

WAYNE R. MURPHY

Order (public reprimand) entered by the Board May 1, 2007.

SUMMARY¹

In May 1999, a mother, her minor children, and her adult sister were injured while riding a miniature train owned by It's Party Time Rental, Inc. The mother and her husband retained the respondent to represent their family in connection with their claims against Party Time. The sister separately retained the respondent to represent her in connection with her claims against Party Time.

On May 21, 2002, the last day before the statute of limitations expired on his clients' claims, the respondent filed a complaint in court against Party Time on behalf of the mother's family. The respondent also filed a complaint against Party Time on behalf of the sister on May 21, 2002. The respondent sent copies of the complaints and summonses as well as requests for the production of documents and interrogatories in both cases to a constable to serve on Party Time.

The constable failed to serve Party Time. The respondent failed to confirm with the court, communicate with the constable, or take any other steps of substance to make sure that service had been made on the defendant.

On September 12, 2002, both complaints were dismissed for lack of service. Between that date and August 2003, the respondent took no action of substance in either case.

In about August 2003, the respondent prepared motions for judgment in both cases for Party Time's failure to answer the complaints. When he attempted to file the motions, the respondent discovered that the two cases had been dismissed for lack of service. The respondent did not inform his clients that their cases had been dismissed.

Sometime in August 2003, the mother discovered that the complaints against Party Time had been dismissed in September 2002. On about September 9, 2003, the mother and her sister retained new counsel to represent them. New counsel sent a certified letter to the respondent discharging him from both cases and requesting that the respondent turn over his files.

On September 11, 2003, before he received the letter from the clients' new lawyer, the respondent filed motions to vacate the dismissals in court. On September 19, 2003, a judge denied the respondent's motion to vacate the dismissal in the sister's case on the grounds that the respondent's motion provided inadequate documentation and failed to explain the respondent's delay in learning of the dismissal and moving to vacate. As a result, the sister's claim became time-barred by the statute of limitations. The respondent failed to inform the sister that her case had been dismissed and that her claim was time-barred. On September 23, 2003, a different judge allowed the respondent's motion to vacate the dismissal in the mother's family's case.

After he received the letter from the clients' new lawyer, the respondent did not promptly withdraw from the mother's case, inform the new lawyer about the status of the sister's case, or advise the new lawyer that it was necessary to serve Party Time with a copy of the complaint and summons in the mother's case because a prior dismissal for lack of service had been vacated. The respondent also failed to turn over the clients' files to the new lawyer until February 20, 2004.

The respondent's failure to diligently pursue his clients' claims violated Mass. R. Prof. C. 1.1 (competent representation), 1.2(a) (lawyer shall seek the lawful objectives of client through reasonably available means), and 1.3 (diligence and promptness). The respondent's failure to inform his clients about the status of their cases violated Mass. R. Prof. C. 1.4(a) and (b) (lawyer shall keep a client informed about the status of matter and explain matter to extent reasonably necessary to permit client to make informed decisions regarding the representation).

The respondent's failure to withdraw promptly after his clients discharged him violated Mass. R. Prof. C. 1.16(a)(3) (lawyer shall withdraw from representation if discharged), and his failure to deliver the clients' files to successor counsel promptly after he was discharged violated Mass. R. Prof. C. 1.16(e) (lawyer must make file available to former client upon client's request).

This matter came before the Board of Bar Overseers on a stipulation of facts and a joint recommendation for discipline by public reprimand. The Board of Bar Overseers voted to adopt the parties' recommendation and imposed a public reprimand.

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

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