ADMONITION NO. 19-01

CLASSIFICATION:

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

SUMMARY:

On multiple occasions starting in late 2013, the respondent allowed earned fees to accumulate in his IOLTA account. The respondent failed to hold trust funds on deposit in the IOLTA account separate from his own property. The respondent withdrew his personal funds by paying personal or business expenses directly from his IOLTA account, including payment of overtime wages to an employee.

The respondent's conduct in allowing earned fees to accumulate into his IOLTA account and paying personal or business expenses directly from the account violated Mass. R. Prof. C. 1.15(b)(2).

The respondent was admitted in 1976 and has no prior discipline. The respondent audited, reconciled and closed his existing IOLTA account and opened a new account. The respondent will attend a class on trust accounting designated by the Office of Bar Counsel. He accordingly received an admonition for his conduct in this matter.

ADMONITION NO. 19-02

CLASSIFICATION:

No Written Fee Arrangement [Mass. R. Prof. C. l.5(b)(l)]

SUMMARY:

In May 2017, the respondent agreed to represent a buyer in a real estate transaction. The respondent failed to communicate to the client in writing the scope of the representation and the basis or rate of his fee. A dispute, since resolved, later arose as to whether the fee paid by the client was a flat fee or a retainer. By failing to communicate to the client in writing, either before commencing the representation or at any time thereafter, the scope of the representation and the basis or rate of his fee, the respondent violated Rule l.5(b)(1).

The respondent was admitted to practice in 1992 and had received no prior discipline.

The respondent received an admonition, on the condition that he attend a continuing legal education program designated by bar counsel.

ADMONITION NO. 19-03

CLASSIFICATION:

No Written Fee Arrangement [Mass. R. Prof. C. 1.5b1]

SUMMARY:

In July 2017, the respondent agreed to represent a client in a contested guardianship matter concerning the client's sister. The respondent agreed to charge the client, who had limited resources, a flat fee of $250 for each court appearance, which would include all travel and printing costs. The respondent failed to communicate to the client in writing the scope of the representation and the basis or rate of her fees and expenses. The respondent appeared at six probate court hearings and also pursued an interlocutory appeal on the client's behalf. In total, the client paid the respondent $900. The respondent, who had performed significant work on the client's behalf, withdrew in December 2017 when the client sought to expand the scope of the representation. After the respondent withdrew from the representation, the client questioned both the amount of the fee charged and the scope of the representation. The respondent agreed not to seek any additional fee payments.

By failing to communicate to the client in writing, either before commencing the representation or at any time thereafter, the scope of the representation and the basis or rate of her fee, the respondent violated Rule 1.5(b)(1).

The respondent was admitted to practice in 2015 and had received no prior discipline. The respondent received an admonition, on the condition that she attend a continuing legal education program designated by bar counsel.

ADMONITION NO. 19-04

CLASSIFICATIONS:

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

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

SUMMARY:

Beginning in 2015, the respondent represented a client in a complicated employment relations matter. Over the next two years, the respondent performed various services for the client and was paid periodically for his work. On three occasions, the respondent deposited earned fees into his IOLTA account while also holding client funds in the same account. By failing to keep client funds separate from his own funds, the respondent violated Mass. R. Prof. C. 1.15(b). On another occasion, the respondent received a retainer from his client for future work on the case. The funds were deposited appropriately into his IOLTA account. However, after the fees were earned, the respondent withdrew the funds to pay his fees without first providing his client with a written accounting of the services rendered, the amount and date of withdrawal, and a statement of any remaining balance. The respondent therefore violated Mass. R. Prof. C. 1.15(d)(2).

The respondent has been a member of the bar since 1974 and has no prior discipline. During bar counsel's investigation, the respondent attended a CLE course on ethics and law office management. The respondent also agreed to contact the Law Office Management Program (LOMAP) and obtain an assessment of his law office management practices.

ADMONITION NO. 19-05

CLASSIFICATIONS:

Failing to act diligently [Mass. R. Prof. C. 1.3]
Failing to communicate adequately with client [Mass. R. Prof. C. 1.4]

SUMMARY:

In June 2015, the respondent was retained by Client A to reopen a closed probate matter in which Client A was a beneficiary of a will. Client A paid to the respondent a retainer of $750.00 and an hourly fee agreement was executed. The probate case had been closed for several years and the initial personal representative had died. Client A learned that the probate estate included some publicly traded shares of stock that had never been administered and had been turned over the Massachusetts Unclaimed Property Division. The respondent initially thought that reopening the case to administer this asset would be fairly simple, but it turned out to be more complex than anticipated. The complexity was compounded by the probate court's conflicting instructions on how to reopen the case. At some point, the respondent stopped communicating with Client A, and failed to respond to her attempts to contact him. After receiving Client A's complaint to bar counsel, the respondent contacted her to resume the representation and the matter is proceeding.

