JULIAN H. LEBECK
Public Reprimand No. 2016-3
Order (public reprimand) entered by the Board on April 7, 2016.

SUMMARY[1]

This matter arises from the respondent's representation of clients in two immigration cases as follows.

Case I. The respondent was hired to represent a client who had entered the United States as a minor and was a lawful permanent resident. The client had been apprehended and placed in removal proceedings in another state after a misdemeanor criminal conviction. The client's parents had lived apart but were not legally separated, and only his father was a naturalized U.S. citizen. The client had mistakenly believed that he was a citizen. The respondent secured the client's release on bond and had the case transferred to the Immigration Court in Boston.

The client's individual hearing was set for February 2012. In prehearing briefs, the respondent erroneously asserted that the client was eligible for derivative citizenship through the father's naturalization. Derivative eligibility would have been available only if the parents both had been naturalized or were legally separated. In addition, the respondent asserted the client's eligibility for discretionary relief through cancellation of removal. The respondent submitted a required application for this relief but failed to include the filing fee, and the application was not accepted for filing. The respondent received notice that the application was not on file but failed to take timely corrective action.

At the 2012 hearing, the court ruled that the client's application for cancellation of removal had been abandoned for failure to file the required application and entered a removal order. The court indicated that a motion to reopen would be entertained upon payment of the filing fee. The respondent paid the fee and had the proceedings reopened.

The client's second individual hearing took place in September 2014. The respondent failed to verify before the hearing that the client had obtained updated biometrics as required, and the application for cancellation was dismissed for that reason. The judge again ordered the client's removal and granted voluntary departure within sixty days in the alternative.

The client subsequently discharged the respondent and hired another attorney who moved to stay and reopen the proceedings based on assertions of ineffective assistance by the respondent. The motions were granted in late 2014 and the proceedings reopened for hearing on the merits.

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

Case II. In 2011, a naturalized U.S. citizen consulted the respondent about obtaining immigrant visas for two of the client's grown children still living in his birth country. The client had filed alien relative petitions for the children some years earlier, but the petitions had not been acted on. The respondent agreed to investigate the status of the petitions, correct any deficiencies, and pursue approval of the petitions for a flat fee of $2,500. The client paid the fee.

In August 2011, the respondent sent requests to USCIS for copies of records on the petitions, but he did not include required releases by the client, and the request was denied on that basis. The respondent submitted new requests with releases in November 2011. Thereafter he had periodic communications with the client but took no further action of substance to advance the petitions. By 2014 at the latest, the representation had been effectively terminated. The client hired new counsel who reopened and successfully pursued the petitions.

The respondent had not earned the entire fee paid by the client but failed to make a prompt refund. At bar counsel's request, he provided a breakdown of his time and charges at $250 per hour, most of which were for e-mails and text messages in fifteen-minute increments. Those charges were clearly excessive.

In both cases, the respondent failed to represent the clients competently and diligently in violation of Mass. R. Prof. C. 1.1 and 1.3. The respondent's conduct in charging and collecting a clearly excessive fee in the second case violated Mass. R. Prof. C. 1.5(a), and his failure promptly to refund the unearned portion violated Mass. R. Prof. C. 1.16(d) as then in effect.

The respondent was admitted to the Massachusetts bar in 2004 and had no history of discipline. In mitigation of his misconduct in the second case, the respondent later made a fee refund to the client.

The matter came before the Board of Bar Overseers on the parties' stipulation of facts and rule violations and an agreed recommendation for discipline by public reprimand, conditioned at the respondent's attendance at a continuing education course designated by bar counsel. In March 2016, the board voted to accept the stipulation and to impose a public reprimand on the agreed condition without further proceedings.