

2006 Admonitions

ADMONITION NO. 06-01

CLASSIFICATIONS:

Knowing Failure to Respond to Demand for Information from Disciplinary Authority [Mass. R. Prof. C. 8.1(b)]

Failure to Cooperate in Bar Discipline Investigations [Mass. R. Prof. C. 8.4(g)]

SUMMARY:

In 2002, the respondent was appointed as a co-administrator of two estates. In December 2004, the other co-administrator filed a grievance against the respondent alleging that the respondent had neglected the estates.

Bar counsel forwarded the grievance to the respondent and requested his reply. The respondent knowingly failed without good cause to reply to bar counsel's initial request and a follow-up letter requesting a response to the grievance.

Bar counsel requested that the Board of Bar Overseers issue a subpoena pursuant to S. J. C. Rule 4:01, § 22, requiring the respondent to appear at the Office of Bar Counsel on March 16, 2005. The board issued the subpoena, which was served on the respondent. The respondent knowingly failed without good cause to appear at the Office of Bar Counsel.

Bar counsel sought the respondent's administrative suspension in the Supreme Judicial Court for Suffolk County. On March 24, 2005, the respondent was administratively suspended for failure to respond to bar counsel's requests for information and to appear in response to the subpoena issued by the Board of Bar Overseers. On March 30, 2005, the respondent appeared at the Office of Bar Counsel and provided the requested information.

By knowingly failing without good cause to respond to bar counsel's requests for information and to comply with a subpoena issued by the Board of Bar Overseers, the respondent violated Mass. R. Prof. C. 8.1(b) and 8.4(g).

The respondent had no history of discipline. The respondent received an admonition for his misconduct.

ADMONITION NO. 06-02

CLASSIFICATION:

Excessive Fee [Mass. R. Prof. C. 1.5(a)]

SUMMARY:

On or about March 14, 2003, the respondent was hired to represent his client as the sole heir at law and administrator of a small estate. The respondent charged his client a \$6,000.00 retainer against which he was to bill at the rate of \$225.00 per hour. The respondent charged for services that were unnecessary and redundant.

On or about August 18, 2005, the client terminated the services of the respondent. The respondent promptly refunded the unused portion of the retainer. Shortly thereafter, the respondent made restitution of the fees associated with the unnecessary and redundant

services. By charging against the \$6,000 retainer for services that were unnecessary and redundant, the respondent charged a clearly excessive fee in violation of Mass. R. Prof. C. 1.5.

The respondent has been a member of the Bar since 1980, with no prior discipline. Accordingly, the respondent has received an admonition for his misconduct on the conditioned he attend a MCLE course on estate administration.

ADMONITION NO. 06-03

CLASSIFICATIONS:

Failure to Maintain Disputed Funds in Trust Account [Mass. R. Prof. C. 1.15(b)(2)]

Trust Account Not Properly Labeled [Mass. R. Prof. C. 1.15(e)(2)]

SUMMARY:

This matter came to bar counsel's attention as a result of four notices of dishonored checks received by bar counsel pursuant to Mass. R. Prof. C. 1.15(h) from the bank at which the respondent maintains his IOLTA account.

The respondent issued five checks from his IOLTA account on May 24, May 31, June 3, and June 7, 2005 in the amounts of \$86.00, \$65.00, \$850.00, and \$250.00. Two of the checks were sent to probate courts to pay fees that the respondent was advancing on behalf of the clients and the remaining checks were payable to the respondent. The bank returned all of the checks due to insufficient funds in the account.

There were no client funds on deposit in the IOLTA Account. The account was solely used for the deposit of personal or business funds. The respondent's use of a client trust account for the deposit of personal funds and the payment of expenses violated Mass. R. Prof. C. 1.15(b)(2). The respondent's mislabeling of a personal or business account as a trust account was a violation of Mass. R. Prof. C. 1.15(e)(2). The respondent did not understand that his use of the account was improper and has now closed the account.

The respondent has been a member of the bar since 1988, with no prior discipline. He accordingly received an admonition for the above violations, conditioned upon attendance at the trust account training program designated by bar counsel.

ADMONITION NO. 06-04

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

Failure to Cooperate in a Bar Discipline Investigation [Mass. R. Prof. C. 8.4g]

Failure to Cooperate in a Bar Discipline Investigation [S.J.C. Rule 4:01, § 3]

SUMMARY:

In February 2003, the client, a firefighter, was forced to retire due to "atypical chest pain". The client retained the respondent to modify his divorce agreement to reduce his alimony payments to his ex-wife, and he provided the respondent with a doctor's letter. In February 2003, the respondent filed a complaint for modification, and a motion for temporary orders, seeking a reduction in alimony with the court.

After hearing, the motions were denied without prejudice, citing insufficient information. However, the client discontinued paying alimony because his income had been greatly reduced upon retirement, and he suffered a lapse in benefits.

In April 2003, the client's ex-wife filed a complaint for contempt, and in June 2003, the client's ex-wife filed a motion for attachment by trustee process. The trustee process was allowed in June 2003. By letters to the respondent, the client requested that the respondent update him on the status of the case and complained that she had failed to respond to his inquiries. The respondent failed to make contact with her client until the following year in July 2004.

In September 2004, the ex-wife's counsel filed a motion to compel seeking, among other things, the client's complete medical records. The motion was allowed. The respondent received the medical records, but failed to forward them to opposing counsel, and failed to inform her client of her inaction. The respondent ignored the client's subsequent calls and failed to withdraw from the representation.

After filing a complainant with the Office of the Bar Counsel, the client requested that the respondent withdraw from his case and return his file. The respondent still took no action.

The respondent did not cooperate with bar counsel's requests for information, and failed to appear pursuant to a subpoena. As a result, the Supreme Judicial Court entered an order of administrative suspension, after which the respondent filed with the court her notice of withdrawal and provided the file to the client.

During the relevant time period, the respondent had serious medical problems, underwent two surgeries and was responsible for her mother's care due to the sudden onset of dementia.

The respondent's failure to act with reasonable diligence and promptness in representing her client, and her failure to communicate with her client, is a violation of Mass. R. Prof. C. 1.3 and 1.4. The respondent's failure to respond to bar counsel's requests for information until after an order of administrative suspension entered violated Mass. R. Prof. C. 8.4(g) and Supreme Judicial Court Rule 4:01, § 3.

The respondent received an admonition for the above violations. In connection with this disposition, the respondent agreed to attend a CLE program designated by bar counsel.

ADMONITION NO. 06-05

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

The respondent represented a wife in a divorce action. In January 1995, the respondent filed a complaint for divorce and a motion for temporary orders for the client. Pursuant to an agreement between the parties, the court ordered the husband to pay \$200 per week in spousal support, provide health insurance coverage, and contribute toward the wife's uninsured medical costs.

At a pretrial conference in the case in November 1995, the respondent requested a continuance so that she could retain an expert to review the husband's municipal employee pension benefits, the only asset of significance in the marriage. The court allowed the respondent's request and continued the case indefinitely until the respondent was ready to proceed on the pension issue.

After November 1995, however, the respondent took no action of substance in the case. In July 1997, the court sent notice that the case was being placed in inactive status pursuant to Probate Rule 408, because no activity had occurred in the case for over one year. Upon receipt of this notice, the respondent promptly requested an updated financial statement

from the husband, thereby restoring the case to the active docket. The court sent a second Rule 408 notice to the respondent in July 2000. The respondent did not respond or take action to restore the case to the active list after July 2000. In September 2001, the court dismissed the case, thereby terminating the existing temporary support and health insurance orders.

The respondent's client discovered that her case had been dismissed in October 2001, when her support payments ceased. The client went to the respondent's office to speak to the respondent about what had happened, but the respondent was in court. Thereafter, when the respondent contacted the client, the client informed the respondent that she had retained a new lawyer to represent her in her divorce case. The client's new lawyer filed a new complaint for divorce and a new request for temporary orders. In November 2001, the court entered new orders, reinstating the client's support order and health insurance coverage.

The respondent's neglect of the client's case between 1998 and 2001 violated Mass. R. Prof. C. Rule 1.3 (lawyer shall act with reasonable diligence and promptness). The respondent's failure to keep the client adequately informed about the status of the case violated Mass. R. Prof. C. Rule 1.4 (lawyer shall keep the client reasonably informed about the status of a case).

The respondent has no prior disciplinary history. The respondent received an admonition for her misconduct conditioned on her completion of a continuing legal education course to be specified by bar counsel.

ADMONITION NO. 06-06

CLASSIFICATION:

Improper Contingent Fee [Mass. R. Prof. C. 1.5(c)]

SUMMARY:

On July 7, 2004, the client hired the respondent to represent him in a wrongful termination case against the client's former employer. The client had been employed with a local hospital as a phlebotomist. In drawing blood from a patient, he was stuck with a needle and underwent several months of testing before it was determined that he had not contracted HIV or hepatitis. As a result of this incident, the client began demanding that the hospital review and revise their safety procedures. According to the client, the hospital fired him in retaliation for his efforts to change safety procedures.

The respondent took over the case from the client's first attorney, who withdrew after working on the case for approximately one year because the client had rejected the attorney's advice concerning settlement. The respondent states that he and the client agreed to a contingent fee of one-third of the settlement amount plus expenses. The respondent, however, failed to execute a written agreement as required by Mass. R. Prof. C. 1.5(c). The case was settled for \$9,000 and the respondent sought to enforce his oral agreement with the client.

The respondent's failure to execute a written contingent fee agreement with the client constituted a violation of Mass. R. Prof. C. 1.5(c). The respondent received an admonition conditioned upon his attendance at a CLE course designated by Bar Counsel.

ADMONITION NO. 06-07

CLASSIFICATIONS:

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

Withdrawal without Protecting Client or Refunding Fee [Mass. R. Prof. C. 1.16(d)]
False or Misleading Communication [Mass. R. Prof. C. 7.1]
Firm Names and Letterhead [Mass. R. Prof. C. 7.5]

SUMMARY:

The client hired the respondent on April 20, 2005, to represent the client's son in an application for permanent resident status. The client paid the respondent \$750 to be applied to a flat fee agreement of \$1500. Within a few weeks of being hired, the respondent relocated his law practice to California. Although the respondent is not licensed to practice in California, he limited his practice to immigration matters.

The respondent did not notify the client that he had relocated his law practice. On June 23, 2005, after having difficulty communicating with the respondent and learning that the respondent had relocated to California, the client discharged the respondent and requested that his \$750 payment be refunded. At that point in time, the respondent had not performed any services for the client. The respondent, however, did not refund the retainer.

In August of 2005, the client filed a complaint with the Office of Bar Counsel. After bar counsel began his investigation, the respondent refunded the client's \$750.

The respondent's failure to refund promptly the unearned fee of \$750 upon being discharged by the client, constituted a violation of Mass. R. Prof. C. 1.16(d). The respondent's failure to inform the client promptly that he had relocated to California constituted a failure to communicate in violation of Mass. R. Prof. C. 1.4.

When the respondent relocated to California, he began using letterhead that identified his law practice as respondent "& Associates." The respondent was a sole practitioner who did not employ any associates during the months that he used this letterhead. The use of this letterhead was deceptive in violation of Mass. R. Prof. C.7.5 and 7.1. The respondent has now revised his letterhead to comply with the Mass. Rules of Professional Conduct.

The respondent has been a member of the Bar since 1999, with no prior discipline. The respondent received an admonition.

ADMONITION NO. 06-08

CLASSIFICATIONS:

Conflict from Responsibilities to Another Client or Lawyer's Own Interests (Mass. R. Prof. C. 1.7(b))

Failure to Withdraw From Representation (Mass. R. Prof. C. 1.16(a))

SUMMARY:

The respondent represented a non-profit corporation in federal court litigation over control of the corporation. Through the intervention of the court, all the members of the board of directors changed. The respondent presented a bill for fees while he was still attorney of record for the organization and purporting to give advice the board. When the board asked for further documentation, the respondent provided bills and filed suit against the organization without first withdrawing as counsel. The respondent's conduct in suing his client for fees while remaining attorney of record in the federal court litigation violated Mass. R. Prof. C. 1.7(b) and 1.16(a). The respondent received an admonition for this conduct.

ADMONITION NO. 06-09

Order (admonition) entered by the Board January 9, 2006.

HEARING REPORT

On January 21, 2005, Bar Counsel filed a petition for discipline against the Respondent, Richard Roe (“Roe”), pursuant to the provisions of Chapter 4 of the Rules of the Supreme Judicial Court, Rule 4:01, §8(3) and §§3.13(2) and 3.14 of the Rules of the Board of Bar Overseers. The Respondent, Roe, represented by counsel, filed an answer on February 8, 2005 and an amended answer on February 15, 2005.

On May 10, 2005, the matter came before Special Hearing Officer, Francis J. Russell. The Special Hearing Officer heard testimony from the Respondent, Roe, and another witness called by Bar Counsel, Attorney Jane Jones. On June 27, 2005, the parties filed their proposed findings, conclusions of law and recommendations.