In 2011, Client B retained the respondent to file her personal bankruptcy case. Client B paid the respondent a flat fee of $1,799.00 and executed a flat fee agreement. After analyzing Client B's financial situation, the respondent realized that Client B was not eligible to file bankruptcy. Client B and the respondent agreed that, rather than filing for bankruptcy, as creditors contacted Client B, she would refer them to the respondent, who would advise the creditors of Client B's financial status and negotiate on her behalf. This arrangement worked well until late 2016 and 2017, when Client B attempted on more than one occasion to contact the respondent but was unable to reach him. After receiving Client B's complaint to bar counsel, the respondent contacted her to resume the representation.

Respondent executed a diversion agreement in 2018. The agreement required the respondent to attend the MCLE program "How to Make Money and Stay Out Of Trouble" and to obtain an audit of his practice management procedures through Law Office Management Assistance Program. The respondent failed to perform either task in the time allotted in the agreement.

In mitigation, in 2016 and early 2017, the respondent was experiencing serious family problems and respondent admits that he was unresponsive to his clients during this extremely difficult time. The respondent has addressed these issues. The respondent will also comply with the diversion agreement requirements.

The respondent received an admonition for this misconduct.

ADMONITION NO. 19-06

CLASSIFICATIONS:

Failure to Timely Communicate Basis for Fee [Mass. R. Prof. C. 1.5(b)]

Improper Acceptance of Compensation for Representation from Nonclient [Mass. R. Prof. C. 1.8(f)]

SUMMARY:

The respondent is a criminal defense lawyer who had previously represented an incarcerated client in an unsuccessful effort to secure a new trial. That representation had been undertaken pursuant to a written agreement in which the respondent charged a specified flat fee for his services. Several years after the conclusion of that representation, the respondent agreed to represent the client in a second attempt to secure a new trial. In undertaking this engagement, the respondent failed to communicate in writing the scope of the representation and the basis or rate of his fee. The respondent had previously received a written warning from bar counsel concerning the need for fee arrangements to be memorialized in writing pursuant to Mass. R. Prof. C. 1.5(b).

During the course of the second representation, the respondent received a series of fee payments from the client's spouse and another relative. At no time did the respondent secure the client's informed consent to the respondent's acceptance of compensation from non-clients.

By failing to communicate the scope of the representation and basis or rate of the fee to his client in writing, the respondent violated Mass. R. Prof. C. 1.5(b). By failing to secure the client's informed consent to his acceptance of compensation from non-clients, the respondent violated Mass. R. Prof. C. 1.8(f).

The respondent was admitted to practice in Massachusetts in 1974 and has no prior record of discipline. He received an admonition for his misconduct.

ADMONITION NO. 19-07

CLASSIFICATION:

Improper Communication with Represented Person [Mass. R. Prof. C. 4.2]

SUMMARY:

The respondent represented clients in a property dispute in which their neighbor accused them of causing damage to her property. The respondent's clients filed a counterclaim against the neighbor accusing her of causing damage to their property. The respondent knew that the neighbor was represented by counsel.

The respondent's clients called him to complain that the neighbor had recently caused more damage to the property line. The respondent went to his clients' property to take photographs of the new damage. The neighbor saw him and invited him onto her property. The respondent accompanied the neighbor onto her property and engaged in conversation with her relating to the pending litigation. The respondent did not contact opposing counsel to obtain permission to talk with the neighbor. The respondent suggested the neighbor call her attorney, but the neighbor said she did not want to bother him.

By communicating about the subject of the representation with a person the respondent knew was represented by another lawyer in the matter without first obtaining the permission of that lawyer, the respondent violated Mass. R. Prof. C. 4.2.

The respondent was admitted to practice in Massachusetts in 1970 and had received no prior discipline. The respondent received an admonition for his conduct.

ADMONITION NO. 19-08

CLASSIFICATIONS:

Failing to act diligently [Mass. R. Prof. C. 1.3]
Failing to communicate adequately with client [Mass. R. Prof. C. 1.4]

SUMMARY:

From 2008 to 2011, the client lived with her boyfriend in a house that he owned. The boyfriend had executed a will that left all of his personal and residual property to the client. The client believed that the will entitled her to receive the boyfriend's house upon his death. After the boyfriend died in 2011, his estranged wife, who was unaware of the will, filed a petition to administer the boyfriend's intestate estate. The probate court allowed the petition and the wife was appointed as administratrix of the estate. A judgment creditor of the estate asserted a claim of over $1,000,000. Shortly thereafter, the wife filed an action to evict the client from the house.

The client retained the respondent in April 2012 to defend her in the eviction action. The respondent successfully obtained dismissal of the eviction action on procedural grounds. At that time, the client also retained the respondent to probate the boyfriend's will. Although the respondent was on notice that there was a pending administration of the boyfriend's estate, he prepared a petition for formal probate of boyfriend's will and mailed the documents to the probate court.

