ROBERT BRIAN CARMEL-MONTES

Public Reprimand No. 2015-9

Order (public reprimand) entered by the Board on October 8, 2015.

SUMMARY[1]

In September 2011, the respondent and the client, a citizen of the Dominican Republic who wanted to remain in the United States, entered into the first of two written fee agreements. Per the first agreement, the client agreed to pay the respondent $300 to investigate his Dorchester District Court 1990 and 1996 convictions for drug offenses, which he believed had resulted in his removal from the United States in October 2000. In December 2011, the respondent and the client entered into a second agreement whereby the client paid the respondent $7,000 in cash to file post-conviction motions on the client's behalf. In March 2012, the respondent filed in the Dorchester District Court a motion to correct the records, motion to withdraw the guilty plea, and a motion to vacate the conviction and for a new trial (a combined motion) under Mass. R. Crim. P. 30(b).

In December 2012, at the hearing on the motions, the respondent argued that his client's criminal convictions caused him to be deported and that the client had not received an "alien warning" prior to entering into his guilty plea. However, at that hearing the respondent was advised of a second docket sheet in the criminal matter, which indicated that the sentencing judge had given the appropriate warning prior to the guilty plea. The respondent asked the judge for leave to obtain and provide the judge with the client's original removal order from the immigration court, and an affidavit from the sentencing judge about his prior practice in giving "alien warnings". This request was granted until February 5, 2013.

In January and February 2013, the respondent sent letters to the sentencing judge requesting information about his past practice when giving immigration warnings to defendants in the course of guilty pleas. The sentencing judge did not reply to the respondent's inquiry.

The respondent did not request his client's immigration documents and did not provide the judge with any documents or otherwise communicate with the judge by the February 2013 due date. In March 2013, a docket entry noted that the motions were denied as of December 2012. The respondent, however, made no effort to determine whether the court had issued an order on the motions. Between December 2012 and June 2013, the respondent failed to communicate with the client and failed to respond to the client's attempts to contact him.

In June 2013, the client filed a complaint against the respondent with the Office of the Bar Counsel. After the respondent received notification from bar counsel, he learned that the motions had been denied months earlier. He did no further legal work for the client. The respondent failed to complete the legal work that he agreed to perform, did not earn the $7,000 fee, and did not return the unearned portion of the fee when the representation was terminated.

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

The respondent's failure to take notice of the alien warning on his client's docket sheet, his failure to obtain deportation documents that the judge requested, and his failure to take further steps on behalf of his client violated Mass. R. Prof. C. 1.1 and 1.3. The respondent's failure to keep the client informed of the status of his case, and his failure to respond to his client's requests for information, violated Mass. R. Prof. C. 1.4(a), as in effect prior to July 1, 2015. The respondent's failure to return the unearned portion of the fee to the client when the representation was terminated violated Mass. R. Prof. C. 1.16(d), as in effect prior to July 1, 2015.

In mitigation, the respondent refunded the entire $7,000 he received from the client.

In aggravation, the respondent has a prior disciplinary history. He received an admonition in 2012 for violating Mass. R. Prof. C. 1.1, 1.2(a), 1.3 and 1.4(a) in connection with failing to file a timely Federal Torts Claim Act claim.

The matter came before the Board of Bar Overseers on a stipulation of facts and rule violations and a joint recommendation for a public reprimand. On September 24, 2015, the board voted to accept the stipulation and joint recommendation, and imposed a public reprimand.