I. Findings of Fact

1. Roe is an attorney admitted to the bar of the Commonwealth of Massachusetts on June 13, 2000. (Ans. 2)
2. Roe is an American citizen of Japanese descent who was raised in Japan and moved to the United States when he was fifteen years old. (Trans. pp. 61-62, 129-130 [Roe])
3. I credit Roe’s testimony that Japanese is his primary language and English is his second language. (Trans. p. 131; see Trans. pp. 61-62 [Roe])
4. Roe has a Bachelor’s Degree in American Studies from Brandeis University, a Master’s Degree from the University of Hawaii in the same subject, and obtained a Juris Doctorate Degree from New England School of Law. (Trans. pp. 62-64 [Roe])
5. After his admission to the bar in June 2000, Roe worked six months for an attorney doing pretrial discovery work (Trans. pp. 65-66 [Roe]) and, thereafter, opened his own practice from his apartment with no employees or support staff. (Trans. pp. 133-134 [Roe])
6. Roe represented a defendant in litigation filed in Suffolk Superior Court in May 2002. (Ans. 5, 6)
7. The plaintiff was represented by Mark Smith, Esq. (“Smith”) and Jane Jones, Esq. (“Jones”). (Ans. 7) Smith was then a partner in a New York law firm (Ans. 3; Ex. 1), and Jones maintained an office in Boston, Massachusetts. (Ans. 4) Jones served as local counsel and Smith was lead counsel with the responsibility for responding to motions filed by the defendants. (Trans. pp. 17-18 [Jones])
8. This matter was Roe’s first case in Superior Court. (Trans. pp. 134-135 [Roe]) I credit Roe’s testimony that he did not familiarize himself with the Massachusetts Rules of Civil Procedure and the Rules of the Superior Court. (Trans. pp. 67-68, 94-96, 161-162 [Roe]; Ans. 10)
9. All disciplinary actions sought by Bar Counsel in this matter result from Roe’s failure to properly adhere to Superior Court Rule 9A (“Rule 9A”).
10. In 2002, Superior Court Rule 9A(b)(2) required that prior to filing a motion with the court, the moving party was to serve a copy of its motion, memorandum, and supporting documentation on every other party. (Ex. 3) Rule 9A(a)(2) provided that an opposing party had ten days after service of the motion and supporting documentation to file an opposition with the moving party. (Ex. 3) Upon receipt of the opposition, the moving party had an additional ten days to file all of the parties’ papers with the court along with a “separate document listing the title of each paper in the combined documents.” (Ex. 3) The rule further provided that if the moving party did “not receive an opposition within three business days after expiration of the time permitted for service of oppositions, then the

moving party shall file with the clerk the motion and other documents initially served on the other parties with an affidavit reciting compliance with th[e] rule in timely fashion.” (Ex. 3) Under either circumstance, the moving party was required to “give prompt notice of the filing of the motion to all parties by serving a notice of filing accompanied by a copy of the document listing the title of each paper filed.” (Ex. 3) Finally, Rule 9A(a)(3) provided that “[p]apers not served with the motion or opposition may be filed only with leave of court[.]” (Ex. 3)

11. On May 20, 2002, Roe filed directly with the court a motion to dismiss plaintiff’s complaint under Mass. R. Civ. P. 12(b)(6) (the “First Motion”). (Ans. 8) In so doing, Roe failed to comply with Rule 9A by failing to serve the motion and any supporting documents on the plaintiff’s counsel and allowing ten days for plaintiff’s counsel to serve an objection. (Ans. 11)

12. On May 23, 2002, the court denied the First Motion without prejudice, stating further that the motion could be “refiled pursuant to the requirements of Superior Court Rule 9A.” (Ex. 5) Roe and plaintiff’s counsel received notice of the denial of this motion. (Ans. 12; Ex. 17)

13. I credit Roe’s testimony that, after receiving this denial, he reviewed parts of Rule 9A and, at the time, thought he understood its requirements. (Trans. pp. 68-70 [Roe]) I further credit his testimony that, while he understood from this review that he had to serve the motion and other documents on opposing counsel and give them ten days to respond, he did not understand that, if he did not receive an opposition, he had to wait an additional three business days before filing the documents and a certificate of no opposition with the court. (Trans. pp. 82-84, 104-105, 108-109, 135-136 [Roe])

14. On May 30, 2002, Roe hand delivered to Jones and mailed to Smith a second motion to dismiss the complaint identical to the first motion (the “Second Motion”).¹ (Trans. pp. 137-138 [Roe]; Ex. 7)

15. On June 11, 2002, Roe filed the motion, brief, and affidavit with the court. (Trans. p. 87 [Roe]; Ex. 7, Ex. 17) He also filed a certificate stating that he had not received an opposition to his motion. (Ex. 7) Based on my previous finding above, that Roe did not understand he needed to wait an additional three business days when he did not receive an opposition within ten days after service, I credit his testimony that he believed he had complied with Rule 9A at the time of this filing. (Trans. pp. 139-140 [Roe])

16. However, having received no opposition within ten days of service of the Second Motion, that is by June 9, Roe was required under Rule 9A to wait three additional business days before filing the motion with the court. (See Ans. 15) He failed to do so.

17. On June 12, 2002, the Second Motion was denied by the court without prejudice, ruling that Roe had again failed to meet the time requirements of Rule 9A. (Ex. 7) On June 18, 2002, notice of the court’s denial of the Second Motion was sent to Roe, Smith, and Jones. (Ans. 19; Ex. 7, Ex. 17)

18. On June 20, 2002, Smith faxed and mailed to Roe, by overnight mail, “Plaintiff’s Opposition to [Defendant’s] Motion to Dismiss”. (Trans. p. 89 [Roe]; Ex. 6) In light of the June 10, 2002 service date on the brief, Smith may have concluded that the opposition would be timely served by June 20, 2002. However, I do not draw this inference because Smith did not testify at the hearing, and Jones admitted to receiving the brief by June 9, 2002. In any event, I credit Roe’s testimony that he, in good faith, did not believe this opposition was timely.

19. I credit Roe’s testimony that on June 23, 2002, Roe served on Smith and Jones, by first class mail, a subsequent motion to dismiss (the “Third Motion”), and a brief in support of the

motion, both dated June 23, 2002, and an affidavit. (Ans. 21; Ex. 11; Trans. pp. 143-144 [Roe]) The Third Motion was identical to the two previous motions. (Ans. 21) Jones received the Third Motion on June 28, 2002. (Trans. pp. 36-37 [Jones])

20. On July 8, 2002, Roe filed with the court the Third Motion, the brief and affidavit, together with a certificate of no opposition. (Ex. 11) Roe was in error when he filed the Third Motion with the court on July 8, 2002 because he filed it at least one day before the time prescribed by Rule 9A. (Ans. 23) I find, however, that this was not deliberate, but was based on Roe's mistaken understanding of Rule 9A and his failure to properly allow for the additional three business days when no opposition is received (see findings above). (Trans. pp. 83-84, 104-105, 108-109, 135-136 [Roe]) In addition, I credit Roe's testimony that he believed in good faith that the opposition he had previously received on June 20, 2002, was an opposition to the Second Motion, which had been dismissed by the court, and did not constitute an opposition to this Third Motion, which had not yet been served when he received the opposition.² (Trans. pp. 89-90, 120, 141-144 [Roe])

21. I credit Roe's testimony that on July 8, 2002, he mailed a copy of the certificate of no opposition to Attorney Jones. (Tr. 146 [Roe]) That same day, Roe mailed a copy of the certificate of no opposition in an envelope addressed to Smith at his New York office address without designating the firm name or identifying Smith as an attorney. (Ex. 8, Ex. 9; Trans. pp. 113-115, 117, 145-146 [Roe]) The post office could not deliver this envelope and it was returned to Roe on or about July 22, 2002, marked "Return to Sender - Attempted Not Known." (Ex. 9; Trans. pp. 115-116 [Roe]) I credit Roe's testimony that the failure to properly address the envelope to Smith was a mistake and was not a deliberate effort to deprive Smith of the certificate of no opposition. (Trans. p. 147 [Roe])

22. On July 9, 2002, Roe received from Smith a written opposition presumably to the Third Motion, in which Smith requested sanctions in the amount of \$1,500 against Roe for the repetitive filings of the same motion. (Ans. 28, 29; Ex. 12)

23. I credit Roe's testimony that he did not file this opposition with the court, believing it to be sent to him after the filing deadline. (Trans. pp. 110-113, 147 [Roe]) I therefore find that even though Roe was in error in assuming that the filing deadline for Smith's opposition had passed and for not filing the same with the court, this was not an intentional effort to hide the opposition from the court but was based on a good faith, albeit mistaken, belief.

24. On July 18, 2002, Smith sent a fax to Roe demanding that he send him the notice of filing that was required by Rule 9A, as well as the document listing all the documents that had been filed with the court. (Ans. 31; Ex. 10) I credit Roe's testimony that, when he received this fax, he did not know what Smith was asking for. (Trans. p. 148 [Roe]) As a result, Roe reviewed Rule 9A again and, having found the reference to the two requested documents, produced a notice of filing and a document listing the title of each paper filed. (Trans. pp. 148-149 [Roe]) I credit his testimony that he served these two documents on all of the attorneys in the case, but did not file them with the court because he did not believe it was required. (Trans. p. 149 [Roe]; Ex. 20)

25. On July 22, 2002, the Superior Court allowed the Third Motion based on the lack of opposition. (Ans. 32; Ex. 11) On July 23, 2002, notice of the allowance of the Third Motion was sent to all parties. (Ans. 32; Ex. 17)

26. On July 23, 2002, having received the returned envelope addressed to Smith with the certificate of no opposition, Roe re-sent the original cover letter and certificate to Smith, without adding any explanation that the envelope had been previously sent and returned. (Trans. pp. 115-117, 150, 163-164, 174 [Roe]; Ex. 8) This time the envelope address included the law firm name and identified Smith as an attorney. (Ex. 8)

27. On August 1, 2002, Smith filed with the court an emergency motion to vacate the

dismissal of the plaintiff's complaint in which he also requested sanctions for Roe's failure to comply with Rule 9A. (Ans. 34; Ex. 13) Smith also filed an affidavit in support of his motion. (Ex. 18)

28. On August 6, 2002, Roe filed an opposition to Smith's motion, requesting that the dismissal be affirmed and that the court award him reasonable fees for Smith's frivolous claims. (Ans. 35; Trans. pp. 124-125 [Roe]; Ex. 14)

29. On August 8, 2002, the Superior Court allowed the plaintiff's motion to vacate the dismissal based on Roe's failure to comply with Superior Court Rule 9A (Ans. 36), and scheduled a hearing on August 15, 2002, on Roe's renewed motion to dismiss and on Smith's request for sanctions. (Ex. 15, Ex. 17) The hearing was held on August 15, and Roe and Jones were present. (Tr. 44 [Jones])

30. On August 23, 2002, the Superior Court denied Roe's motion to dismiss and for sanctions, and assessed sanctions against Roe personally in the amount of \$1,000. (Ans. 37; Trans. pp. 41-42 [Jones], p. 125 [Roe])

31. Roe petitioned the Appeals Court for relief and, on August 30, 2002, the single justice denied it. (Trans. p. 128 [Roe]; Ex. 16)

32. With the agreement of Smith, Roe paid the plaintiff \$400.00 in full satisfaction of the order of sanctions. (Ans. 39; Trans. p. 128 [Roe])

II. Conclusions of Law

33. Bar Counsel charges that the Respondent's failure to familiarize himself with the Superior Court Rules and to comply with the requirements of Rule 9A prior to filing the First Motion violated Mass. R. Prof. C. 1.1 (lawyer shall provide competent representation), 1.3 (lawyer shall act with reasonable diligence and promptness), and 8.4(d) (conduct prejudicial to the administration of justice), and (h) (conduct adversely reflecting on fitness to practice). In light of Roe's admitted failure to familiarize himself with the Superior Court Rules and to comply with the requirements of Superior Court Rule 9A prior to his filing of the First Motion, I conclude that Roe violated Mass. R. Prof. C. 1.1, and 8.4(d) and (h) as charged. In my view, however, Roe did not violate Mass. R. Prof. C. 1.3 because his misconduct did not stem from a failure to act promptly.

34. Bar Counsel charges that the Respondent's knowing failure to comply with the requirements of Rule 9A when he prematurely filed with the court both the Second

Motion and the Third Motion violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists), and 8.4(d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). Because I have found that Roe did not knowingly fail to comply with Rule 9A, but that he simply misunderstood its requirements, I do not find that Roe's conduct constituted a violation of Mass. R. Prof. C. 3.4(c).

35. In addition, I conclude that, under the circumstances presented here, Roe's conduct does not constitute a violation of Mass. R. Prof. C. 8.4(d) or (h). These are "catch-all" rules that are subject to the dangers of vagueness and over breadth in their application to professional conduct. In *Matter of the Discipline of Two Attorneys*, 421 Mass. 619, 628 (1996) ("Two Attorneys"), the Court, finding violations of other disciplinary rules, rejected the Board's conclusion that the attorneys had engaged in conduct prejudicial to the administration of justice in violation of Canon One, DR 1-102(A)(5).³ The Court reasoned:

The New Jersey Supreme Court has said that 'on those few occasions when the rule has served as the sole basis for discipline, it has been applied only in situations involving

conduct flagrantly violative of accepted professional norms.’ Matter of Hinds, 90 N.J. 604, 632 (1982). Without such limiting interpretations of DR 1-102(A)(5), the rule presents the risk of vagueness and arbitrary application. See C. Wolfram, *Modern Legal Ethics* §3.3.1 at 87-88 (1986); 2 G. Hazard & W. Hodes, *The Law of Lawyering*, §8.4:501, at 957 (2d ed. Supp. 1994), discussing Rule 8.4(d) of the ABA Model Rules of Professional Conduct, which preserves the same language.

Id. at 628-629 (1996). See also Matter of Thurston, Board Memorandum, p. 13 (May 12, 1997). The Court concluded that such limitation on the application of this disciplinary rule was necessary, since in its absence “the rule presents the risk of vagueness and arbitrary application.” Two Attorneys at 628-629.

36. Similarly, with respect to Canon One, DR 1-102(A)(6), the Board concluded that the standard should be that the conduct is unethical where “a reasonable lawyer would or should have known that [the lawyer’s] conduct would bring disrepute upon [himself] and the bar in general.” PR-94-2, 10 Mass. Att’y Disc. R. 309, 316 (1994) In that case, Attorney A, who had represented a wife in divorce proceedings, hired Attorney B, the husband’s counsel in the divorce matter, to collect his fee from the wife. The Hearing Committee and the Board had no problem finding Attorney A’s conduct “both outrageous and unethical.” Id. at 316.

37. In my view, Roe’s failure to understand the requirements of Rule 9A regarding the timing of filing papers when an opposition has not been received, as opposed to when one has been received, although showing a lack of competence, does not amount to the type of conduct egregious enough to constitute a violation of Mass. R. Prof. C. 8.4(d) or (h). In any event, even if the conduct were considered a violation of these rules, my recommendation as to sanction would not be altered.

38. Bar Counsel charges that the Respondent’s false representations in the second certificate that the plaintiff had not filed an opposition to the motion to dismiss violated Mass. R. Prof. C. 3.3(a)(1) (lawyer shall not knowingly make a false statement of material fact or law to a tribunal), and 8.4(c) (dishonesty, fraud, deceit or misrepresentation), (d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). When Roe received the plaintiff’s opposition on June 20, 2002, he had not yet served the Third Motion, and he believed that the time for opposition to the Second Motion had passed, which testimony I credited. At the time Roe filed the Third Motion with the court on July 8, 2002, along with what Bar Counsel characterizes as the second certificate of no opposition, Roe had not received an opposition from the plaintiff relating to the Third Motion, and Roe believed that the time for opposition to the Third Motion had passed. Although Roe was in error, and in fact a timely opposition was received by Roe on July 9, 2002, I have found that Roe’s actions were not deliberate but due to his mistaken understanding of the provisions of Rule 9A. As a result, I do not find that Roe made any knowingly false misrepresentations to the court in his certificate of no opposition. Because I have found that Roe did not knowingly fail to comply with Rule 9A but that he simply misunderstood its requirements, I do not find that Roe’s conduct constituted a violation of Mass. R. Prof. C. 3.3(a) or 8.4(c). In addition, for the reasons set forth above, I conclude that his conduct did not violate Mass. R. Prof. C. 8.4(d) and (h).

39. Bar Counsel charges that the Respondent’s failure to inform the court in connection with the Third Motion that the plaintiff had filed an opposition that Roe deemed not responsive to the Third Motion violated Mass. R. Prof. C. 3.3(d) (in ex parte proceeding, lawyer shall inform tribunal of all material facts known to lawyer which will enable tribunal to make an informed decision, whether or not facts are adverse), 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of tribunal except for an open refusal based on an assertion that no valid obligation exists) and 8.4(d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). As set forth above, although Roe received an opposition to the Third Motion on July 9, 2002, he, in

good faith, believed the time for opposition had passed and had already filed the documents with the court on July 8, 2002. Because I have found that Roe did not knowingly fail to comply with Rule 9A but that he simply misunderstood its requirements, I do not find that his conduct constituted a violation of Mass. R. Prof. C. 3.3(d) or 3.4(c). In addition, for the reasons set forth above, I conclude that his conduct did not violate Mass. R. Prof. C. 8.4(d) and (h).