The respondent then failed to do any work of substance. For the next four years, the client occasionally called the respondent to ask for a status update. The respondent failed to respond. Finally, the respondent realized that the formal probate petition had never been accepted by the probate court. From March 2016 through May 2016, the respondent attempted to re-file the case, but the probate court rejected the filings. A few months later, the client terminated the respondent's representation.

The town then foreclosed on a tax lien on the house. All heirs-at-law were notified of the tax taking through the pending probate filed by the wife. The land court entered judgment in favor of the town foreclosing all rights of redemption under the tax taking. In August 2017, the town evicted the client from the house and sold it to a third party. The judgment creditor of boyfriend's estate received the excess sale proceeds from the town.

The respondent failed to correctly advise the client, when she first engaged him, that the probate court had already appointed the wife as administratrix, and he failed to take action to have the boyfriend's will probated for more than four years. Ultimately, however, the client was not harmed by the respondent's inaction because she remained in the house for six years after the boyfriend's death and because the estate's beneficial interest in the house was ultimately and properly distributed to the estate's creditor.

By failing to represent the client diligently and by failing to keep the client reasonably informed about the status of the matter, the respondent violated Mass. R. Prof. C. 1.3 and 1.4

The respondent was admitted to the bar in 1994. He has no previous discipline. The respondent received an admonition for this misconduct.

ADMONITION NO. 19-09

CLASSIFICATION:

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

SUMMARY:

In about January 2015, the respondent and another lawyer (Lawyer A) agreed to represent a criminal defense client in post-conviction matters following the client's 2014 conviction for armed robbery. The client was serving a twenty-year sentence at MCI Norfolk. The two lawyers worked at separate law firms. The client agreed to pay the lawyers a $12,000 flat fee for "preparation of the appeal and, if the facts permit, a Rule 30 motion." The lawyers agreed that the respondent would prepare the appeal to the Appeals Court, Lawyer A would prepare the Rule 30 motion for a new trial, and that they would split the fee. The plan was to have the Rule 30 motion heard prior to the oral argument on the appeal.

In March 2015, the lawyers received the trial transcripts and began working on the direct appeal and Rule 30 motion. On June 20, 2015, Lawyer A sent a lengthy draft of the Rule 30 motion to the respondent but did not file it. By the end of September 2015, the client and his family were growing impatient with the lack of progress on the matter. On October 1, 2015, Lawyer A sent an email to the client's family stating that she was awaiting receipt of medical records and anticipated she would likely need one additional week after receiving the records to finalize the Rule 30 motion. The lawyers received the medical records on October 28, 2015.

In November 2015, Lawyer A falsely represented to the respondent that she had hand-delivered the completed Rule 30 motion to the trial judge and sent a copy to the district attorney's office. Lawyer A did not provide a copy of the completed Rule 30 motion to the respondent or to the client and his family. The Rule 30 motion did not appear on the court's docket.

Between December 2015 and December 2016, the respondent repeatedly assured the client's family that in November 2015, Lawyer A had filed the Rule 30 motion directly with the trial judge and a copy had been provided to the district attorney, and that Lawyer A was now awaiting a hearing date. The respondent made these representations to his client's family based on information he received from Lawyer A but did not independently verify. During this period, the respondent repeatedly requested that Lawyer A send him and the client and his family a copy of the Rule 30 motion that she claimed to have filed with the trial judge. Lawyer A did not provide the respondent or her client and his family with a copy of the Rule 30 motion she had purportedly filed.

When the client's family raised concerns that the Rule 30 motion had not yet been docketed at the court, the respondent incorrectly advised them based on information that he received from Lawyer A that "the lack of a docket entry doesn't mean anything since the Judge has the motion and so does the DA." In July 2016, the respondent assured the client's family

that he would "follow-up with the trial court and get an extra copy of the Rule 30 motion docketed." When Lawyer A did not provide him with a copy of the completed Rule 30 motion after repeated requests, the respondent took no action to determine if in fact the Rule 30 motion had been filed, and if not, to complete the draft Rule 30 motion himself and file it with the court on behalf of the client.

In the meantime, the respondent completed and filed and served the appeal brief in January 2016. The hearing on the direct appeal took place in November 2016, at the Appeals Court. Lawyer A made the oral argument to the Appeals Court panel. In December 2016, the Appeals Court issued a Rule 1:28 memorandum and order affirming the client's conviction. In the decision, the Appeals Court noted that the client had not filed a Rule 30 motion for a new trial. The respondent provided the client and the family with a copy of the court's decision.

In April 2017, the client terminated the representation by the respondent and Lawyer A and retained successor counsel to represent him in his post-conviction matters, including a possible Rule 30 motion.

