-wife and the possibility that she had failed to disclose her retirement account on the financial statement she had filed at the time of the divorce trial.

The respondent issued a subpoena *duces tecum* under the caption of the divorce case to the ex-wife's former employer in January 2010. The subpoena demanded production within ten days of the ex-wife's employment records for the entire period of her employment and any and all records pertaining to any defined benefit plans, defined contribution plans, pension plans, and savings plans in which the ex-wife had participated during the time of her employment. The respondent notarized the subpoena and mailed it to the former employer.

The respondent knew that Mass. R. Dom. Rel. P. 30(a) required an action to be pending before she could take the deposition of the employer's keeper of records and subpoena business records, and that she was not authorized to issue the subpoena. In

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

violation of rules 30(b) and 45(d), the respondent intentionally did not serve a copy of the subpoena to the former employer on the ex-wife or her attorney.

In mid-January 2010, the former employer turned over to the respondent the ex-wife's personnel file, payroll records, and retirement plan account statement. In April 2010, the respondent filed in the probate and family court a motion for relief from judgment to which she attached the subpoena and some of the documents the employer had produced pursuant to the subpoena. The ex-wife's attorney filed an opposition to the respondent's motion in which she pointed out that the respondent' had served her subpoena at a time when no action was pending between the parties and without the knowledge or authorization of the ex-wife. The court denied the respondent's motion for relief from judgment at the end of April 2010.

The respondent's conduct in issuing a subpoena *duces tecum* to the employer at a time when she knew that she was not authorized to do so violated Mass. R. Prof. C. 1.1, 3.4(c), and 8.4(c) and (d). The respondent's failure to provide timely notice of the subpoena to the ex-wife or her attorney violated Mass. R. Prof. C. 1.1, 3.4(c), and 8.4(c) and (d). The respondent violated Mass. R. Prof. C. 4.4 by using a method to obtain evidence that violated the ex-wife's legal rights.

On April 24, 2012, bar counsel filed a petition for discipline, and the respondent filed an answer admitting to the charges. The parties stipulated that a public reprimand would be appropriate. On May 21, 2012, the Board of Bar Overseers voted to publicly reprimand the respondent.