

JEFFREY A. DENNER

Public Reprimand No. 2016-10

Order (public reprimand) entered by the Board on July 28, 2016.

SUMMARY¹

Jeffrey A. Denner (the respondent) was admitted to the bar of Massachusetts on December 12, 1973.

In July 2012, the parents of a thirteen year-old student retained the respondent to represent them in a civil action against the child's school. The clients paid the respondent \$30,000 to prosecute their claims, which arose out of certain disciplinary and other incidents that had taken place at the school.

In violation of Mass. R. Prof. C. 1.4(b) and 1.5(b), the respondent failed to communicate to the clients the scope of the representation or the basis for his fee. As a result, the clients understood that the \$30,000 represented an initial payment toward a fee that would ultimately be determined as a percentage of the damages recovered. The respondent subsequently contended that the \$30,000 he received was merely to investigate the viability of the lawsuit, which he would then handle under a separate, one-third contingent fee agreement.

Shortly after accepting the \$30,000 payment, the respondent conferred with two members of his firm as to the viability of a suit against the school district. Neither perceived much merit to the case. One of them assigned an associate to conduct general legal research as to possible causes of action that might be asserted as part of an action against the school. That research confirmed that the clients had no viable claims against the school district. In violation of Mass. R. Prof. C. 1.4(a) and (b), the respondent failed to share with his clients his colleagues' negative assessment of the merits of the planned civil action.

Apart from gathering the input of his colleagues as described above, the respondent engaged in no further investigation of the clients' civil claim. However, during the same period in which he was handling the civil matter, the respondent and his firm successfully represented the child before a magistrate of the juvenile court in opposing the issuance of a criminal complaint against the child. The juvenile court matter arose out of an incident that had occurred between the child and another student.

The respondent met with the clients in June 2013. At the meeting, the respondent suggested to his clients that the civil action might not be worth pursuing. However, he failed to inform them that the potential civil claims against the school lacked merit and that he was no longer actively investigating those claims.

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

The clients terminated the representation in October 2013 due to the respondent's perceived unwillingness to proceed with the lawsuit. The respondent had not earned the entire \$30,000 fee. Upon termination of the representation, the respondent violated Mass. R. Prof. 1.16(d) by failing to promptly refund the unearned portion of the \$30,000 fee. The \$30,000 fee collected by the respondent was clearly excessive in relation to the amount, quality, and results of the work the respondent performed with respect to the civil matter and the subsequent juvenile matter. By charging and collecting a clearly excessive fee, the respondent violated Mass. R. Prof. C. 1.5(a).

As a result of the commencement of the present disciplinary proceedings against him, the respondent refunded most of the fees he had collected from the clients in July 2012.

In a separate matter, the respondent collected a \$10,000 fee in December 2012 to represent an elderly woman against whom guardianship and conservatorship petitions had been filed. Due to a conflict of interest, the respondent withdrew from that representation a few months later, without achieving the objectives of the representation or earning the \$10,000 fee. Following the termination of the representation, the respondent failed to return the unearned portion of the fee to the client. Such failure was in violation of Mass. R. Prof. C. 1.16(d).

As a result of the commencement of the present disciplinary proceedings against him, the respondent refunded the fee he had collected from the client in December 2012.

On June 17, 2016, the parties filed with the Board of Bar Overseers a stipulation and joint recommendation that the respondent be publicly reprimanded for his conduct. On July 11, 2016, the Board of Bar Overseers voted to accept the parties' stipulation.