By failing to independently investigate the questionable false information he was receiving from his co-counsel about the filing of the Rule 30 motion, and to take action to ensure that the client's case was handled with reasonable diligence and promptness, the respondent violated Mass. R. Prof. C. 1.3 (obligation to act with reasonable diligence and promptness in representing a client).

In mitigation, the respondent's co-counsel had more experience with criminal defense matters than the respondent, and he initially deferred to her judgment on the matter. In aggravation, the respondent received an admonition for unrelated conduct in September 2017, after his representation of the client in this matter had already concluded and prior to the initiation of bar counsel's investigation.

The respondent received an admonition for his conduct, on the condition that he attend a continuing legal education class designated by bar counsel.

ADMONITION NO. 19-10

CLASSIFICATIONS:

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

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

SUMMARY:

The respondent represented the buyers and acted as settlement agent in connection with the purchase of a condominium unit in Quincy, Massachusetts that took place on November 15, 2018.

As part of the closing package prepared by the respondent, and consistent with his standard practice, the respondent drafted a declaration of homestead for the benefit of his clients, to be executed at the closing. Due to the hectic nature of the closing, the execution of the homestead was overlooked until the clients were about to leave. At that time, the clients told the respondent to sign their names on the declaration of homestead and record it. A few days later, the clients confirmed their direction in writing to the respondent.

After the closing, at the direction of his clients, the respondent signed the declaration of homestead in the names of his clients. He did not indicate that he was signing for his clients pursuant to any authority such as by following their signatures with his initials. The respondent then notarized the signatures, falsely attesting that the parties personally appeared before him to sign the document. On November 15, 2018, the respondent recorded the improperly executed and notarized homestead in the Norfolk County Registry of Deeds.

The respondent was admitted in 2004 and had no prior discipline.

Notarizing a document outside the signatory's presence, even on the basis of recognition of a party's signature or oral confirmation that the party authorized the signature, is deemed conduct involving a misrepresentation, in violation of Mass. R. Prof. C. 8.4(c) and 8.4(h).

Where the clients authorized the respondent to sign and file the homestead declaration on their behalf, the filing was intended solely to their benefit and the respondent did not intend harm, the respondent received an admonition, conditioned on his attendance at a continuing legal education program designated by bar counsel.

ADMONITION NO. 19-11

CLASSIFICATIONS:

IOLTA Violation [Mass. R. Prof C. 1.15(e)(6)]
Trust Account Commingling [Mass. R. Prof. C. 1.15(b)(2)]

SUMMARY:

A former client allegedly owed the respondent's law firm over $300,000 in unpaid legal fees. The former client disputed the debt. As part of the firm's collection efforts, the respondent asserted an attorney's lien over $320,000 in funds the law firm was holding on behalf of the former client. The respondent initially held the disputed funds in a non-interest-bearing conveyancing account before transferring them into his law firm's IOLTA. Approximately four years after obtaining possession of the funds, the respondent transferred them into an interest-bearing client trust account. The respondent's firm ultimately prevailed in a collection against the former client and the funds were disbursed to the firm.

By holding the disputed funds in a non-interest-bearing client trust account for approximately four years, the respondent violated Mass. R. Prof. C. 1.15(e)(6).

Over a period of several years, the respondent used his law firm's IOLTA account as a repository for his own self-employment taxes and 401k contributions. The IOLTA also contained client funds. By commingling personal funds and client funds in the IOLTA account, the respondent violated Mass. R. Prof. C. 1.15(b)(2).

The respondent was admitted to practice in 1991 and had no disciplinary history. He received an admonition for his misconduct.

ADMONITION NO. 19-12

CLASSIFICATION:

Improper Communication with Represented Person [Mass. R. Prof. C. 4.2]

SUMMARY:

This matter relates to a residential real estate transaction in which three siblings and their now-deceased mother had interests in a parcel for sale. Two of the siblings were aligned against the third, with each side having legal representation. The respondent represented the third sibling. The respondent knew that the two aligned siblings were represented by counsel in the matter

In March 2018, a seller's agent working on behalf of all three siblings sent an email to one of the aligned siblings and copied the second aligned sibling, their counsel, a buyer's agent, and the respondent. The seller's agent was reporting that the prospective buyer was terminating the transaction.

The respondent immediately replied with the "reply all" function, thus sending his email to the two represented siblings. In the reply, the respondent indicated there was no objection to the termination as it would give the parties an opportunity to "re-set." The respondent closed the email stating, "I found [the aligned siblings' counsel's] attitude to be non-collegial, but if either he or another attorney representing the siblings wish to contact me they are welcome to do so." Counsel for the aligned siblings did not authorize the respondent to communicate directly with the clients.