40. Bar Counsel charges that the Respondent's conduct in using an incomplete address to serve Smith with a copy of the Third Motion and the supporting certificate and brief, his failure to serve Jones with the pleadings, and his failure to file Smith's opposition to the Third Motion violated Mass. R. Prof. C. 3.4(c) (lawyer shall not knowingly disobey an obligation under the rules of tribunal except for an open refusal based on an assertion that no valid obligation exists), and 8.4(c) (dishonesty, fraud, deceit or misrepresentation), (d) (conduct prejudicial to the administration of justice) and (h) (conduct adversely reflecting on fitness to practice). Roe's failure to file Smith's opposition to the Third Motion was addressed above. I previously credited Roe's testimony as to service of the Third Motion on Jones, and Jones admitted to receipt of the Third Motion. I also credited Roe's testimony that his failure to properly address the envelope to Smith was a mistake and not a deliberate effort to deprive Smith of the certificate of no opposition. In light of these findings, I do not find that Roe's conduct constituted a violation of Mass. R. Prof. C. 3.3(a) or 8.4(c). In addition, for the reasons set forth above, I conclude that his conduct did not violate Mass. R. Prof. C. 8.4(d) and (h).

III. Factors in Mitigation and Aggravation

41. In mitigation, at the time of the misconduct, Roe was inexperienced in the practice of law. *Matter of Franchitto*, 12 Mass. Att'y Disc. R. 180, 180-181 (1996); *Matter of Pascucci*, 12 Mass. Att'y Disc. R. 452, 454-455 (1996); *Matter of Pike*, 408 Mass. 740 (1990);

Matter of Grossman, 3 Mass. Att'y Disc. R. 89, 93 (1983); ABA Standards for Imposing Lawyer Sanctions §9.32(f).

42. There is nothing in the record that indicates that the plaintiff was ultimately harmed by Roe's actions.

43. Roe was sanctioned by the court as the result of his failure to properly comply with the Rule, and paid the sanction in accordance with an agreement with the plaintiff.

IV. Recommendation for Discipline

Roe recommends that he receive no sanction. Bar Counsel seeks an eighteen-month suspension based on his charges of repeated, knowing misrepresentations to the court to improperly obtain dismissal of the case against his client, intentional disregard for the rules of the court, and dishonesty in dealing with opposing counsel. I have rejected most of these charges.

In essence, Roe was negligent in not familiarizing himself with the requirements of Rule 9A and, as a result, on three separate occasions filed documents with the court and with opposing counsel that did not comply with the requirements of Rule 9A. Although I consider Roe's misconduct to be more inadvertent than the almost willful blindness found in AD-98-85, 14 Mass. Att'y Disc. R. 971 (1998) (attorney's conduct in preparing, signing under the pains and penalties of perjury, and filing with a court an affidavit under Rule 9A without apparent concern for accuracy constituted inadequate preparation, and resulted in an admonition), Roe compounded his carelessness by repeating his mistake at least twice, despite the court advising him of his non-compliance with Rule 9A, and by failing to seek additional information or advice in order to better understand the requirements of Rule 9A.

The case most analogous to this matter is AD-98-85, 14 Mass. Att'y Disc. R. 971 (1998), which

involved an attorney who mailed a notice to the opposing party pursuant to Rule 9A, advising the opposing party that any opposition to the attached motion was due within ten days, with a certificate of service dated April 28, 1998. The opposing party received the documents in an envelope postmarked April 30, 1998, and advised the attorney of the discrepancy in the dates of service in a letter accompanying his opposition. The attorney then filed the documents with the court, accompanied by an affidavit in which she attested to the date of service upon the opposing party as April 28, 1998. The attorney's conduct in preparing, signing under the pains and penalties of perjury, and filing with a court an affidavit under Rule 9A without apparent concern for accuracy constituted inadequate preparation in violation of Mass. R. Prof. C. 1.1, and resulted in an admonition.

In AD-03-56, 19 Mass. Att'y Disc. R. 630 (2003), another case involving failure to comply with Rule 9A, an attorney filed suit against a contractor and subcontractor on behalf of his client. When served by the subcontractor with a motion pursuant to Rule 9A, the attorney failed to notify his client and failed to file any opposition within the requisite time period, and the case against the subcontractor was dismissed as a result. Subsequently, the contractor served a motion pursuant to Rule 9A, and the attorney again did not notify his client or file any opposition. For whatever reason, the court did not act upon the contractor's motion. The attorney failed to respond to inquiries from his client, and the client learned of the dismissal of her case against the subcontractor by calling the court. The attorney's neglect and inadequate communication with his client was in violation of Mass. R. Prof. C. 1.3 and 1.4, and resulted in an admonition.

Finally, in Matter of Manzi, 12 Mass. Att'y Disc. R. 269 (1996), the attorney filed suit on behalf of his client but then failed to effect service on the defendants, and the suit was dismissed by the court. The attorney then filed a motion to remove the default, but the motion was docketed by the court as not in compliance with Rule 9A and the attorney took no further action on the motion. The attorney's failure to cause appropriate service of process, to comply with applicable motion procedure and to take effective action to correct his prior errors was found to be inadequate preparation and neglect, and failing to represent his client zealously. Because the attorney also failed to cooperate with Bar Counsel, necessitating the issuance of two subpoenas, the parties stipulated to a public reprimand.

In my view the misconduct in each of these cases is more egregious than that presented here. Therefore, I recommend that the Respondent, Richard Roe, receive an admonition.

Respectfully submitted,

By the Special Hearing Officer, Francis J. Russell

FOOTNOTES:

¹ This Second Motion was accompanied by an affidavit. (Trans. p. 138 [Roe]; see Ex. 7) There is a dispute as to whether Roe served his brief in support of the Second Motion at the same time. He testified that the date on the brief of June 10, 2002, was an error and was incorrectly repeated as the date of service on his certificate of no opposition. (Trans. pp. 85-88, 137-140 [Roe]; Ex. 7) Attorney Jones could not recall when she was served with the brief, but after reviewing her time records, stated that she received it on June 9, 2002 (one day before the date on the brief). (Trans. p. 31 [Jones]) In any event, we need not resolve this matter here because, as set forth below, although the court denied the Second Motion without prejudice as untimely under Rule 9A based upon the June 10, 2002 date of service of the brief (Ex. 7), even if Roe had served the brief on May 30, 2002, at the time he served the motion, his subsequent filing with the court on June 11, 2002, would still have been premature under Rule 9A.

² The fact that Smith sent Roe another opposition on July 9, 2002 (see below), supports this finding.

³ Canon One, DR 1-102(A)(5) and (6), respectively, are the predecessor rules, containing the same language as Mass. R. Prof. C. 8.4(d) and (h), and therefore cases construing those rules are applicable.

ADMONITION NO. 06-10

CLASSIFICATIONS:

Failure to Act Diligently [Mass. R. Prof. C. 1.3]

Record-Keeping Violation [Mass. R. Prof. C. 1.15(f)]

SUMMARY:

Bar counsel began his investigation after receiving a notice of dishonored check drawn on the respondent's conveyancing account. Investigation disclosed that the respondent had gone to record and issued checks in connection with a real estate conveyance before he had confirmed that corresponding funds had been deposited into his conveyancing account. In fact, the lender had not transferred funds to the account. Upon notice of the deficiency, the respondent immediately contacted the lender, who wire-transferred the funds in question to the respondent's conveyancing account. The mortgagor's check was then redeposited and paid. The respondent has since attended a course on the record keeping requirements of Mass. R. Prof. C. 1.15.

The respondent's received an admonition for inadequate record-keeping, in violation of Mass. R. Prof. C. 1.15(a) of the rule in effect prior to July 2004 (now Rule 1.15(f)), and for lack of diligence, in violation of Mass. R. Prof. C. 1.3.

ADMONITION NO. 06-11

CLASSIFICATION:

Conflict from Responsibilities to Another Client or Lawyer's Own Interests [Mass. R. Prof. C. 1.7(b)]

SUMMARY:

The respondent was admitted to practice on June 20, 1983. In 2001, the respondent agreed to represent a client in her divorce action. After the judgment of divorce was final, the respondent continued to represent the client in the client's refinance and buyout of the marital home and other post-divorce issues arising under the separation agreement.

On August 8, 2002, the respondent sent the client a demand letter for payment of \$15,347.50 on her outstanding bill for legal services. On August 9, 2002, the respondent filed suit against the client for her unpaid legal fees and sought and obtained a pre-judgment attachment on the marital home. The respondent was still representing the client when she took these actions.

The respondent did not notify the client and opposing counsel that she was withdrawing from representation until August 21, 2002. On August 22, 2002, the respondent filed a motion in the Probate Court to withdraw her appearance on behalf of the client. The respondent's conduct in filing a civil suit against her client prior to withdrawing from the client's representation violated Mass. R. Prof. C. 1.7(b).

The respondent received an admonition in 1998 for the unauthorized practice of law in another jurisdiction and handling a legal matter without adequate preparation. Admonition No. 98-52, 14 Mass. Att'y Disc. R. 906 (1998). Because the harm to the client in this case was minimal and there were only a couple of weeks between the respondent's filing of the lawsuit and her withdrawal of appearance, the respondent received an admonition for her conduct in this matter.

ADMONITION NO. 06-12

CLASSIFICATION:

Improper Financial Assistance to Client [Mass. R. Prof. C. 1.8(e)]

SUMMARY:

In February of 2002, the client hired the respondent to sue a local restaurant for injuries allegedly sustained when bottles broke and shattered glass injured his eye. While this case was pending, a judge set a \$50,000 cash bail for the client in a pending criminal matter. The respondent was not representing the client in that case.

The client's wife, also a former client of the respondent, sought the respondent's assistance in obtaining cash to post the client's bail. The respondent co-signed a loan with the client's wife, the proceeds of which were used to post the client's bail. That bail money was forfeited when the client defaulted at his court appearance. The wife then defaulted on the loan that she and the respondent had co-signed. The respondent paid the loan in its entirety, with interest, from his personal funds. When the client's personal injury suit against the restaurant later settled, the respondent applied the client's portion of the settlement funds to the amount that the respondent was owed for having paid the loan. The client, who by then was again in custody, denied any obligation to repay the defaulted loan, co-signed only by his wife, from the proceeds of his personal injury settlement. The respondent subsequently resolved this dispute with the client.

By co-signing and guaranteeing a loan for the benefit of his client while the client's personal injury case was pending, the respondent made an improper financial advance in violation of Rule 1.8(e) of the Massachusetts Rules of Professional Conduct.

The respondent has been a member of the Bar since June of 1999 and has no history of prior discipline. The respondent received an admonition conditioned upon his attendance at a CLE course designated by Bar Counsel.

ADMONITION NO. 06-13

CLASSIFICATION:

Trust Account Violation [Mass. R. Prof. C. 1.15]

SUMMARY:

This matter came to bar counsel's attention pursuant to Mass. R. Prof. C. 1.15(h) as the result of receipt from a bank of a notice of five dishonored checks drawn on an IOLTA account in the respondent's name. The account in question was denominated as an IOLTA account but was in fact being used as a business operating account.

The respondent initially opened this account to hold funds advanced by a major client to pay court costs in collection cases. The client subsequently discontinued its practice of advancing court costs. The respondent then began depositing his firm's money into the account and continued to use the account to pay court costs for this one client. At the time the checks were dishonored, there were no client funds in the account.

The respondent's use of an IOLTA account as a business operating account violated Mass. R. Prof. C. 1.15(b)(2). The respondent received an admonition for the above violation.

ADMONITION NO. 06-14

CLASSIFICATIONS:

Handling Legal Matter When Not Competent or Without Adequate Preparation [Mass. R. Prof. C. 1.1]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

SUMMARY:

The respondent handled the closing of a residential real estate sale on behalf of the buyer's mortgage lender. He had received a closing package from the lender, a Florida bank, on the day before the closing and understood from the closing instructions that the lender would not fund the closing by wiring funds to the respondent's account until it had approved the HUD-1 Settlement Statement for the transaction.

On the morning of the day of the closing, a Friday, the respondent prepared the HUD-1. He obtained approval of the HUD-1 from the buyer's and seller's attorneys and attempted to send it by fax to the lender twice; each time the lender's fax line was busy.

Because of scheduling conflicts, the seller's attorney could not attend the closing at the registry of deeds. The respondent went to the attorney's office on his way to the registry, received the deed signed by the seller and left the seller's proceeds check with the attorney to be held in escrow until he called her to confirm recording of the closing papers. He then went to the registry, completed the closing with the buyer and his attorney and recorded the seller's deed and the buyer's mortgage.

On the next Monday, the respondent sent the lender by fax a full set of the closing documents, including the HUD-1. On Tuesday afternoon, an employee of the lender called the respondent to inform him that the HUD-1 was incorrect and needed to be corrected and re-signed before the closing would be funded. The respondent had misread the lender's instructions concerning the required treatment of a credit between the seller and buyer. The respondent called the buyer's and seller's attorneys and informed them of the problem and that the closing had not been funded.

The correction to the HUD-1 demanded by the lender required the buyer to pay about \$400 more to complete the purchase. The buyer at first refused to cooperate because of an unrelated dispute he had with the lender. About two weeks later, the closing was reconvened and new documents were signed and approved by the lender, which funded the closing.

The respondent's conduct in recording the buyer's mortgage prior to his receipt of good funds from the lender in violation of the "good funds" statute (G.L. c. 183, § 63(B)) was in violation of Mass. R. Prof. C. 1.1 and 1.3.

The respondent received an admonition for his misconduct, conditioned on his attendance at a CLE program designated by Bar Counsel.

ADMONITION NO. 06-15

CLASSIFICATIONS:

Failure to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

IOLTA Violation [Mass. R. Prof. C. 1.15(e)(5)]

SUMMARY:

In August of 2003, the respondent represented the lender and was settlement agent of a residential real estate closing transaction. The seller, who was not represented at the closing, advised the respondent that there was a fifteen-year old development loan in the amount of \$9,500.00 that had been issued by the city in which the property was located. The seller was unsure if the loan needed to be repaid or whether it was secured. The respondent determined that she should hold \$10,000 in her IOLTA account from the seller's

net proceeds in the event that the city had a claim against the property. The HUD-1 settlement statement was adjusted accordingly by the respondent and the parties signed the adjusted HUD-1. There was no written escrow agreement and the seller believed that the respondent was to undertake to research the matter.

Between August of 2003 and June of 2005, the seller, through counsel, contacted the respondent asking for the status of her research, a copy of any release from the city and the money owed to her. During this time, the respondent was unable to find any recorded encumbrance or other records of the loan from the city. However, the respondent did not release the funds, believing that there was still potential that the city might have some enforceable claim relating to the title to the property. The respondent made some efforts to speak with the seller's attorney during this time, but her efforts were inadequate, resulting in confusion as to what needed to be done, and by whom, in order to release the funds.

In August 3, 2005, the seller's attorney complained to bar counsel. The seller and the respondent subsequently reached an agreement to release the funds. The seller provided the respondent with an indemnification agreement in the unlikely event that the city raised a claim that might cloud the title.

