JAMES P. DILLON, JR.

Public Reprimand No. 2012-7

Order (public reprimand) entered by the Board on June 1, 2012.

SUMMARY[1]

In April 2009, a client consulted the respondent about her ex-husband's alleged failure to abide by a settlement agreement that he was to pay their son's tuition for his senior year at the school where he was enrolled. The client asked the respondent about filing a complaint for contempt and provided him with a copy of the parties' divorce settlement agreement. The respondent agreed to file a complaint for contempt and requested $3,500 for his services, which the client paid.

The agreement provided that "[t]he Husband shall, without contribution from the Wife, pay all of the private school expenses, including tuition, activity fees, course charges and books, but not for after care costs, for their son as a non-boarding student." The agreement further provided that the decision to continue the son's education in a private school would be made by the client and the ex-husband on a year-to-year basis. In the event that they were unable to agree, they were to submit the issue to "the Probate and Family Court for determination." The respondent did not review the agreement sufficiently to appreciate that the parties were required to present disputes over tuition payment to the court.

In late May 2009, the respondent contacted the ex-husband by email to notify him that he represented the wife in their dispute and asked that the ex-husband pay the son's school tuition for his senior year. That same day, the ex-husband responded by email that he was financially unable to pay his son's tuition where he was enrolled.

The respondent filed a complaint for contempt in the probate and family court alleging the ex-husband had been ordered "to pay the tuition for the minor child at his private school" and had violated the order on "or about May of 2009 by failing to pay said tuition costs[.]" The respondent did not have an adequate legal basis for bringing the complaint for contempt. The ex-husband through his counsel filed a motion to dismiss the complaint for contempt on the ground that he had not violated a clear and unambiguous court order, which was sent to the respondent.

The respondent did not respond to the motion, and he failed to inform the client that he would not file a response to it. He did not review the divorce agreement to determine its terms, and he took no steps of substance to withdraw the complaint for contempt or to file a proper motion for the court to resolve the dispute.

On December 14, 2009, the court held a hearing on the motion to dismiss attended by the parties and counsel. The respondent argued to the court in support of the contempt complaint, which the court dismissed. The client immediately terminated the respondent's services.

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

The respondent had not earned the entire retainer and owed the client at least $530. By email dated January 25, 2010, the client demanded her entire file from the respondent and an itemized bill. The respondent sent the client her file and an itemized bill on February 15, 2010, showing that he owed his client at least $530, but he did not timely refund the unearned portion of the fee.

On July 1, 2010, the client filed a request with the Office of Bar Counsel for investigation of the respondent's conduct. Bar counsel forwarded the client's correspondence to the respondent with a request for an explanation of his conduct within twenty days. The respondent knowingly failed without good cause to respond to bar counsel's request. The Board of Bar Overseers then issued a subpoena directing the respondent to appear and produce documents at the Office of Bar Counsel, but the respondent knowingly failed without good cause to comply with the subpoena and was administratively suspended from the practice of law.

The respondent was reinstated to the practice of law after complying with the subpoena. The respondent paid the client the funds due her in October 2011.

By failing to review the divorce agreement and judgment sufficiently to draft an appropriate motion, the respondent violated Mass. R. Prof. C. 1.1 and 1.3. By filing a complaint for contempt and by arguing in support of it when he had no basis for doing so that was not frivolous, the respondent violated Mass. R. Prof. C. 3.1 and 8.4(d). By failing timely to inform his client about the motion to dismiss and that he would not file a response, the respondent violated Mass. R. Prof. 1.4(a) and (b).

By failing to promptly return the unearned portion of the fee to his client, the respondent violated Mass. R. Prof. C. 1.15(c) and 1.16(d). By knowingly failing without good cause to cooperate with bar counsel's investigation and by failing to comply with the subpoena issued by the Board of Bar Overseers, the respondent violated S.J.C. Rule 4:01, § 3(1), and Mass. R. Prof. C. 3.4(c), 8.1(b), and 8.4(d) and (g).

On April 26, 2012, the parties filed with the Board of Bar Overseers a stipulation of facts and rule violations together with an agreed recommendation for discipline by public reprimand. On May 14, 2012, the board voted to accept the parties' stipulation and impose a public reprimand.