

DEREK H. DePETRILLO

Public Reprimand No. 2015-1

Order (public reprimand) entered by the Board February 24, 2015.

SUMMARY¹

The respondent received a public reprimand for the manner in which he communicated with his client about a settlement offer in a pending matter.

In October 2013, the respondent was retained to represent a woman who was receiving numerous phone calls from a collections company regarding her unpaid student loans. The respondent agreed to pursue a harassment claim on her behalf. Under the terms of their fee agreement, the respondent only would be paid if his client's claim was successful. If successful, then he would collect his legal fees for the work that he actually performed on the matter.

The respondent promptly sent a demand letter to the collections company. In it, he demanded the payment of his client's damages and reasonable attorney's fees and expenses. The collections company in turn offered to settle the matter for \$1,500.

Over the next several months, the respondent had various communications with his client about the possibility of settling her claim. In these communications, the respondent failed to explain the settlement offer in a manner that would permit his client to make an informed decision about whether to accept it. In particular, the respondent did not advise his client of the full amount of the \$1,500 offer. Instead, after calculating his legal fees in the matter and deciding on his own to pay a portion (but not all) of those fees from the anticipated settlement proceeds, he informed his client only of her resulting share of the proceeds. When the client asked for additional information, he again failed to provide her with a full disclosure of the \$1,500 offer. Rather, he reapportioned the settlement proceeds to his client's advantage and falsely informed her that the collections company had made a new and improved settlement offer. The client refused to accept this offer; she informed the respondent that, before any settlement, she required a full accounting of the settlement proceeds.

By February 2014, the \$1,500 settlement offer had not yet been acted upon. At this point, the respondent went back to the collections company and demanded a settlement of \$2,000. His demand specified that he and his client would evenly split the \$2,000. The company accepted this counteroffer, and prepared a release disclosing the 50/50 split of the settlement proceeds. The respondent fully disclosed the new offer to his client, and provided her with a release for her signature. However, the client had numerous questions about the proposed settlement and declined to sign the release. It was agreed that the respondent should withdraw from the matter.

By failing to explain the settlement offer in a manner that would permit his client to make an informed decision about whether to accept it, and by failing to respond to his client's requests for information about the offer, the respondent violated Mass. R. Prof. C. 1.4.

By withholding information from his client and, in so doing, misrepresenting by omission the full value of the settlement offer, and by subsequently expressly misrepresenting that there

¹ Compiled by the Board of Bar Overseers based on the record filed with the board.

had been a new settlement offer when, in fact, he had only increased the client's share of the existing offer, the respondent violated Mass. R. Prof. C. 8.4(c).

On December 23, 2014, the parties submitted a stipulation to the Board of Bar Overseers in which the respondent admitted the truth of the above facts and stipulated to the above disciplinary rule violations. The parties recommended that the respondent receive a public reprimand.

On January 12, 2015, the Board of Bar Overseers voted to accept the stipulation of the parties and their proposed sanction.