At all times, the funds remained intact in the respondent's IOLTA account. The respondent's failure to transfer the holdback funds to an individual interest-bearing trust account was in violation of Mass. R. Prof. C. 1.15(e)(5) as amended effective July 1, 2004.

Upon finding that no recorded or written encumbrance existed, the respondent's failure either to release the funds, or to clearly and timely communicate reasonable terms for release, was in violation of Mass. R. Prof. C. 1.15 (c) as amended effective July 1, 2004.

The respondent has been a member of the Bar since 1999, with no prior discipline. She accordingly received an admonition for the above violations, conditioned upon attendance at a CLE program designated by Bar Counsel.

ADMONITION NO. 06-16

CLASSIFICATION:

Alluding to Matters Not Supported by Admissible Evidence [Mass. R. Prof. C. 3.4(e)]

SUMMARY:

In or around October 5, 2003, the respondent was retained to represent a client on criminal charges pending in district court. On October 20, 2003, the client was arrested on additional criminal charges and he was arraigned in the same district court on those charges on October 22, 2003. A pre-trial conference for both matters was scheduled for December 1, 2003.

At his December 1, 2003 pre-hearing on the two pending matters, the client pled guilty and received a sentence of one year in the house of correction with four months to serve and the balance suspended to November 30, 2005.

In November 2004, while on probation on the district court matters, the client was arrested on new criminal charges. The client was then charged with violating his probation as a result of the new arrest.

On November 15, 2004, the client filed a motion to vacate his December 1, 2003 guilty plea and a motion for new trial on the December 2003 convictions. As grounds for the motion, the client alleged ineffective assistance of counsel on the part of the respondent. One of the client's allegations was that the respondent had failed to inform the court that the client was taking new medication at the time of his guilty plea, which affected his ability to concentrate and his understanding of the proceedings.

The prosecutor advised the respondent that she planned to file an opposition to the client's motion and asked the respondent to provide an affidavit. The respondent prepared and filed the requested affidavit. The motion was heard by the court on September 8, 2005, and denied.

The affidavit filed by the respondent outlined her communications with the client and his family concerning his plea. Although the affidavit revealed client confidences, the respondent was permitted to do so by Mass. R. Prof. C 1.6(b)(2) in light of the claims against her of ineffective assistance. However, the respondent went a step further than necessary and concluded her affidavit by stating, "In my personal and professional opinion, (the client) made a knowing, informed and intelligent waiver of his rights and he should not be allowed to withdraw his guilty plea..." The respondent's statement as to the merits of the client's motion violated Mass. R. Prof. C. 3.4(e).

The respondent was admitted to the Bar in 1999 and has no prior discipline. She received an admonition for her conduct in this matter, conditioned upon her attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-17

CLASSIFICATION:

Failure to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

SUMMARY:

The respondent represented a client in a personal injury claim on which Medicare had a statutory lien. The client, who was a pedestrian, was struck and injured by a motor vehicle.

On December 10, 2004, the driver's insurance company issued a settlement check made payable to the respondent, the client, and Medicare. The respondent determined that there was \$5,632.78 in additional no-fault benefits remaining to pay the Medicare lien. Accordingly, the respondent deposited the client's settlement check into his IOLTA account without Medicare's knowledge, authorization, or endorsement. The respondent then disbursed 2/3 to the client and 1/3 to himself for his attorney's fee.

The respondent's deposit of a settlement check that was payable jointly to a third party (Medicare) without notifying the third party of his receipt of the funds, or obtaining the third party's authorization, was conduct in violation of Mass. R. Prof. C. 1.15(c). In mitigation, Medicare did get paid by the no-fault insurer.

The respondent has been a member of the Bar since 1973, with no prior discipline. He received an admonition.

ADMONITION NO. 06-18

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

Failing to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

Responsibilities Regarding Non-lawyer Assistants [Mass. R. Prof. C. 5.3(a) and (b)]

SUMMARY:

The respondent was the settlement agent for a real estate closing. Shortly before the scheduled closing in October 2004, a lis pendens was filed on the property related to a child support obligation from the prior marriage of the seller's husband, who was not an owner of the property. The closing was delayed for approximately two months until the seller's attorney obtained removal of the lien by order of the Probate Court. During the period from

October to December 2004, additional interest charges accrued on the seller's outstanding mortgage loans.

Because of the additional interest charges, there were insufficient funds at the closing to pay off the priority claims of the mortgage holders and the broker's fee. Nevertheless, the buyer and the seller were anxious to proceed due to the threat of foreclosure on the property. The respondent agreed to close the loan with the understanding that the seller would be responsible for the difference between the broker's full commission of \$18,315 and the \$9,415 available to pay the broker.

The broker did not attend the closing on December 7, 2004. When he learned that his commission would not be paid in full from the closing proceeds, the broker threatened to sue the respondent's office for the difference.

The respondent had delegated to his paralegal the responsibility for sending the broker a check for \$9,415.40 from the closing proceeds. After the broker threatened to sue the respondent, the paralegal did not pay the broker the \$9,415.40 because she erroneously considered the amount to be disputed, and she was waiting to see what a court determined was owed. In fact the \$9,415.40 was not disputed, and this amount should have been promptly distributed with the rest of the closing proceeds as detailed on the HUD-1 statement. The funds that were not paid out remained in the respondent's client funds account.

The paralegal did not seek the respondent's approval to hold back the check, and the respondent did not have any policy or procedures in place to require the paralegal to clear these decisions with him. The respondent was not aware that the check had not been paid until approximately eight months later, when he was contacted by the Attorney and Consumer Assistance Program (ACAP) after the broker contacted bar counsel's office. During that eight-month period, the respondent did not verify that all funds from the closing had been distributed, nor did he review the reconciliation reports for his client funds account. The respondent did not have in place reasonable procedures to confirm that all closing proceeds had been properly paid after the closing. Shortly after he was contacted by ACAP and learned that the funds had not been paid to the broker, the respondent sent the broker a check for \$9,415.40 from his client funds account.

The respondent was admitted to practice in 1995 and had received no prior discipline. The respondent instituted personal monthly review of the required records maintained in connection with his trust accounts, and policies in his office to assure that his employees' conduct is compatible with his professional obligations.

By failing to promptly distribute the funds from the closing, the respondent violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client) and 1.15(c) (a lawyer shall promptly deliver any funds that a client or third person is entitled to receive). By failing to institute policies and procedures in his office to assure that his employee's conduct was compatible with his own professional obligations, the respondent violated Mass. R. Prof. C. 5.3(a) and (b).

The respondent received an admonition conditioned upon his attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-19

CLASSIFICATIONS:

Failing to Seek Client's Lawful Objectives [Mass. R. Prof. C. 1.2(a)]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

In September 2004, the respondent was retained by his client to resolve a dispute with her ex-husband regarding the vacation schedule of their minor child. Between September 2004 and March 2005, the respondent attempted to resolve the disputes on his client's behalf with her ex-husband's attorney. In March 2005, the attorneys agreed to a vacation schedule conditioned on approval by their clients.

In late March 2005, the respondent presented the proposed agreement to his client. In mid-April 2005, the respondent met with the client to discuss the proposed schedule. After meeting with his client in mid-April 2005, the respondent failed to take any steps of substance to complete the agreement with his client and opposing counsel.

Between mid-April and May 2005, the respondent failed to respond to telephone calls and emails from his client inquiring about the status of her matter. Between April and May 2005, the respondent also failed to respond to correspondence from opposing counsel.

In May 2005, the attorney for the ex-husband filed a complaint for contempt and notified the respondent by letter that the respondent's client would be served with the complaint. After his client was served with the complaint for contempt, the respondent contacted the opposing counsel. The parties reached an agreement on the vacation schedules, and the client was not adjudged in contempt or otherwise harmed by the respondent's lack of diligence.

By failing between mid-April and May 2005 to respond to his client's inquiries about the status of her case, the respondent violated Mass. R. Prof. C. 1.4(a) (a lawyer shall keep his client reasonably informed about a matter). By failing between mid-April and May 2005 to take any steps of substance to resolve the vacation schedule dispute, and by failing between April and May 2005 to respond to opposing counsel's correspondence resulting in opposing counsel's filing a complaint for contempt against the respondent's client, the respondent violated Mass. R. Prof. C. 1.2(a) (a lawyer shall seek his client's lawful objectives) and 1.3 (a lawyer shall handle a matter with reasonable diligence).

The respondent has no prior discipline. He received an admonition for his conduct in this matter.

ADMONITION NO. 06-20**CLASSIFICATIONS:**

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

Failure to Safeguard Trust Property Other Than Funds [Mass. R. Prof. C. 1.15(b)(3)]

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

SUMMARY:

The respondent has been a member of the bar since 1972 and has no disciplinary history. He received an admonition for misconduct in two unrelated criminal defense matters.

In the first matter, the respondent agreed to represent a defendant on an appeal of a rape conviction after a trial in October of 2000. The client was incarcerated, and the respondent was retained by a girlfriend of the client. The respondent filed the appeal brief in July of 2001, and the Appeals Court affirmed the conviction in January of 2003.

To prepare the appeal, the respondent and an associate reviewed the trial transcript and exhibits and the trial court's file. The respondent also obtained and reviewed trial counsel's file and discussed the matter with trial counsel. The respondent did not, however, review potential appellate issues with the client and did not provide the client with a draft of the brief for review and comment. The respondent's inadequate communication with his

incarcerated client was in violation of Mass. R. Prof. C. 1.4(a) and (b).

In the second matter, the respondent represented a defendant on two charges of armed assault with intent to murder. The client was convicted on both charges after a four-day jury trial at the end of October, 2003, and received a lengthy sentence in January of 2004.

A dispute arose between the respondent and the client over payment of the balance of the respondent's fee. The respondent withdrew from representing the client, and the court appointed new counsel to handle the client's appeal. At some point, the client requested that the respondent provide him with his file. By letter dated June 25, 2004, the respondent purported to send to the client copies of some file material; in fact, the letter received by the client had no enclosures due to error.

The client filed a grievance with the Office of Bar Counsel, a copy of which was sent to the respondent for response on August 30, 2004. The respondent acknowledged to bar counsel that enclosures had been omitted from his prior letter through oversight and in October 2004, provided copies of a large number of file documents. The client then provided a list of specific documents that had been given to the respondent by the prosecutor but that the respondent had not yet produced. The respondent then in December produced additional documents that had been misplaced, but he could not locate some of the documents received from the prosecutor.

The respondent's conduct in misplacing and losing material from the client's file was in violation of Mass. R. Prof. C. 1.15(a) (as in effect prior to July 1, 2004) and, to the extent that the material was lost on or after July 1, 2004, 1.15(b)(3). His conduct in failing to provide the client with file material within a reasonable time of request was in violation of Mass. R. Prof. C. 1.16(e).

ADMONITION NO. 06-21

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. of Prof. C. 1.3]

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

Withdrawal without Protecting Client or Refunding Fee [Mass. R. Prof. C. 1.16(d)]

SUMMARY:

In February 2004, an incarcerated client serving a federal sentence sought the services of the respondent following his conviction and sentencing in United States District Court. The respondent and the client met at a correctional facility, and the client engaged the respondent to handle his appeal in the United States Court of Appeals for the First Circuit. The client and the respondent signed a fee agreement, and the respondent later that day met with the client's fiancée who gave the respondent a check for \$5,000 which represented payment in full of the flat fee agreed upon by the client and the respondent for the appeal. In February 2004, the appeal was pending, but the court had not yet established a briefing schedule. The court-appointed attorney who had represented the client at trial was the attorney of record in the appeal.

As instructed by the respondent, the client's fiancée copied all of the case-related documents in her possession and provided those copies to the respondent. When the transcripts of all the proceedings in the district court became available, the attorney of record sent copies to the client's fiancée, and she in turn made copies for the respondent. The respondent reviewed the documents and transcripts that he received from the client's fiancée, he researched the issues, and he monitored the status of the case through Pacer.

The respondent never contacted the attorney of record, filed an appearance, or filed a brief. The respondent at first accepted or returned the client's and the fiancée's telephone

calls, but then became non responsive to their inquiries. Unaware that the client had retained the respondent, the attorney of record filed a brief for the client in March 2005. The attorney of record argued the appeal, and the court affirmed the conviction.

In September 2005, upon learning of the court's decision and discovering that the respondent had not filed an appearance or a brief, the client's fiancée filed a grievance with bar counsel. The respondent immediately refunded the \$5,000 retainer and acknowledged that he should have withdrawn from the representation and refunded the retainer as soon as he realized that he would be unable to perform the work he had undertaken.

In mitigation, the respondent's health problems and the serious health problems of his child, along with the death of a family member, contributed to the respondent's neglect of the client's case. In addition, the respondent had just become a sole practitioner and was overwhelmed by work. He has since joined a firm. Finally, the attorney of record who handled the appeal fully protected the client's appellate rights, and the respondent refunded the fee to the client.

By failing to file an appearance and a brief on behalf of the client, the respondent neglected a legal matter entrusted to him, in violation of Mass. R. Prof. C. 1.3. By failing to respond to the attempts by the client and his fiancée to contact him, the respondent also failed to adequately communicate with his client, in violation of Mass. R. Prof. C. 1.4(a). The respondent's failure to withdraw from the representation and immediately refund the unearned fee when he became unable to perform the work he had undertaken was in violation of Mass. R. Prof. C. 1.16(d).

The respondent received an admonition for his misconduct in this matter, conditioned upon attendance at a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-22

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

The respondent was retained in 2002 to represent an out-of-state corporation as plaintiff in a contract dispute. The respondent promptly filed suit in superior court and made service on the defendant. The defendant filed an answer in January 2003. The respondent thereafter took no further action to prosecute the claim and was unaware that the suit was dismissed in 2004 for failure to pay an annual civil litigation assessment fee.

Commencing at least as of 2004 and continuing into 2005, the president of the client corporation and its in-house counsel repeatedly attempted, both by telephone and letter, to contact the respondent in order to ascertain the status of the lawsuit. In mid February 2005, the respondent spoke to counsel and said that he would respond as soon as he located the file. The client and counsel thereafter sent the respondent two more letters to which the respondent did not reply. Counsel therefore discharged the respondent in writing in April 2005. The respondent then telephoned counsel and advised him that he had located the file and that the civil complaint had been dismissed, but that the respondent would refile it.

When the lawsuit had not been refiled by September 2005, the client filed a complaint with bar counsel. After the complaint was filed, the respondent again offered to refile the lawsuit and, with the client's consent, did so in December 2005.

The respondent's conduct in failing to pursue the client's claim diligently and in failing to reply to the client's inquiries is in violation of Mass. R. Prof. C. 1.3 and 1.4. The respondent

accordingly received an admonition, conditioned upon attendance at a CLE course designated by Bar Counsel.

ADMONITION NO. 06-23

CLASSIFICATIONS:

Failing to Seek Client's Lawful Objectives or Abide by Client's Decisions to Settle or Enter Plea [Mass. R. Prof. C. 1.2a]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

SUMMARY:

In late July 2002, a single mother hired and paid the respondent a retainer to represent her in ongoing disputes with the father of her children over his visitation rights. The father's visitation had been severely restricted due to his drug and alcohol problems and long criminal history, as a result of which he was in and out of jail. In early 2002, however, the father had started a contempt proceeding against the client on allegations, denied by the client, that she was withholding all visitation, and he had secured expanded, supervised visitation rights. In June 2002, after the supervised visits proved uneventful, the client, pro se, had stipulated to unsupervised visitation with a review scheduled for October 2002.

