

**MARK J. GILLIS****Public Reprimand No. 2012-23****Order (public reprimand) entered by the Board on November 29, 2012.****SUMMARY**¹

The respondent was admitted to the bar on December 15, 1992.

On September 22, 2006, the client was convicted after trial of one count of rape by force of a child under sixteen and nine counts of indecent assault and battery on a child under fourteen. In December 2006, the client engaged the respondent to investigate whether he had a meritorious basis for a post-trial motion or appeal. The respondent agreed to charge the client \$4,000 to review the transcript and perform necessary research. The client transmitted \$4,000 to the respondent. The respondent filed a notice of appearance in the Appeals Court.

On January 31, 2008, the Appeals Court notified respondent that that the appeal would be dismissed if the brief was not filed by May 1, 2008. The respondent did not thereafter file anything in the Appeals Court or notify the client of the impending deadline.

On May 14, 2008, the Appeals Court dismissed the appeal, pursuant to Standing Order 17A. Upon receipt of the notice of dismissal, the respondent advised the client by letter that he would prepare a motion for additional time to file a brief, but did not advise the client that the matter had already been dismissed. He further advised the client that there were two possible issues for appeal, that he had exhausted the initial \$4,000 payment and that he required an additional \$3,960 to write the brief and argue the appeal.

On May 20, 2008, the respondent filed a motion to extend the time for filing his brief. Subsequently, the Appeals Court notified the respondent that it had denied the motion and dismissed the appeal. The respondent did not at any time move to vacate the dismissal and did not advise the client that the court had dismissed his appeal.

In August 2008, the client's wife forwarded to the respondent a check for \$3,960, to write the brief and argue the appeal. After conducting further research, the respondent concluded there was insufficient basis for an appeal. He did not, however, notify the client that he had so concluded or that he did not intend to file a brief. The respondent did not, upon termination of the representation, refund any portion of the client's fee.

By failing to prosecute his client's appeal, the respondent failed to provide competent representation, in violation of Mass. R. Prof. C. 1.1; failed to provide diligent representation, in violation of Mass. R. Prof. C. 1.3; and failed to seek the lawful objectives of his client through reasonably available means, in violation of Mass. R. Prof. C. 1.2(a).

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

By failing to inform his client that the appeal had been dismissed, that he had not moved to vacate the dismissal and that he had not filed an appellate brief, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).

By failing at the effective termination of the representation to refund the fees advanced to him by the client that he had not earned, the respondent violated Mass. R. Prof. C. 1.16(d).

In mitigation, after the client filed his complaint with bar counsel, the respondent refunded the \$8,000 to the client.

The matter came before the Board of Bar Overseers on a stipulation of the parties, agreeing to recommend discipline in the form of a public reprimand. On November 19, 2012, the Board of Bar Overseers voted to administer a public reprimand to the respondent.