KENNETH S. MELLO
Public Reprimand No. 2016-6
Order (public reprimand) entered by the Board on July 21, 2016.
SUMMARY[1]

As set forth below, the respondent received a public reprimand for neglecting the interests of two clients in unrelated matters.

In the first case, the respondent was retained by a client to file and prosecute a personal injury action. Over the next three years, the respondent performed very little work of substance on the case. With the statute of limitations looming, he did file a complaint in the superior court. However, a judgment *nisi* followed because the complaint failed to allege damages in excess of $25,000, as required by M.G.L. c. 212, § 3. The respondent did not advise his client of the judgment *nisi* or take any other action in response to it. As a result, the lawsuit was dismissed without prejudice. The respondent never informed his client of the dismissal. The client ultimately contacted the court on her own and learned of the dismissal for the first time. In summary, the respondent's incompetent representation of his client, his failure to pursue the lawsuit resulting in its dismissal, and his failure to inform his client of the dismissal violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.4(a) and (b).

In the second case, the respondent was retained by a client to represent him in a criminal matter pending against him in the superior court. The matter went to trial, after which the client was convicted and sentenced to prison. The respondent timely advised the client of his possible appellate options. He also informed the client that he needed to obtain new counsel for any appeal. He did not, however, return the client's file in order to enable him to pursue the appeal himself or retain other counsel. The respondent also failed to file a notice of appeal for the client or to withdraw from the case, contrary to the requirements of Rule 65 of the Superior Court, which provides that defendant's counsel in a criminal case that has gone to trial is responsible for perfecting and prosecuting the appeal unless counsel is relieved of the responsibility after a hearing on a motion to withdraw. The client later demanded the return of his files, but the respondent did not comply until bar counsel opened an investigation into the issue. In summary, the respondent's failure to (a) file a notice of appeal or alternatively obtain the allowance of a motion to withdraw and (b) promptly return his client's files, violated Mass. R. Prof. C. 1.3 and 1.16(c) and (d).

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

The respondent's misconduct in the above cases was aggravated by the fact that he received an admonition in 2006 for similar misconduct (specifically, he failed to prosecute a client's case resulting in its dismissal and failed to communicate with his client).

On May 6, 2016, the parties submitted a stipulation to the board in which the respondent admitted the truth of the above facts and stipulated to the above rule violations. The parties recommended that the respondent receive a public reprimand. On June 13, 2016, the board accepted the parties' recommendation.