The father had no contact with the client for about two months after the respondent's engagement, but he resurfaced shortly before the review date and asked to visit the children. The client, concerned for the children's safety in light of the father's past behavior, avoided the visit. By then, the respondent realized that she could not appear for the review due to a conflicting obligation, but she failed to seek a continuance. Instead, the respondent told the client to go to court and, if the father appeared, ask to have the matter postponed due to unavailability of counsel. The client and the father both appeared on the review date. The client was unable to get a continuance and had to proceed on her own. After hearing from the father, the judge found the client in contempt and gave her a fifteen-day suspended sentence.

The respondent withdrew from representation and subsequently refunded the entire retainer. In 2003, the client returned to court and got the supervision requirement restored on her own after the father again went to jail, and all visitation rights were terminated by the court thereafter.

The respondent's failure to appear for the client at the review hearing or obtain a continuance prior to the hearing date violated Mass. R. Prof. C. 1.2(a) (failure to seek client's lawful objections through reasonably available means) and 1.3 (failure to act with reasonable diligence)

The respondent has no history of discipline. She received an admonition for her misconduct.

ADMONITION NO. 06-24

CLASSIFICATIONS:

Improper Disclosure of Confidential Information [Mass. R. Prof. C. 1.6(a)]

Improper Disclosure of Confidences of Lawyer's or Firms Former Client [Mass. R. Prof. C. 1.9(c)(1)]

SUMMARY:

In the fall of 2005, a prospective client applied to a county bar association for legal representation for a bankruptcy. The prospective client's written application for a referral was forwarded by the bar association to the respondent, who was on the association's reduced fee panel.

The respondent was then estranged from her husband. By coincidence, the prospective client was in a relationship with the respondent's husband but had not told him about the proposed bankruptcy. On receipt of the referral application, the respondent realized that the prospective client was the woman living with her husband at his residence, a marital asset. As a result, she informed the bar association that she had to decline the representation due to a conflict of interest and left a telephone message to that effect for the prospective client.

The respondent also noticed, however, that the referral application listed rent payments by the prospective client to the respondent's husband. The respondent's husband had previously told her that the prospective client paid no rent. The respondent, recognizing that any rent payments could affect an eventual divorce or separation agreement, called her husband and confronted him about the rent payments. She also told her husband that she had learned of the payments from the prospective client's application for a bankruptcy referral. The husband in turn told the prospective client of the call and his discovery of her bankruptcy plans.

The respondent's disclosure of confidential information acquired from a prospective client, without the prospective client's consent after consultation, violated Mass. R. Prof. C. 1.6(a). The requirements of Rule 1.6 apply to confidential information imparted by a prospective client for purposes of determining whether the lawyer will accept a case even if the lawyer is never retained. See Mass. R. Prof. C. Scope [3]. In addition, by using the information for her own purposes, the respondent violated Mass. R. Prof. C. 1.9(c)(1) (prohibiting a lawyer from using confidential information relating to a representation to the disadvantage of a former client or to the lawyer's advantage). The respondent was inexperienced at the time of the referral and failed to recognize that the information in the referral application was confidential. No ultimate harm resulted from the disclosure. The respondent, who had no history of discipline, received an admonition conditioned on her attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-25

CLASSIFICATIONS:

Failure to Notify of Receipt or to Disburse Promptly [Mass. R. Prof. C. 1.15(c)]

Failure to Account on Request or on Final Disbursement [Mass. R. Prof. C. 1.15(d)(1)]

Conduct Adversely Reflecting on Fitness to Practice [Mass. R. Prof. C. 8.4(h)]

SUMMARY:

The respondent and opposing counsel represented elderly clients who applied for criminal assault complaints against each other after an altercation in May 2004. In August 2004, the parties agreed at a magistrate's hearing to an accord and satisfaction whereby the opposing party was to pay \$277 to the respondent's client as compensation for her medical bills.

Opposing counsel subsequently sent the respondent a check in that amount and a release. In his cover letter, opposing counsel instructed the respondent to hold the check in escrow pending execution and return of the release. The respondent, erroneously believing that the accord and satisfaction was not intended to release any civil claims, refused to have his client sign the release. In addition, the respondent turned the funds he had received from opposing counsel over to his client without prior notice to or authority from opposing counsel.

The respondent's failure to acknowledge the effect of the agreement reached at the magistrate's hearing derived from his misunderstanding of the accord and satisfaction procedure and his misinterpretation of the purpose of the ensuing payment. Even if the scope of the agreement was unclear, however, the respondent should have known that he had no right to disburse the funds unilaterally in violation of the escrow terms imposed by

opposing counsel.

The respondent's release of funds entrusted to him in escrow absent mutual agreement or notice to opposing counsel violated Mass. R. Prof. C. 1.15(c) and (d)(1), and his breach of his fiduciary obligation as escrow agent reflected adversely on his fitness to practice law, in violation of Mass. R. Prof. C. 8.4(h).

The respondent was relatively inexperienced at the time of these events and has no history of discipline. He received an admonition for his misconduct conditioned on his attendance at a CLE course acceptable to bar counsel.

ADMONITION NO. 06-26

CLASSIFICATIONS:

Failure to Act Diligently [Mass. R. Prof. C. 1.3]

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

Failure to Cooperate in Bar Discipline Investigation [Mass. R. Prof. C. 8.4(g)]

SUMMARY:

A husband and wife retained the respondent in early 2004 to file a joint bankruptcy petition for them. The clients paid the respondent his \$400 fee and advanced \$41 for filing fees. The respondent failed to complete or file the petition for the clients.

The respondent also did not respond to the clients' efforts to communicate with him. In addition, the respondent moved out of state in the fall of 2004 and failed to notify the clients. The respondent also failed to respond to bar counsel's inquiries after the clients complained to the Office of Bar Counsel. As a result, the respondent was administratively suspended from the practice of law pursuant to S.J.C. Rule 4:01, § 3(2).

At the time of his misconduct, the respondent was suffering from personal problems. He was in the process of getting divorced and was temporarily left homeless. In addition, the respondent suffered from alcohol dependency, for which he has subsequently received treatment. In his confusion, the respondent wrongfully believed the clients had discharged him.

In mitigation, the respondent repaid the clients the full amount of the fees and costs they had paid to him. In addition, the clients lost no rights to bankruptcy protection as a result of the respondent's neglect, as they were able to file a timely petition for bankruptcy protection after the respondent refunded his fee to the clients.

The respondent's failure to file a bankruptcy petition for his clients violated Mass. R. Prof. C. 1.3 (failure to diligently pursue a client matter). The respondent's failure to maintain appropriate contact with his clients violated Mass. R. Prof. C. 1.4 (failure to keep client reasonably informed and respond to client's reasonable request for information). The respondent's failure to answer bar counsel's inquiries violated S.J.C. Rule 4:01, § (3)(1)(b), and Mass. R. Prof. C. 8.4(g) (failure to cooperate with a bar discipline investigation).

ADMONITION NO. 06-27

CLASSIFICATIONS:

Failure to Act Diligent [Mass. R. Prof. C. Rule 1.3]

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

SUMMARY:

The respondent represented the plaintiff in a personal injury matter arising out of a slip and

fall in February 2002. The respondent investigated the scene, reviewed his client's medical records, and negotiated with the insurer. Unable to settle the matter, the respondent filed suit in February 2005, but did not arrange for service on the defendants or tell his client that he had filed suit. On May 31, 2005, the court dismissed the client's complaint for lack of service.

On multiple occasions throughout 2005, the client attempted to contact the respondent by telephone to ascertain the status of her case. The respondent failed to reply to these inquiries. On August 8, 2005, the client sent the respondent a certified letter requesting information regarding the status of her case, but the respondent failed to reply. The client subsequently contacted the court and learned that a complaint had been filed and later dismissed.

The client filed a complaint with bar counsel. Upon receiving notice of the bar counsel complaint, the respondent successfully moved to vacate the dismissal in his client's case and provided satisfactory representation in the matter from that point forward.

The respondent's failure to effect service of the complaint, resulting in the dismissal of the case, violated Mass. R. Prof. C. 1.3, and the respondent's failure to inform his client that he had filed suit and his failure to communicate with her regarding the status of her case and to respond to her repeated requests for information violated Mass. R. Prof. C. 1.4. The respondent accordingly received an admonition for his misconduct, conditioned upon attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-28

CLASSIFICATIONS:

Trust Account Violation [Mass. R. Prof. C. 1.15]

Improper Financial Assistance to Client [Mass. R. Prof. c. 1.8(e)]

SUMMARY:

On or about May 5, 2004, two tenants filed suit in Springfield Housing Court against their landlord. The tenants had unknowingly moved into a three-unit apartment building that had been condemned by the Board of Health for multiple housing code violations. The respondent agreed to represent the tenants in the suit after being asked to do so by the clerk-magistrate of the court.

The respondent impleaded the building's prior owner from whom the tenants had originally rented the apartment. On May 26, 2004, he filed an ex parte motion for further temporary orders. This motion sought \$5,000.00 in alternate housing and/or relocation funds from the landlord, who failed to make necessary building repairs in compliance with previous court orders. On May 27, 2004, the court allowed the motion and ordered the landlord to pay the funds into court by June 1, 2004. The landlord failed to pay the funds as ordered. However, the prior owner subsequently deposited \$5,000.00 into the court.

In reliance on receipt of the funds, one of the tenants secured a new apartment. The court then declined to release the funds. On August 27, 2004, the respondent loaned \$750.00 to the tenant to enable her to move to her new apartment. The funds were taken from earned fees that the respondent had not timely withdrawn from his IOLTA account.

The respondent subsequently settled the case with the prior owner for \$4000.00. He disbursed \$1250.00 to the client who had received the prior advance and the balance of the funds to the remaining client. The respondent's relationship with the clients subsequently deteriorated and he was allowed to withdraw before the suit against the landlord was resolved.

The respondent's failure to timely withdraw earned fees from his IOLTA account violated Mass. R. Prof. C. 1.15(b)(2). His providing financial assistance to a client was in violation of Mass. R. Prof. C. 1.8(e).

The respondent was admitted to the bar on January 21, 1985 and has no prior discipline. He received an admonition for his conduct in this matter, conditioned upon his attendance at a CLE program designated by bar counsel.

ADMONITION NO. 06-29

CLASSIFICATION:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

SUMMARY:

The respondent was retained to represent a client in an appeal of a criminal conviction for larceny by check in March of 2001. The client had been found guilty after a jury-waived district court trial and sentenced to two years' probation, with restitution of \$30,700.

The respondent filed a notice of appeal on March 28, 2001, and requested copies of the tapes of the trial. He received the tapes and had them transcribed by the spring of 2002. Although the respondent met periodically with the client, he did not complete a review of the transcripts and trial exhibits until early 2004. He provided the client with a rough draft of a brief for review in June of 2004 but did not finalize and file a brief or enter the appeal with the Appeals Court.

Due to the respondent's unreasonable delay in pursuing the appeal, the client retained successor appellate counsel in May of 2005. The respondent assisted the client in finding new counsel and cooperated with the transition. Successor counsel filed and briefed the appeal on the client's behalf, and the appeal was argued before a panel of the Appeals Court. The probation department held periodic restitution payments of the client in escrow pending the appeal.

The respondent's conduct in failing to act with reasonable diligence and promptness in pursuing the client's appeal was in violation of Mass. R. Prof. C. 1.3 (lawyer shall act with reasonable diligence and promptness in representing a client).

The respondent became a member of the bar in 1996 and had no prior disciplinary history. The respondent received an admonition for this misconduct.

ADMONITION NO. 06-30

CLASSIFICATIONS:

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

Trust Account Commingling [Mass. R. Prof. C. 1.15(b)(1)]

Failure to Account on Request or on Final Disbursement [Mass. R. Prof. C. 1.15(d)(1)]

Withdrawal of Fees Without Accounting [Mass. R. Prof. C. 1.15(d)(2)]

Withdrawal without Protecting Client or Refunding Fee [Mass. R. Prof. C. 1.16(d)]

SUMMARY:

A client engaged the respondent in July 2004 to handle his divorce matter. The client agreed to pay the respondent \$150 per hour for his services, and paid the respondent a \$1,500 retainer in July of 2004. Upon receipt, the respondent deposited his client's retainer to his law office account, rather than to a client trust account as required, and thereby commingled client funds with his personal funds. The respondent also paid himself the full retainer prior to billing the client, and without giving the client an opportunity to dispute

the fee.

In February 2005, the respondent also agreed to represent the client in filing a Chapter 7 bankruptcy petition. On February 28, 2005, the client paid the respondent a \$750 flat fee for the bankruptcy matter, plus \$209 for filing fees.

The respondent began preparing the bankruptcy petition in March 2005, and the petition was ready to be filed in April 2005. However, before the petition was filed, the respondent learned that on April 5, 2005, the client had purchased a new automobile.

In early May 2005, the respondent spoke with the client regarding the purchase of the vehicle and the effect it would have on the bankruptcy petition. The respondent informed the client that the automobile would not be an exempt asset using the state exemptions and could be liquidated by the interim trustee to satisfy some of the client's unsecured creditors. The client informed the respondent that his fiancée's father had provided the cash to purchase the vehicle, and he did not want the trustee to seize it.

The respondent determined that the client could not file a Chapter 7 Bankruptcy without risking loss of the automobile. However, the respondent did not notify the client of his conclusion, nor did he explore other options with the client, including filing the bankruptcy petition and seeking to buy back the car from the bankruptcy trustee.

On May 12, 2005, the client wrote to the respondent to request a list of items the respondent needed to complete any tasks on the client's behalf in the bankruptcy and divorce matters. The respondent did not respond to this letter, and did not otherwise inform the client that he would not be filing the bankruptcy petition.

In July and August of 2005, the respondent did not respond to letters from the client or from opposing counsel in the divorce.

As a result of the breakdown in communication with the respondent, the client retained new counsel to represent him in the divorce and the bankruptcy. In early September 2005, the client went to the respondent's office and advised the respondent that he had hired new attorneys to represent him in both matters, and requested the return of the unearned bankruptcy fee. The respondent agreed to prepare an itemized bill for the divorce matter and to return the unearned portion of the bankruptcy retainer.

On or about September 22, 2005, the respondent withdrew his appearance in the divorce case, but he delayed in providing the client with his final itemized bill for the divorce matter and in returning the unearned portion of the bankruptcy retainer. In fact, the respondent had performed services in the divorce that exceeded the amount of the retainer.

In October 2005, the client filed a grievance with bar counsel. After receiving notice of the grievance, the respondent provided the client with an itemized bill for the divorce matter, and paid the client \$709 as a refund of the filing fee and two-thirds of the legal fee for the bankruptcy matter. The respondent did not seek to collect the unpaid balance of his bill for the divorce matter.

By depositing the retainer from the divorce case to his office account before the retainer had been earned, and by failing to deliver to the client an itemized bill or other accounting showing the services rendered before paying himself the fees, the respondent violated Mass. R. Prof. C. 1.15(b)(1) and 1.15(d)(2). In mitigation, the respondent, in a short period of time, provided services to the client in excess of the \$1,500 retainer that he had been paid.