By communicating about the subject of a representation with parties who the respondent knew to be represented by another lawyer in the matter, without the consent of the parties' lawyer, the respondent violated Mass. R. Prof. C. 4.2.

The respondent was admitted to practice in 1999. In April 2014, he received a warning about communicating with represented parties without authorization. The respondent received an admonition for his misconduct in the instant matter and will be required to attend a continuing legal education course designated by bar counsel.

ADMONITION NO. 19-18

IN RE: IN THE MATTER OF AN ATTONEY

S.J.C. NO. BD-2019-025

Order (Admonition) entered by Justice Budd on July 3, 2019.[1]

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[1] The complete order of the Court is available by contacting the Clerk of the Supreme Judicial Court for Suffolk County.

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPREME JUDICIAL COURT
FOR SUFFOLK COUNTY
DOCKET NO. BD-2019-025

IN THE MATTER OF AN ATTORNEY

ORDER FOR ISSUANCE OF AN ADMONITION

The Board of Bar Overseers (BBO) brought this matter following bar counsel's written objection to having formal proceedings against the respondent concluded by admonition pursuant to S.J.C. Rule 4:01, § 8(6). Bar counsel recommends that the respondent be publicly reprimanded for violations of Mass. R. Prof. C. 3.4(c) ("a lawyer shall not knowingly disobey an obligation under Rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists."); 8.4(d) (conduct prejudicial to the administration of justice); and 8.4(h) (conduct that adversely reflects on fitness to practice law). A hearing committee of the BBO recommended a public reprimand. On appeal, the BBO, based on a totality of the circumstances, voted to administer an admonition. For the reasons set forth by the BBO in the Board Memorandum, I conclude that an admonition is appropriate in this case. Accordingly, it is Ordered that the BBO's decision that an admonition be administered to the lawyer is affirmed.

By the Court, (Budd, J.)

Assistant Clerk

DATED: July 3, 2019

COMMONWEALTH OF MASSACHUSETTS
BOARD OF BAR OVERSEERS
OF THE SUPREME JUDICIAL COURT

BAR COUNSEL,	)
Petitioner,	)
v.	)
AN ATTORNEY,	)
Respondent.	)

BOARD MEMORANDUM

While cross examining a police officer during a jury trial, the respondent asked a question that the judge had specifically ordered him to avoid. The judge declared a mistrial, the respondent objected, and the SJC affirmed, finding that the respondent had "intentionally violated her order."

A hearing committee concluded that the respondent had violated Rule 3.4(c) (disobeying a court order); 8.4(d) (conduct prejudicial to the administration of justice); and 8.4(h) (conduct adversely reflecting on fitness to practice law). One member dissented from the conclusion on Rule 8.4(h), reasoning that the rule applied only in the absence of other rules. The committee recommended a public reprimand.

While we agree with the committee that the respondent intentionally violated a court order, we do not agree that he should receive a public reprimand. Although no case is directly analogous, the Supreme Judicial Court has not publicly disciplined lawyers under the circumstances in this case: a single question during a trial that was contrary to a court order. Based on the totality of the circumstances, we impose an admonition.

Factual Background

We adopt the hearing committee's Findings of Fact, as they are not erroneous. BBO Rules, § 3.53. The material facts come directly from the transcripts and orders from the criminal case at issue here. They are not disputed.

The respondent has practiced in Massachusetts since 1998. On January 22, 2015, a judge in the Suffolk Superior Court appointed him to represent the defendant in a criminal case in which the defendant was charged with possession of a firearm and related charges.

The firearm charges arose out of a traffic stop by Boston Police of a van in which the respondent's client was a back seat passenger. There were two others in the van: the driver and a front seat passenger. Two officers were at the scene.[1] Two bouncers from a nearby nightclub informed the officers that that the van's occupants had just left the club and that they had heard from a witness that one of the passengers had a gun. Officer 1 obtained information from the mobile data terminal (MDT) in his car that the front seat passenger (not the respondent's client) had previously been convicted for a firearms offense. The officers ordered the three occupants out of the van. As the respondent's client got out of the back seat, the officers saw a gun in the area where he was sitting.

The respondent's client was tried alone. At trial, the prosecution did not want the jury to learn that the front seat occupant had a prior firearms conviction, because this information would tend to deflect culpability away from the respondent's client. Accordingly, the prosecution filed a motion *in limine*, which the trial judge allowed.

The respondent opposed the motion because of his concern that the jury might speculate about the reasons that a routine traffic stop led to an exit order and a search of the van's interior.

[1] To preserve the anonymity of identities, we will refer to the first responding officer as Officer 1 and the second as Officer 2.

As a solution, the assistant district attorney proposed, and the respondent agreed, that the jury be informed that, "based upon certain information learned from his [the officer's] review of the computer system and conversations he had with additional people," he gave the exit order.

