
ADMONITION NO. 00-02

CLASSIFICATIONS:

Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4]

Failure to Notify of Receipt or Account to Client or Third Person for Property [Mass. R. Prof. C. 1.15(b)]

Failure to Return Papers on Discharge [Mass. R. Prof. C. 1.16(e)(3)]

SUMMARY:

In February of 1997, a client retained the respondent to represent him in a civil litigation matter. After the client's claim against one defendant was dismissed on a motion for summary judgment, the client discharged the respondent. The client thereafter filed a malpractice suit against the respondent, and filed a grievance with the Board of Bar Overseers.

Among other issues raised, the client claimed that the respondent failed to account for funds paid by the client for costs and expenses. At the outset of the representation, the client and the respondent signed a contingent fee agreement which provided that the client was to pay a \$1,000.00 retainer which would be credited towards "reasonable expenses and disbursements." Despite the written language of the contingent fee agreement, the respondent believed that his arrangement with the client was that the \$1,000.00 was to be used for the respondent's initial legal fees.

During the course of the representation, the respondent billed the client for a total of \$2,559.91 in expenses, as opposed to charging them against the retainer. The client made payments totaling \$800.00, which were reflected in the respondent's billing statements. The billing statements did not credit the client with payment of the \$1,000.00 retainer.

After the client discharged the respondent in May of 1998, the client demanded that the respondent turn over a complete copy of his file. While the respondent turned over most of the file to the client, he refused to provide copies of deposition transcripts. The respondent claimed he was justified under Mass. R. Prof.

C. 1.16(e)(3) in withholding those materials for which the client had not paid the respondent's out-of-pocket costs. However, if the respondent had properly credited the client with the initial payment of \$1,000.00 towards expenses, the client would have paid all but approximately \$700.00 of the expenses incurred by the respondent, and therefore would have been entitled to receive additional documents.

By failing to credit his client with the \$1,000.00 payment for costs and expenses, the respondent failed to provide an accurate accounting of client funds received in violation of Mass. R. Prof. C. 1.15(b). By failing to promptly turn over those deposition transcripts which had been paid for by the client, the respondent violated Mass. R. Prof. C. 1.16(e)(3).

In mitigation, no funds were withheld from the client. When the \$1,000.00 retainer was properly applied to costs and expenses, the client still owed the respondent for approximately \$700.00 in unpaid expenses. In addition, the client voluntarily dismissed his appeal of the dismissal in August of 1998.

The client also claimed that the respondent failed to adequately communicate with him. The respondent acknowledged that he hung up on the client during two telephone conversations in March and April of 1998, after his relationship with the client had begun to deteriorate. Although the respondent continued to respond to the client's inquiries by written communications, the respondent refused to meet or speak by telephone with the client despite the client's repeated requests. By limiting his communications with his client to writing, and by refusing to meet or speak by telephone with his client, the respondent violated Rule 1.4 of the Massachusetts Rules of Professional Conduct.

The respondent, who was admitted to practice in 1977 and had received no prior discipline, received an admonition for his conduct.