By failing to keep his client reasonably informed about the status of his cases and to promptly comply with reasonable requests for information, and by failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions concerning the representation, the respondent violated Mass. R. Prof. C. 1.4(a) and (b). By

failing upon termination of the representation to promptly provide his client with an accounting regarding the divorce retainer and to refund the advance bankruptcy fee that had not been earned, the respondent violated Mass. R. Prof. C. 1.15(d)(1) and 1.16(d).

The respondent was admitted to practice in 1986 and had no prior discipline.

The respondent received an admonition conditioned upon his attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-31

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. Rule 1.3]

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

SUMMARY:

The respondent received an admonition for his conduct in two unrelated matters.

In the first matter, a client retained the respondent in August 2001 to represent her in a personal injury claim arising from injuries she sustained when she was hit by a car while riding her bicycle on August 14, 2001. The client provided the respondent with copies of her medical bills and other necessary information. Thereafter, the respondent failed to reply to the client's repeated inquiries about the case until July 2002.

In July 2002, the respondent contacted the client to request information concerning her lost wages. The respondent advised the client to see her surgeon again regarding her treatment and provide the respondent with an update concerning her condition. The client met with her surgeon in November 2002, and was assured that further surgery would not be necessary. The client communicated this information to the respondent. She received no reply.

In early 2003, with still no word from the respondent, the client began to receive communications from the collections department at her treating hospital. She responded by providing the respondent's name and contact information.

In October 2003, not having heard from the respondent since July 2002, the client contacted the insurer involved in her claim. The insurer reported that while her claim was still active, the respondent had failed to reply to their repeated inquiries and that the insurer was ready to settle the claim.

The client filed a complaint with bar counsel in January 2004. After receiving a copy of the complaint from bar counsel, the respondent spoke with the client, agreed to settle the case as soon as possible, and agreed to waive his entire fee. In his response to bar counsel, the respondent expressed remorse for his actions.

The respondent settled the client's case for \$81,500 in August 2004, and took no fee for his representation in the matter.

The respondent's failure to diligently pursue the client's claim and to seek to resolve it in a timely manner violated Mass. R. Prof. C. 1.3. The respondent's failure to respond to the client's repeated inquiries and his failure to communicate with her at all for over a year violated Mass. R. Prof. C. 1.4(a).

In the second matter, a client retained the respondent in November 1998 to represent him in a personal injury claim arising from injuries he sustained on October 8, 1998 while driving a car which was struck from the rear by another driver. The respondent negotiated with the other driver's insurance company, and in May 1999 obtained an offer of \$5,500 for the client. However, because of a dispute between the client's PIP carrier and medical insurer

that affected the amount that the client would net from the settlement, the settlement was never finalized. The respondent did file suit and serve the other driver in 2001. In the meantime, the other driver's insurance company became insolvent. The respondent made claims both to the insurance trust fund and against the client's uninsurance coverage, but did not pursue either claim zealously and was unresponsive over the next several years to the client's letters and calls.

The client ultimately discharged the respondent and retained successor counsel who was able to settle the case in August 2005 for \$10,000.

The respondent's failure to diligently pursue the client's claim and seek to resolve it in a timely manner violated Mass. R. Prof. C. 1.3. The respondent's failure to respond to the client's repeated letters and calls for several years violated Mass. R. Prof. C. 1.4(a).

The respondent, who was admitted in 1995, has no disciplinary history. The respondent received an admonition for his conduct, conditioned upon his attendance at a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-32

CLASSIFICATIONS:

Handling Legal Matter when Not Competent or without Adequate Preparation [Mass. R. Prof. C. 1.1]

Failing to Act Diligently [Mass. R. Prof. C. Rule 1.3]

SUMMARY:

The respondent represented the defendant in a civil action brought by the defendant's ex-fiancé following the defendant's failure to return an engagement ring after the engagement was terminated.

On August 21, 2003, the respondent filed his appearance, and the court issued a preliminary injunction prohibiting the defendant from selling or otherwise disposing of the ring. That same day, the respondent and plaintiff's counsel discussed the possibility of resolving the case by having the defendant return the ring to the plaintiff's jeweler. At that time, the defendant maintained that she had lost the ring, but was searching for it. Mistakenly believing that the matter would be resolved without further litigation, the respondent did not file an answer to the civil complaint.

On September 30, 2003, plaintiff's counsel filed a request for default based on the respondent's failure to file an answer. On October 7, 2003, the court defaulted the defendant. On October 15, 2003, after learning of his client's default, the respondent requested plaintiff's counsel's assent to a motion to remove the default. Although plaintiff's counsel refused to assent to the motion, the respondent still erroneously believed that if the defendant returned the ring, the plaintiff would not seek to enforce a judgment. The defendant insisted that she would be able to find the ring. The respondent, therefore, did not seek to remove the default.

On November 14, 2003, the court entered a default judgment against the defendant for \$36,000 plus \$3,586 in costs. On November 17, 2003, the respondent contacted plaintiff's counsel and informed him that the defendant had found and would return the ring immediately. Plaintiff's counsel took the position that the judgment had to be paid in cash. As a result, the defendant did not immediately return the ring.

On January 12, 2004, the court issued an execution against the defendant for \$40,726.13, and on January 14, 2004, the sheriff seized the defendant's Mercedes Benz. On January 15, 2004, the defendant brought the ring to the plaintiff's jeweler; on January 16, 2004, the

respondent and the defendant's new counsel filed a motion to remove the default judgment. Before the court ruled on this motion, the defendant, assisted by her new counsel, settled the case with the plaintiff. On January 22, 2004, the defendant received her car back, and the satisfied execution was returned to the court on January 30, 2004.

The respondent's misplaced reliance on his mistaken belief that the plaintiff would not pursue the litigation against his client, his failure to file an answer, and his subsequent failure to file a motion to remove the default violated Mass. R. Prof. C. 1.1 and 1.3. The respondent has no prior discipline. He accordingly received an admonition, conditioned upon attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-33

CLASSIFICATION:

Improper Contingent Fee [Mass. R. Prof. C. 1.5(c)]
Failing to Communicate Adequately with Client [Mass. R. Prof. C. 1.4(a) and (b)]

SUMMARY:

The respondent was admitted in 1980 and concentrated his practice in personal injury law. In 2002, he entered into an oral contingent fee agreement to pursue a medical malpractice claim on behalf of a client. After researching the facts of the case, the respondent concluded that the client would be unlikely to prevail on her claim. The respondent did not notify the client of his opinion.

To preserve the client's right to pursue her claim, the respondent filed a civil complaint in court on the client's behalf against "Doe et al" on October 1, 2004, the date the statute of limitations expired on the client's claim. The respondent did not inform the client about filing this complaint, which was eventually dismissed for failure to serve process. The respondent did not notify the client that her case had been dismissed and the statute of limitations had run on the claim.

Throughout 2005, the client called the respondent numerous times seeking an update on the status of her case. The respondent did not return the client's calls. The client then hired another attorney to contact the respondent. In November 2005, the respondent provided successor counsel with information on the work he had performed on the client's case and the basis for his opinion that the client could not prevail on her medical malpractice claim, and returned the file containing the notice of dismissal.

By entering into an agreement for a contingent fee without executing a proper written fee agreement, the respondent violated Mass. R. Prof. C. 1.5(c). By failing to advise the client that her case had little or no chance of success, by failing to respond to his client's telephone calls, and by failing to keep her informed of the status of her case, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).

The respondent received an admonition for his conduct in this matter conditioned upon his attendance at a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-34

CLASSIFICATION:

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

SUMMARY:

The client retained the respondent to represent her in a divorce action, and a criminal matter. The respondent successfully resolved the criminal matter. However, in November

2004, the respondent and the client disagreed on the strategy relative to the divorce action, and the client discharged the respondent, and retained new counsel.

The respondent refused to turn over the client's file to successor counsel unless the client paid her bill. The client already had many of the pleadings and letters in her possession. However, the client did not have some original documents, such as her teaching certificate and her marriage certificate.

In July 2005, the client filed a complaint with bar counsel. After meeting with bar counsel, the respondent resolved the matter by returning the original documents to the client.

By failing to return the client's original documents within a reasonable time period after the client requested he do so, the respondent violated Massachusetts Rule of Professional Conduct, 1.16(e).

The respondent has been a member of the bar since 1986, with no prior discipline. He accordingly received an admonition for the above violations.

ADMONITION NO. 06-35

CLASSIFICATIONS:

Failing to Seek Client's Lawful Objectives or Abide by Client's Decisions to Settle or Enter Plea [Mass. R. Prof. C. 1.2(a)]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

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

Failure to Cooperate in Bar Discipline Investigations [Mass. R. Prof. C. 8.4(g), 8.1(b), and S.J.C. Rule 4:01, § 3]

SUMMARY:

The respondent was retained in January of 2005 to represent the wife in a divorce. After consulting with the client and reviewing various financial information, the respondent drafted a separation agreement and scheduled a meeting with the client to review the draft in December of 2005.

The respondent cancelled the December meeting due to illness and told the client that she would receive a letter summarizing the respondent's comments on the proposed draft. The client never received this letter and became anxious about completing the divorce. From early January through the end of February, the client left many messages for the respondent by telephone and email. Other than an exchange of messages about 2005 financial information, the respondent did not respond to any of these messages and took no actions of substance to finalize the divorce. The client also attempted to contact the respondent through mutual friends, with no success.

On March 9, 2006, the client sent a letter to the respondent by certified mail and email terminating the representation and requesting the return of her file and all fee payments. The respondent did not respond to this or to two additional letters from the client. On March 16, 2006, the client retained new counsel.

The client filed a grievance against the respondent with the Office of Bar Counsel on April 12, 2006. Upon receipt of bar counsel's request for a response to the grievance in late April, the respondent sent the client some documents the client had provided but did not respond to the grievance. After receipt of a subpoena compelling the respondent's attendance and response to the grievance, the respondent provided bar counsel with a response to the grievance and sent the client the remainder of her file and a full refund of her fee payments.

The respondent's failure to take any action of substance to finalize the divorce from December of 2005 through March of 2006 was in violation of Mass. R. Prof. C. 1.2(a) and 1.3. The respondent's failure to respond to communications from the client from January through March of 2006 was in violation of Mass. R. Prof. C. 1.4(a) and (b). The respondent's failure to provide the client with her file within a reasonable time of her request was in violation of Mass. R. Prof. C. 1.16(e). The respondent's failure to cooperate with bar counsel's investigation of the client's grievance in a timely manner was in violation of Mass. R. Prof. C. 8.1(b) and 8.4(g), and S.J.C. Rule 4:01, § 3.

In mitigation, the respondent was ill from September of 2005 through early 2006, and lost substantial time from practice due to the illness and various tests and treatments. After returning to full-time practice in early 2006, the respondent found it difficult to resume a full caseload. The respondent has adopted internal office procedures to avoid similar problems in the future.

The respondent received an admonition, conditioned upon attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-36

CLASSIFICATIONS:

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

Conduct Involving Dishonesty, Fraud, Deceit, Misrepresentation [Mass. R. Prof. C. 8.4c]

SUMMARY:

The respondent agreed to represent two clients on an intellectual property claim in July of 2003. The clients were insistent on filing suit as soon as possible, although there were no statute of limitations issues and no need for preliminary relief. By mid-September of 2003, the respondent had prepared a draft of a civil complaint to be filed in federal court.

Upon review by other lawyers in the respondent's firm, including a senior partner who was to sign the complaint as co-counsel, it was decided that more legal research was necessary to finalize the complaint. This additional work delayed the filing of the complaint until late November of 2003. This delay caused no harm or prejudice to the clients' rights in the case.

In late September of 2003, in response to repeated requests from the clients about the status of the case, the respondent intentionally misrepresented to the clients that the suit had been filed with the court and gave them a false docket number. Through early December of 2003, the respondent made additional misrepresentations to the clients concerning the course of the case. The respondent's conduct in making misrepresentations to the clients concerning the filing of their case and the course of proceedings was in violation of Mass. R. Prof. C. 1.4(a) (lawyer shall keep client reasonably informed of status of case) and 8.4(c) (lawyer shall not engage in dishonesty, fraud, deceit or misrepresentation).

In mitigation, at the time of the misrepresentations, the respondent was suffering from clinical depression, anxiety and chronic fatigue caused by personal, family and professional stress. The respondent has been in therapy for depression since early 2004 and has responded well to treatment.

The respondent was admitted to the bar in 1981 and had no disciplinary history. She received an admonition for her misconduct.

ADMONITION NO. 06-37

CLASSIFICATIONS:

Handling Legal Matter when Not Competent or without Adequate Preparation [Mass. R. Prof. C. 1.1]

Failing to Seek Client's Lawful Objectives or Abide by Client's Decisions to Settle or Enter Plea [Mass. R. Prof. C. 1.2(a)]

Failing to Obtain Client's Consent to Scope of Representation [Mass. R. Prof. C. 1.2(c)]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

Improper Permissive Withdrawal [Mass. R. Prof. C. 1.16(b)]

Withdrawal without Protecting Client [Mass. R. Prof. C. 1.16(d)]

SUMMARY:

In April 2002, a client who was incarcerated hired the respondent to represent him in a multi-defendant tort action against the Department of Corrections and other defendants. On or about June 5, 2002, the respondent filed a complaint on behalf of his client. The respondent signed the complaint, and later served the complaint on the defendants. The respondent expected the client to handle the matter, but he did not discuss with the client the limits of his representation, and, because the client was incarcerated, there were additional limits on what the client could reasonably be expected to handle.

In May 2003, the respondent was served with the defendants' interrogatories and request for production of documents. The respondent sent the defendants' interrogatories to his client by first class mail. The client did not receive the respondent's correspondence. The respondent failed to follow up promptly with the client to determine why he had not received responses to the discovery requests. Additionally, the respondent did not, on behalf of the complainant, serve interrogatories or any requests for production of documents on the defendants.

In November 2003, because the plaintiff had not answered their discovery requests, the defendants moved to dismiss the lawsuit. In opposition to the defendants' motions, the respondent asserted that his client had not received his correspondence and that he would hand deliver the defendants' interrogatories and requests for production of documents to his client and obtain a response. The respondent did not do so, however.

As a result, in early March 2004, his client's lawsuit was dismissed. The respondent did not inform his client of the defendants' motions to dismiss, or that the court had allowed the motions.

On his own, the client learned that his case had been dismissed. On or about March 30, 2004, the client acting pro se filed a notice of appeal. The respondent filed his appearance on behalf of the client in the Appeals Court. The respondent expected the client to retain new counsel to handle the appeal, but the client did not do so.

The respondent failed to take any steps of substance to prosecute the appeal, and he failed to withdraw his appearance so that the client could proceed pro se. As a result, the client's appeal was dismissed.

The respondent later filed a motion to withdraw. The client acting pro se filed a motion to reinstate his appeal. The court allowed the client's motion and reinstated his appeal. The order of dismissal in the superior court was, however, ultimately affirmed.

By failing to obtain the client's consent to the limited scope of the representation and by attempting to impose limits that interfered with his obligation to provide competent representation, the respondent violated Mass. R. Prof. C. 1.2(c).