The case was called for trial on October 19, 2015. On cross-examination, Officer 1 testified that based on the information from the MDT terminal, the van's front seat passenger had a criminal record and the respondent's client did not:

> Q: On the MDT terminal, you found a criminal record on one of the occupants of that van; didn't you?
> A: Yes
> Q: And it wasn't my client ...?
> A: Correct.
> Q: It was the front passenger...?
> A: Yes.
>
> ...
>
> Q: And, as a result, you had suspicions about that front seat passenger over the other ones; am I correct?
> A: You are incorrect.
> Q: So even though one of them – the occupants of that van had a criminal record and was the only one with a criminal record, he didn't stand out in your opinion as somebody you would be focusing in on?
> A: No, not necessarily.
>
> ...
>
> Q: The conviction that you pulled up on the MDT was for possession –
> DA: Objection. Objection, Your Honor.
> The Court: Sustained. Sustained. Sustained.

The respondent then asked: "When you approached the van and [Officer 2] to discuss the issue, one of the things you were concerned about was whether the front seat passenger had a ---" The ADA's objection was sustained, and the attorneys convened at sidebar, during which the judge addressed the inadmissibility of the prior firearm conviction of the other passenger:

> The Court: But I thought we agreed that what he found on the computer –I thought we had this discussion the other day that what he found on the computer is not admissible. . . . I appreciate that you need to know the basis for his state of mind. But he's just told

> you that he didn't suspect the passenger above the other three [sic]. So you don't like the answer. You want to impeach the answer. But how are you going to do that with admissible testimony?

The respondent argued that it was not necessarily impeachment; he was just "trying to bring in a clearer picture" and that he was entitled to do so "once this witness refuses to acknowledge that he was focusing in on the front passenger. . . ." The Court observed that Officer 1 had *denied* that he was worried about the front seat passenger more than the others and wondered "what is in this record that tells you that that's not true." The respondent then made an offer of proof:

> The offer of proof I would offer up is that he finds that [the front seat passenger] has a conviction for a firearm offense in his MDT computer. That's one of the things he discussed with [Officer 2] in addition to what the bouncers observed...So when he was going into that car, it was with the suspicion that [the front seat passenger] had a firearm.

The judge asked: "Just because someone has a conviction doesn't mean they have a gun, right, that night?" The respondent insisted that "[i]t means that the officer has no way of knowing who has a gun and who doesn't have a gun" and that "it would defy logic for an officer not to have a suspicion about . . . an occupant who has a conviction for a firearm offense."

In response, the prosecutor reemphasized to the Court that, "the Commonwealth filed a motion *in limine* to preclude just this sort of evidence," and that the Commonwealth did not want "the gun conviction of [the other passenger] in."

The trial judge then informed the respondent that the gun conviction of the other passenger *was not admissible for any reason*:

> The Court: Right. And it's not in. So we are okay with that so far. All right? So it's not coming in.
>
> Respondent: And I agree it doesn't come in substantively. But the only –
>
> The Court: It doesn't come in at all is my ruling, ... Okay? Let's be clear about that.

The respondent objected, and the Court noted his objection for the record. He continued his cross-examination:

> Q: Based on the information that you obtained [f]rom your MDT terminal in your cruiser and only on the information from the MDT terminal in your cruiser, at that point, did you have any reason to suspect one of the occupants of the van over all of the others?
> A: Not really.
> Q: Not really?
> A: No.
> Q: You had some reason but not really or you didn't have any reason at all?
> A: I'd say no reason at all.

The following examination ensued:

> Q: So when you reviewed the information from the MDT, it didn't come up with a criminal conviction for one of the occupants of the van?
> A: It did.
> Q: And that was for [the person in] the front passenger seat?
> A: Yes, sir.
> Q: And that was possession of a firearm?
> A: Yes, sir.

The respondent continued with another question, but the judge stopped him immediately, mid-sentence, and excused the jury. The prosecutor made an oral motion for a mistrial. The respondent argued that Officer 1 had lied and that the evidence was for impeachment, claiming that "anything comes in on impeachment, regardless of motions in limine or court rulings. Once that officer lied about it, it comes in for impeachment." Reiterating that she had ruled that the testimony was "out for all purposes," the judge declared a mistrial.

Before another Superior Court judge, the respondent challenged the government's right to retry his client by filing a motion to dismiss on double jeopardy grounds. In the course of denying that motion, the second judge wrote: "Defense counsel cannot precipitate a motion for a mistrial by his misconduct in direct contravention of a judicial order and then be heard to object

to the grant of a mistrial." He added: "In contrast to the many cases requiring intentional prosecutorial misconduct before a case can be dismissed on double jeopardy grounds after a successful defense motion for a mistrial . . . the misconduct here was by the defense and was clearly intentional." He also denied a subsequent Motion to Reconsider.