By failing to take any steps of substance to see that his client received the defendants' interrogatories and requests for production of document and by otherwise failing to pursue the client's claims, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), and 1.3.

By failing to take any steps of substance to protect the client's interests on appeal or to file a motion to withdraw, the respondent violated Mass. R. Prof. C. 1.1, 1.2(a), 1.3, and 1.16(b) and (d).

By failing to keep his client adequately informed about the status of his matter, the respondent violated Mass. R. Prof. C. 1.4(b).

In mitigation, the respondent made restitution to the client in an amount satisfactory to the client. In addition, the respondent, who was admitted in 1998, was a relatively new member of the bar when he agreed to assist the client in this matter.

The respondent has no prior discipline. The respondent received an admonition for his conduct conditioned upon his attendance at a CLE course designated by Bar Counsel.

ADMONITION NO. 06-38

CLASSIFICATIONS:

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

Withdrawal without Protecting Client [Mass. R. Prof. C. 1.16(d)]

Failure to Cooperate with Bar Admissions or Bar Disciplinary Authority [Mass. R. Prof. C. 8.1(b)]

Failure to Cooperate in Bar Discipline Investigations [Mass. R. Prof. C. 8.4(g)]

SUMMARY:

In August 2005, the respondent was hired by a client to appeal a probate and family court decision directing the partition and sale of a residence that the client had owned with her mother. In addition to the partition and sale, the court entered a judgment apportioning credits to the parties for improvements made by each. The client had filed a notice of appeal from the court's decision before meeting with the respondent.

The respondent reviewed the court file and the court's findings and conclusions of law. He identified two potential grounds for an appeal: the court had erred in declining to continue the final hearing on the partition due to the client's illness and had erred in calculating the credits due to the client for her contributions to the house. The respondent determined that an appeal would not likely be successful and that the client would likely have more success in moving for reconsideration in the trial court. After reviewing the file, the respondent met with the client and set a fee of \$2,000 for his services, which the client paid.

The client had given the respondent her file and tapes of the probate court trial. To preserve the client's rights to an appeal, the respondent was required by Mass. R. App. P. 8(b)(3) to submit the tapes to a transcriber to produce the portions of the transcript of the trial that were relevant to the appeal within 15 days of receiving the cassette from the clerk. The respondent told the client that a transcript might not be necessary but that he would pay for the transcript from the retainer if it became necessary to order one.

Without advising the client that the appeal would not likely be successful, the respondent recommended to the client that he file a motion for a new trial with the trial court on the grounds that the trial judge had abused her discretion by denying the motion to continue. Without foregoing her appeal, the client agreed to allow the respondent to file the motion for a new trial on her behalf. The respondent did not explain to the client that he would not have a transcript prepared while the motion for new trial was pending.

In September 2005, the respondent filed the motion for new trial in the trial court. The respondent simultaneously filed a motion in the trial court to enlarge time to assemble the record for an appeal. After a hearing on the merits, the court denied the client's motion for new trial, but granted her motion to enlarge the time for assembling the record.

After the motion for new trial was denied, the respondent recommended to the client that she attempt to negotiate the credits due her instead of pursuing an appeal. The respondent failed to tell the client that he would not pursue the appeal or otherwise perfect it while he was engaged in negotiations. The client agreed to allow the respondent to negotiate a resolution of the credits on her behalf.

On November 29, 2005, the probate court mailed a notice to the respondent and the client of intent to dismiss the client's appeal within fourteen days unless the client filed a motion to enlarge the time to assemble the record for the appeal and an affidavit in support of the motion. The client telephoned the respondent for an explanation of his failure to have a transcript prepared or otherwise to perfect her appeal.

During the discussion, the client became upset. The respondent informed the client that her appeal could still be filed and inquired whether the client wanted the respondent to pursue the appeal. The client informed the respondent that she wanted time to consider her options. The respondent advised the client that she needed to make a decision within three days. The respondent did not advise the client that, until she made a decision, he would not take any steps to preserve her right to appeal.

On or about December 3, 2005, the respondent contacted the complainant by telephone to inquire again of the client. The client became upset and threatened to contact the Board of Bar Overseers. The respondent informed the client that he considered himself discharged. The respondent did not inform the client of the steps she needed to take to preserve her right to appeal or take any other steps of substance to protect his client's interests, including timely returning her file and the tapes so that the client could have them transcribed. On or about December 14, 2005, the client's appeal was dismissed.

By failing to adequately explain to the client the course of action he proposed to pursue on her behalf, the respondent violated Mass. Rules of Prof. C. 1.4(b). By failing after discharge to take reasonable steps to protect his client's interests, the respondent violated Mass. R. Prof. C. 1.16 (d).

The client filed a request for investigation with the Office of Bar Counsel on February 22, 2006. The respondent knowingly failed to respond to several letters from bar counsel requesting information regarding the complaint. Eventually, the Board of Bar Overseers issued a subpoena requiring the respondent to appear and answer questions. The respondent did respond to the subpoena.

By knowingly failing without good cause to respond to bar counsel's inquiries, the respondent violated Mass. Rules of Prof. C. 8.1(b) and 8.4(g).

The respondent was admitted to the bar in the Commonwealth on December 19, 1994 and had no prior discipline. The respondent received an admonition for his conduct conditioned on his attendance at a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-39

CLASSIFICATIONS:

Failing to Seek Client's Lawful Objectives [Mass. R. Prof. C. 1.2a]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

In mid October 2001, the client was terminated from her position as director of a daycare center. On November 6, 2001, the client retained the respondent to pursue a wrongful termination claim.

In December 2001, the respondent filed a claim against the employer with the Massachusetts Commission Against Discrimination. MCAD dismissed the suit in July 2002 after determining that the employer properly terminated the client for her unsatisfactory handling of a serious incident. In October 2002, the Equal Employment Opportunity Commission declined to investigate the matter, citing MCAD's determination. The respondent subsequently and successfully represented the client at an unemployment hearing.

On January 17, 2003, the respondent filed suit against the employer in U.S. District Court on the client's behalf, alleging defamation, disparate treatment and intentional infliction of emotional distress (Counts 1, 2 and 3) in connection with the client's termination. On June 18, 2003, the court held a scheduling conference, at which time the court gave the parties 30 days to report whether or not the case could be settled. The judge advised the parties if the matter could not be settled, he planned to dismiss Count 2 (the federal claim) with prejudice and to dismiss Counts 1 and 3 without prejudice to refile in superior court.

On August 11, 2003, after failing to hear from either party, the court dismissed the lawsuit as indicated. The respondent thereafter failed to advise the client of the court's order and did not reply to her inquiries, or inform her that the case had been dismissed, until early or mid 2004.

After the federal case was dismissed, the respondent believed, incorrectly, that it was the defendant who was supposed to "remove" the case to superior court and he wrote the defendant's counsel to this effect. By the summer of 2004, he realized his error and was prepared to refile the client's case in state court. The client, now aware that the federal court case had been dismissed, decided at that juncture to file a Chapter 7 bankruptcy petition to relieve herself of mounting debt.

The respondent filed a Chapter 7 bankruptcy petition on the client's behalf on November 17, 2004. The respondent knew that the client still hoped to refile the KLC lawsuit following the bankruptcy, but failed to explain to her that any potential case was an asset of the bankruptcy estate. The respondent did not list the client's claims against the employer as an asset on the bankruptcy petition.

The client received a discharge in bankruptcy on March 16, 2005. The client filed a complaint with bar counsel when the respondent thereafter failed to reply to her inquiries concerning the KLC claim.

The respondent was admitted to the Massachusetts Bar in 1995 and has no prior discipline. His failure to promptly advise the client of the dismissal of her case in federal court, his failure thereafter to timely respond to the client's requests for updates on the status of the case, and his failure to refile suit in superior court in the year after the federal court dismissal and prior to filing the bankruptcy petition, was conduct in violation of Mass. R. Prof. C. 1.2(a), 1.3 and 1.4(a) and (b). The respondent's subsequent failure to explain to the client at the time that the bankruptcy petition was filed that any potential tort claim would be an asset of the estate, and his failure to reply to her inquiries concerning her tort claim after she was discharged in bankruptcy, was also conduct in violation of Mass. R. Prof. C. 1.4(a) and (b).

In mitigation, the respondent has been the main caretaker for the past several years for his brother who is terminally ill with cancer. The respondent's daily caretaking duties included lengthy hospital visits that began immediately after his court appearances. The respondent's responsibilities hampered his ability to effectively return the client's calls and answer correspondence. The respondent accordingly received an admonition for the above violations, conditioned upon attendance at a CLE course designated by bar counsel.

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

The respondent represented a client in an appeal of an Immigration Court decision that denied him asylum and ordered him either to depart voluntarily or be removed to his country of origin. The appeal was filed on December 10, 2003 and denied on July 2, 2004.

While the asylum case was pending, the client in 2003 married a U.S. citizen. The respondent properly filed a form I-130, the so-called "petition for alien relative," on January 9, 2004. This petition was allowed on September 21, 2004.

After the appeal of the asylum decision was denied, the respondent and the client agreed that the respondent would file a motion to reopen the case in order to obtain an adjustment of status based on the marriage. The motion to reopen was required to have been filed within 90 days of the July 2, 2004 order and was therefore due no later than September 30, 2004. The respondent was aware that the 90-day deadline is enforced very strictly.

The client was advised of the due date and undertook to obtain a needed waiver of the foreign residence requirement for exchange visitors. When the waiver was not forthcoming from the client, the respondent did not write to the client prior to the expiration of the 90 days to remind him of the deadline or to assist him with the waiver application, did not file the motion to reopen without the waiver, and did not otherwise take any action to protect the client's interests. The respondent did not finally file the motion until March 2005 and it was accordingly denied by the Board of Immigration Appeals as not timely.

The respondent's failure either to write to the client reminding him of the filing deadline, to assist him in obtaining the necessary waiver, or to file a timely motion to reopen the deportation proceedings, constituted a failure to act with reasonable diligence and promptness in violation of Mass. R. Prof. C. 1.3 and a failure to adequately communicate with the client, in violation of Mass. R. Prof. C. 1.4. The respondent has been a member of the bar since 2000 with no prior discipline. He therefore received an admonition for the above misconduct.

ADMONITION NO. 06-41**CLASSIFICATIONS:**

Making False Statement of Law or Fact to Tribunal [Mass. R. Prof. C. 3.3a1]

Conduct Involving Dishonesty, Fraud, Deceit, Misrepresentation [Mass. R. Prof. C. 8.4c]

Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4d]

Conduct Adversely Reflecting on Fitness to Practice [Mass. R. Prof. C. 8.4h]

SUMMARY:

The respondent is an attorney duly admitted to the Bar of the Commonwealth on December 16, 1998. During the time period relevant to this petition for discipline, the respondent represented an out-of-state distributor of specialty food items ("the client"), as the defendant in a district court action in Berkshire County. The plaintiff in the action was a manufacturer of specialty food items, who alleged that the client had failed to pay certain invoices. The client had contracted with an independent accountant ("the witness") to keep the books and do the taxes for his business.

During 2002, the plaintiff propounded discovery on the client. The respondent needed information from the witness to respond to the plaintiff's discovery. He also expected her to testify at trial. In October of 2002, the respondent attempted to contact the witness in her out-of-state office, but was unable to do so because the witness had temporarily closed her

office. The respondent was unable to obtain the needed information.

The case was scheduled for trial on January 21, 2003. In mid-January, the respondent was finally able to reach the witness by telephone. The witness told the respondent that her business had been closed for a period in the late fall because both her office assistant and husband had been seriously ill. The respondent decided to seek a continuance of the trial date, and in accordance with the rules of the district court, was required to serve the motion on opposing counsel at least seven days before the trial. The respondent discussed this with the witness and told her that he would file a motion for a continuance supported by an affidavit, signed by her, and setting forth the information she had conveyed to him about the temporary closing of her office. The witness then gave the respondent additional details about the illnesses of her husband and her office assistant that had caused her to close her office during the fall.

The respondent drafted a motion to continue the trial date on the grounds that he had been unable to obtain necessary records during the period in which the witness's office was closed. The respondent drafted an "Affidavit of [the witness]" in support of the motion. He did not transmit a draft of the affidavit to the witness or read the affidavit to her over the telephone. On or about January 13, 2003, and without obtaining authorization from the witness, the respondent signed the witness's name to the affidavit. The content of the affidavit was based on the information given to the respondent by the witness and was substantially true, but contained some inaccuracies.

The respondent filed the motion and affidavit with the clerk of the district court on January 14, 2003, and served opposing counsel with a copy of the motion. The respondent did not advise the court or opposing counsel that he had signed the witness's name to the affidavit. The plaintiff did not oppose the motion for a continuance of the trial and the motion was allowed.

The trial commenced in May 2003. The respondent was no longer representing the client at the time of trial. The client's successor counsel called the witness to testify about the accounting records. In cross-examining the witness, the plaintiff's attorney attempted to impeach her with her affidavit. When the plaintiff's attorney showed the witness the affidavit, she denied that she had ever seen it or signed it.

By signing the witness's name on the affidavit under the pains and penalties of perjury, the respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of Mass. R. Prof. C. 8.4(c); engaged in conduct prejudicial to the administration of justice, in violation of Mass. R. Prof. C. 8.4 (d); engaged in conduct that adversely reflects upon his fitness to practice law, in violation of Mass. R. Prof. C. 8.4 (h); and made a false statement of material fact to a tribunal, in violation of Mass. R. Prof. C. 3.3 (a)(1).

The respondent had no previous disciplinary history and was being treated for depression during the period in which he engaged in the misconduct. He received an admonition and was required to attend a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-42

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

Between September 2003 and February 2005, the respondent represented the husband ("client") in a divorce. The client gave the respondent a \$7500 retainer. The respondent performed substantial work for the client and earned fees in excess of the retainer. The

respondent did not, however, request more funds from the client or advise him that the retainer had been exhausted.

In May 2004 the court granted the wife's motion to compel the sale of the marital home. The parties sold their home for \$300,000. The wife's attorney deposited the proceeds of the sale, \$177,689, into an escrow account. In August 2004, she released, by agreement, certain funds to the parties and to their attorneys. She continued thereafter to hold \$147,689 in trust for the parties.

In January 2005, the client discharged the respondent and obtained new counsel. On January 18, 2005, the respondent filed a motion to withdraw and a motion for an attorney's lien and distribution of the escrowed funds held by the wife's attorney, along with a notice of lien. The motion and notice of lien contained blank spaces for the amount of money sought by the respondent. The respondent inaccurately calculated the bill, on the basis of a higher hourly fee, and arrived at an amount that was substantially greater than what the client owed her under the fee agreement. The respondent then hand-wrote that amount into the motion and notice of lien that she filed with the court, and appended an "account annexed" in the form of a bill for that amount. The respondent's staff inadvertently sent the client a copy of the notice of lien in which no amount was filled in and no "account annexed" was attached. Thus the client received no notice of the amount of attorney's fees sought by the respondent.

The respondent's motion for fees was heard and allowed by the court on January 25, 2005. The client and his new counsel were present during the hearing, but were not advised of and did not otherwise learn the amount sought by the respondent. Neither the client nor his new counsel objected to the allowance of the respondent's motion. The wife's attorney continued to hold the funds and did not distribute any funds to the client or the respondent.