The respondent sought extraordinary relief from a single justice of the Supreme Judicial Court pursuant to Mass. G. L. c. 211, § 3. The single justice allowed the petition, concluding that there was no need to declare a mistrial, although she wrote that the respondent could have been cited for contempt for violating the trial judge's order. On further appeal by the government, the full bench of the court reversed the single justice and affirmed the trial judge's decision to grant the government's motion for a mistrial.

We adopt the hearing committee's finding that the respondent intentionally violated the trial court's order when he asked the officer about the front seat passenger's prior firearm conviction. Immediately before the offending question, the respondent tried to parse the ruling by arguing that the question could come in for purposes of impeachment. The trial judge clarified that the question, "doesn't come in at all." As the committee noted, these words were straightforward and unambiguous.

The hearing committee found, as a factual matter, that, "the respondent credibly explained [that] he was trying to head off speculation among the jurors about why three African-American males were asked to exit the van." (Hearing Report, ¶ 31). The committee also credited that the respondent believed he was entitled to impeach Officer 1. (Hearing Report, ¶ 32). However, the hearing committee further concluded that the respondent knew that the court had precluded the question, but in direct contravention of the order, he asked it anyway.

Legal Analysis

Based on the hearing committee's credibility findings, which we do not disturb, BBO Rule 3.53, we conclude that the respondent violated Rules 3.4 and 8.4 of the Massachusetts Rules of Professional Conduct. Pursuant to Rule 3.4(c), a lawyer may not knowingly disobey a court order. Rule 8.4(d) punishes conduct that is "prejudicial to the administration of justice." There is no serious question that the respondent's violation of the court's order was intentional. Although he argued in the underlying case that he thought that he could ask the question for purposes of impeachment, he had been warned minutes (if not seconds) earlier, that the question was forbidden "for all purposes."

On appeal, respondent makes a compelling argument that the question was the result of a split-second decision in the heat of trial. He argues that he did not "premeditate" a strategy of derailing the trial by causing a mistrial. (Respondent's Brief, p. 6). We are sympathetic to the pressures on trial counsel, particularly criminal defense attorneys, whose clients' liberty rests in their hands. However, while we agree with respondent's general point, it is inconsequential to our conclusion that the respondent intentionally violated a court order. As a consequence of his conduct, the government had to re-try the case.

We disagree with the majority of the hearing committee that the conduct violated Rule 8.4(h), which requires bar counsel to prove that the conduct adversely reflects on the attorney's fitness to practice law.[2] We disagree with the committee that the respondent displayed "deep

[2] One member of the committee disagreed with that conclusion on the basis that Rule 8.4(h) only penalizes conduct that is not covered by other rules. We do not agree with the dissent's interpretation of Rule 8.4(h). But for purposes of this case, we agree that the violations of Rules 3.4(c) and 8.4(d) do not adversely reflect on the respondent's fitness to practice. As we discuss in the body of this decision, the misconduct was an isolated incident in the heat of a trial.

disrespect towards the judge and represent[ed] an erosion of the legal system's processes and norms." (Hearing Report, ¶ 36). The respondent made a mistake, not inadvertently, but we hesitate to conclude that a single mistake is evidence of a lack of fitness.

Factors in Mitigation and Aggravation

The hearing committee concluded that the respondent's proffered reasons for mitigation are unavailing, and we agree. The factors he cites – lack of prior discipline, acting in the heat of the moment, and conduct that was the result of zealous advocacy – are typical mitigating factors. Matter of Alter, 389 Mass. 153, 157, 3 Mass. Att'y Disc. R. 3, 7 (1983); Matter of Neitlich, 413 Mass. 416, 422, 8 Mass. Att'y Disc. R. 167, 174 (1992); Matter of Wilson, 32 Mass. Att'y Disc. R. 617, 632 (2016). His attempt to deflect blame onto the assistant district attorney by arguing that the prosecution violated its agreement to confine the police officer's testimony to a narrow set of facts would normally be considered an aggravating factor. Matter of Levin, 33 Mass. Att'y Disc. R. ___ (2017). We will not do so here, because the respondent did not rely on this argument at the hearing, and bar counsel has not asserted it. There are no other factors in aggravation.