In February 2005, the client requested a copy of the bill from the respondent. The respondent sent the client a copy of her bill by letter dated February 15, 2005. When the client received the copy of the bill, he became aware for the first time of the amount of the bill and that the respondent had overcharged him. The client filed a grievance with the Office of Bar Counsel. After receiving a copy of the client's grievance from the Office of Bar Counsel, the respondent recognized the error and recalculated her bill.

By preparing, through lack of due care, an inaccurate bill and by inadvertently failing to notify the client of the amount of the lien she was seeking upon her withdrawal from representation, the respondent failed to act with reasonable diligence in representing a client, in violation of Mass. R. Prof. C. 1.3, and failed to keep her client reasonably informed about the status of a matter in violation of Mass. R. Prof. R. 1.4(a).

The respondent was admitted to the bar in 1980 and has no disciplinary history. The respondent received an admonition and was required to attend a legal ethics program designated by bar counsel.

ADMONITION NO. 06-43

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. of Prof. C. 1.3]

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

SUMMARY:

In early 2000, a client retained the respondent to represent her in connection with injuries she sustained in an automobile accident in November 1999. The respondent filed suit on behalf of the client and her family in November 2002. Thereafter, the respondent failed to respond to the defendant's discovery requests, causing the defendant to file a motion to

compel production of documents and an application for final judgment for failure to answer interrogatories. These pleadings were filed on or about March 16, 2004, the date for the scheduled pre-trial conference. The respondent then failed to appear for the pre-trial conference on March 16, 2004, resulting in the dismissal of the client's case. From early May to late June 2004, the respondent was not responsive to the client's calls concerning the status of the case.

In late June 2004, having heard nothing from the respondent for over a month despite her calls, the client contacted the clerk's office directly and learned of the dismissal. The client informed the respondent of the dismissal, and the respondent prepared a motion to vacate the dismissal, but did not file it. The client discharged the respondent and retained successor counsel. Initially, successor counsel had difficulty getting the client's file from the respondent, but eventually obtained the file and sought to reopen the case. The court vacated the dismissal. Ultimately, successor counsel settled the case favorably for the client and her family.

The respondent's failure to respond to discovery requests, to appear in court for the scheduled pre-trial conference, and to seek to vacate the dismissal constituted a failure to act diligently in violation of Mass. R. Prof. C. 1.3. The respondent's failure to respond to the client's calls and to communicate with the client about the status of the case constituted a failure to communicate adequately with her client in violation of Mass. R. Prof. C. 1.4.

In mitigation, the respondent was experiencing complications with a pregnancy in the spring of 2004 and was preoccupied with her medical condition. The respondent received an admonition for her misconduct in this matter, conditioned upon her attendance at a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-44

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. of Prof. C. 1.3]

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

SUMMARY:

Following trial in 1997, a client was convicted in United States District Court and sentenced to 30 years in prison. In mid 1997, the respondent was appointed to represent the client on his direct appeal. The court reporter did not finish preparing the transcripts until mid 1999, and for two years the respondent filed timely motions to extend the time for filing his brief. The appellate court granted all of these motions. When the respondent finally did receive the transcripts, he obtained two additional extensions of time in order to review the transcripts. Once he had completed his review, he concluded that there were no appellate issues that were not frivolous.

The respondent had been communicating about the appeal with the client's son who had been acting as an intermediary between the respondent and his father. The respondent communicated his opinion that there were no meritorious issues to the son who agreed to communicate the respondent's opinion to his father. The respondent did not communicate his opinion that the appeal lacked merit directly to the client.

Since his appointment in 1997, the respondent had been exploring other possible post-conviction relief that might be available to the client. The client had advised the respondent that he was interested in the other post-conviction relief they were pursuing. Based on the communication with the son about the direct appeal and the communication with the client about the post-conviction relief, the respondent believed, incorrectly, that the client had agreed to abandon the direct appeal in favor of pursuing collateral relief only. The client in fact intended to pursue both the direct appeal and collateral relief.

The respondent's brief was due in October 1999. Because he thought the client had abandoned the appeal, the respondent did not file either a substantive brief or a brief pursuant to *Anders v. California*, 386 U.S. 738, 744 (1967) (holding that, upon determining that there are no meritorious issues to be raised on appeal, appointed counsel must notify the court and file a brief referring to anything in the record that arguably might support an appeal). In December 1999, the United States Court of Appeals dismissed the appeal for failure to prosecute. In March 2000, the respondent wrote the client and informed him that the appellate court had dismissed his case, but did not indicate the reason for the dismissal.

Thereafter, the respondent failed to reply to several requests from the client for information concerning the dismissal of the appeal. However, in 2001, the client obtained and reviewed a copy of his docket sheet and saw that the respondent had not filed a brief on his behalf.

The collateral relief that the respondent was pursuing ultimately did not work out. In 2004, the client filed a petition pursuant to 28 U.S.C. § 2255 alleging ineffective assistance of appellate counsel in allowing the appeal to be dismissed without his consent. The U.S. District Court allowed the unopposed petition and reinstated the appeal period. Successor appellate counsel was appointed, and the client is currently pursuing his appeal with new counsel.

The respondent's failure to file either a substantive brief or an *Anders* brief constituted a failure to act diligently in violation of Mass. R. Prof. C. 1.3. The respondent's failure to communicate directly with his client concerning the merits of the appeal and whether the client wished to continue with the appeal, and the respondent's subsequent failure to respond to his client's requests for information after the appeal had been dismissed, constituted failure to communicate adequately with his client in violation of Mass. R. Prof. C. 1.4.

In mitigation, the respondent was diagnosed with depression in 1997 but his medication was only moderately successful until it was adjusted in 2000. The respondent still did not feel well and was ultimately diagnosed with another serious medical condition that was finally resolved in 2006. In further mitigation, the respondent was overwhelmed during this time period with an overly large caseload that he has now reduced to a manageable number.

The respondent received an admonition for his misconduct in this matter, conditioned upon his attendance at a continuing legal education course designated by bar counsel.

ADMONITION NO. 06-45

CLASSIFICATIONS:

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

Withdrawal Without Protecting Client or Refunding Fee [Mass. R. Prof. C. 1.16(d)]

SUMMARY:

In November 2005, the client hired the respondent to represent him with respect to a tax deficiency notice he had received from the Internal Revenue Service. The tax deficiency resulted from a dispute between the client and his ex-wife as to who was entitled to claim their three children as dependents for federal income tax purposes. The client and the respondent agreed that the representation would involve filing a petition with the U.S. Tax Court and entering an appearance in a pending modification proceeding in the Middlesex probate court, to obtain an order allowing the client to claim three of his children as dependents.

The respondent agreed to do the work for a flat fee of \$1500. The client gave the respondent \$300 and agreed to make additional payments of \$100 per week until he had paid

the entire \$1500. The client, however, paid only the initial \$300, and made no further payments to the respondent.

On December 5, 2005, the respondent filed a petition in the U.S. Tax Court requesting a re-determination of the deficiency noticed by the IRS. After December 5, 2005, the client attempted to contact the respondent, but the respondent did not return the client's telephone calls or otherwise communicate with the client concerning the status of the tax or probate matters. The respondent did not file an appearance in the probate court proceedings and took no further action regarding the tax matter. The client was ultimately able to satisfactorily resolve the tax dispute with his wife without assistance of counsel.

By failing to respond to the client's reasonable requests for information, the respondent violated Mass. Rules of Prof. C. 1.4(a).

By failing to advise the client that he would proceed no further with the representation until the client made additional payments toward the fee, the respondent violated Mass. Rules of Prof. C. 1.4(b).

By terminating his representation of the client without taking steps to the extent reasonably practicable to protect his interests, such as giving him reasonable notice of the termination, the respondent violated Mass. R. Prof. C. 1.16(d).

The respondent has been a member of the bar since 1996 with no prior discipline. He received an admonition for the above misconduct, conditioned upon his attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-46

CLASSIFICATIONS:

Failing to Seek Client's Lawful Objectives [Mass. R. Prof. C. 1.2a]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

In June 2005, a foreign national living in Worcester, Massachusetts hired the respondent to file an application to adjust to permanent resident status on her behalf based on her marriage to an American citizen. The client paid the respondent a flat fee that included the preparation and filing of the appropriate petition and representation at an immigration interview.

The respondent filed a petition to adjust status on behalf of the client shortly after he was retained. In October 2005, United States Customs and Immigration Service sent the client a notice scheduling her for a December 2005 interview in Boston. The client brought the letter to the respondent, who provided her with a list of documents she needed to gather for the interview and a list of possible interview questions to review with her husband. The respondent was aware upon his review of the interview appointment letter that he would be unable to attend the interview with the client and her husband because it was set for a day when he had a schedule conflict. However, the respondent failed to advise the client he could not attend the interview and that, if the client wished him to attend, they would need to request a new date from USCIS.

Over the next several weeks, the client and the respondent had discussions as to whether the client would require a continuance because her husband might not be available. Those problems were resolved the day before the interview and the client and her husband at that time advised the respondent that they wished to proceed. The respondent scheduled a meeting with the client and her husband for the next day (the day of the interview) and, at

that meeting, he advised the client for the first time that he, the respondent, was unavailable to attend the interview. The respondent attempted without success to locate another attorney to attend the interview with the client and her husband. On the respondent's advice, the client and her husband attended the interview without counsel and the client's application to adjust status to that of permanent resident was approved.

The client subsequently requested that the respondent refund a portion of the fee due to his failure to represent the couple at the interview. The respondent ultimately refunded \$200.00 to the client.

By failing to attend the interview with the client, or alternatively to inform her in a timely manner that he was unavailable to attend and that she would therefore either need to request a continuance or to proceed pro se or with substitute counsel, the respondent violated Mass. R. Prof. C. 1.2(a), 1.3 and 1.4. The respondent was admitted to the Massachusetts Bar in 2000 and has no prior discipline. He received an admonition for his conduct in this matter conditioned upon his attendance at a CLE course designated by bar counsel.

ADMONITION NO. 06-47

CLASSIFICATIONS:

Handling Legal Matter when Not Competent or without Adequate Preparation [Mass. R. Prof. C. 1.1]

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4d]

Conduct Adversely Reflecting on Fitness to Practice [Mass. R. Prof. C. 8.4h]

SUMMARY:

In November 2003, the client hired the respondent to collect a debt from a former business partner. In June 2004, the respondent filed a lawsuit against the business partner for breach of contract in district court. The court scheduled the matter for a case management conference.

In October 2004, the client, on her own, sought and obtained a criminal complaint against her business partner for larceny by check. The respondent believed that the outcome of the criminal complaint would affect the outcome of the civil matter. With the consent of the client, the respondent obtained at least three continuances of the case management conference.

The matter was finally continued to February 23, 2005. When the matter was scheduled, the court indicated on the notice to the parties that it would grant no further continuances. On February 22, 2005, the criminal matter had not yet been resolved, and the respondent advised the client that the court would refuse to permit any further continuances.

The respondent further advised the client that she should agree to have the lawsuit dismissed. Believing she had no choice, the client agreed to the dismissal. The respondent was aware that cases could be dismissed in a way that permitted the client to file the case again so long as the statute of limitations had not run. The respondent did not, however, know the term of art "with prejudice" and "without prejudice" applied to dismissals. The respondent did no research to learn how to secure a dismissal "without prejudice." The respondent did not advise the client that a dismissal could be secured in a way to permit refiling or that a dismissal might prevent refiling.

On February 22, 2005, the respondent signed a stipulation, drafted by opposing counsel, agreeing to dismiss the civil matter "with prejudice." Due to her ignorance of the term

“with prejudice,” the respondent did not appreciate that the dismissal would prevent refile and made no effort to secure an agreement from opposing counsel or from the court to dismiss the complaint “without prejudice”.

On February 22, 2005, opposing counsel sent the executed stipulation to the court by fax to be filed. On February 24, 2005, the court entered the stipulation of dismissal on its docket of case. The respondent failed to inform the client that she had signed a stipulation on the client’s behalf and that the case had, in fact, been dismissed.

In early March 2005, the client received the notice that her case had been dismissed and filed a motion pro se to reinstate the lawsuit on the grounds that the respondent had entered into the stipulation without her knowledge or consent. The business partner opposed the client’s motion to reinstate the complaint.

In response to the client’s motion, the respondent, still failing to appreciate the meaning of the term “with prejudice,” filed an affidavit, again prepared by opposing counsel, averring that she had advised the client of her “options,” and that the client had assented to the dismissal. The court denied the client’s motion to reinstate the complaint.

By failing to research the meaning of the term “with prejudice” and failing to research the alternative form of dismissal without prejudice, the respondent violated Mass. R. Prof. C. 1.1 and 1.3.

By failing to explain to her client the options available to her to the extent necessary to permit her client to make an informed decision, by failing to inform her client that she had signed the stipulation, and by failing to advise the client that the complaint had been dismissed with prejudice, the respondent violated Mass. R. Prof. C. 1.4(a) and (b).

By signing the affidavit in opposition to the client’s motion to reinstate the case when she had not, in fact, advised the client of all her options, the respondent violated Mass. R. Prof. C. 8.4(d) and (h).

In mitigation, the respondent became a member of the bar in the Commonwealth in 2001 and was inexperienced. The respondent has no history of prior discipline.

The respondent received an admonition for her conduct on the condition that she attend a CLE course designated by bar counsel.

ADMONITION NO. 06-48

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]

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

SUMMARY:

On or about July 11, 2005, the respondent was informed by a former client (a real estate broker) about a real estate purchase transaction that had closed on that day. The client’s wife was the seller. At the time of closing, there were holdover tenants at the property who were not current in their rent. The buyer agreed with the seller that she would accept title with the tenants in possession on the understanding that the seller would arrange to evict the tenants. The buyer gave the seller authority to act as her agent to evict the tenants and, on July 11, 2005, the seller retained the respondent to evict the tenants.

On July 18, 2005, the respondent served a notice to quit on the tenants and, on August 22, 2005, he filed a summary process summons and complaint. On September 19, 2005, the respondent spoke to the tenants’ attorney and reached a tentative agreement. On September 21, 2005, a summary process agreement for judgment was negotiated. The

agreement stated that the tenants would pay a reduced rent for the last three months of their occupancy and that the tenants would agree to vacate the property on or before a date certain. The agreement was signed by the respondent on behalf of the buyer.

Although the buyer had approved the settlement in general terms, the respondent worked out the details with the seller as the buyer's agent and did not consult with the buyer as to these issues. The buyer after the fact expressed reservations as to some of the terms, especially the reduced rent. The respondent ultimately reimbursed the buyer a substantial portion of the unpaid rent that she claimed she would not have waived.

The respondent's failure to communicate directly with the buyer as to the details of the settlement, and to explain the matter to the extent necessary for her to make an informed decision, constituted a failure to represent a client diligently and inadequate client communication in violation of Mass. R. Prof. C. 1.3 and 1.4(a) and (b).

The respondent was admitted in 1985 and has no prior discipline. The respondent accordingly received an admonition conditioned upon attendance at a CLE program designated by bar counsel.

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