The Appropriate Sanction

Although the respondent intentionally violated a clear court order, we do not recommend that he receive a public reprimand. In this regard, we disagree with bar counsel and the hearing committee. Cases of public reprimand arise out of significantly different facts than this case. For example, in Matter of Winbourne, 23 Mass. Att'y Disc. R. 785 (2007), the respondent failed to comply with a court order to pay another attorney, resulting in a finding of contempt, and failed to cooperate with bar counsel's investigation, leading to an administrative suspension. In Matter of Davis, 20 Mass. Att'y Disc. R. 125 (2004), the respondent failed to appear in court for

the first day of a trial, causing harm to the client, and failed on another occasion to call the court to argue a motion per the court's direction. In Matter of Kerman, 16 Mass. Att'y Disc. R. 291 (2000), the respondent stipulated to a reprimand for engaging in conduct on four separate occasions that was disrespectful to the court and others and disruptive of court proceedings. The respondent in Kerman also twice left court without permission and once left court despite being specifically ordered to stay.[3]

What connects the public reprimand cases – and distinguishes them from the present case – is the sanctioned lawyers' failure to reflect on their misconduct and change course. The misconduct in the reprimand matters took place over a much longer period and often involved repeated misconduct. Despite the opportunity to correct their behavior, lawyers who have been publicly reprimanded persisted in their improper conduct. Unlike those situations. the respondent before us was representing a defendant in a criminal case, cross-examining the principal prosecution witness. He had sufficient time to recognize that he should not ask the question, but his error was an isolated misstep in the middle of a trial with no time to self-correct. In our view, this situation is significantly different from those where a lawyer received a public reprimand. At oral argument, bar counsel was unable to call to our attention any reported case in which similar misconduct was punished by a public reprimand.

Bar counsel and the hearing committee distinguished the admonition cases based on the perceived state of mind of the lawyer, claiming in essence that in cases of "intentional"

[3] Other cases, which the hearing committee discussed at page 15 of its report, involve misconduct by lawyers in their personal lives. As with the cases cited above, every violation took place over time and provided adequate opportunity for reflection. For example, in Matter of Griffin, 34 Mass. Att'y Disc. R. ___, P.R. No. 2018-1 (Feb. 16, 2018), the attorney stipulated to a public reprimand after failing over a five year period to comply with court orders and appear at hearings. In Matter of Sanchez, 23 Mass. Att'y Disc. R. 633 (2007), and Matter of Romain, 15 Mass. Att'y Disc. R. 503 (1999), the respondents were jailed by probate court judges for contempt of court orders in the lawyers' own divorces, including failing to pay arrearages and counsel fees. Both stipulated to public reprimands.

disobedience, the lawyer received a public reprimand, while in cases of "inadvertent" disobedience, the sanction typically is an admonition. That analysis focuses on the wrong question. We see the key distinction as the flagrancy and repetition of the violations. Where a lawyer had less time and opportunity to reflect, the sanction typically is an admonition.

Thus, in Admonition No. 00-60, 16 Mass. Att'y Disc. R. 540 (2000), a prosecutor (who had been a lawyer for eight years at the time of the misconduct) received an admonition for intentional misconduct, a violation Rule 3.4(c) and (e). The prosecutor's cross examination of the defendant was "unnecessarily inflammatory" and he asked a question that he had no reasonable basis to believe was relevant to the case with the intent to degrade the witness. In his closing argument, the prosecutor impermissibly vouched for the credibility of a government witness.

That case is difficult to distinguish from this one, as are other admonition cases featuring fleeting and limited misconduct. *See, e.g.*, Admonition No. 18-12, 34 Mass. Att'y Disc. R. ___ (2018) (prosecutor's closing argument); Admonition No. 05-04, 21 Mass. Att'y Disc. R. 671 (2005) (prosecutor's closing argument). Similarly, we have issued admonitions in cases involving intentional misconduct that occurred outside a trial. For example, a lawyer who signed a release on behalf of his client in a personal injury case was found to have violated Rule 8.4(c) for fraudulent conduct. He received an admonition. Admonition No. 17-07, 33 Mass. Att'y Disc. R. ___ (2017).

We do not condone the respondent's conduct, which is the reason for imposing discipline in this case. "An effective judicial system depends on the honesty and integrity of lawyers who appear before their tribunals." Matter of Finnerty, 418 Mass. 821, 829, 10 Mass. Att'y Disc. R. 86 (1994). To his credit, the respondent through counsel acknowledged a violation of the rules,

while presenting an appropriate argument that his conduct merits no more than an admonition. It is clear to us that, working relentlessly to ask the forbidden question, the petitioner sought every opportunity to do so. When faced with a recalcitrant witness, he could have again approached sidebar. Instead, he plunged ahead with a question he knew, and had just been warned, should not be asked. However, this was a discrete and limited violation. We are confident that an admonition will educate the respondent and prevent similar incidents. It will serve the public interest.

Conclusion

For all of the foregoing reasons, the respondent should receive an admonition.

Dated: 2/11/19

Respectfully submitted,

BOARD OF BAR OVERSEERS

Michael G. Tracy, Secretary *Pro Tempore*

ADMONITION NO. 19-13

CLASSIFICATION:

Unauthorized Practice of Law [Mass. R. Prof. C. 5.5(a)]

SUMMARY:

The respondent received an admonition for the unknowing unauthorized practice of law while administratively suspended.

From 2008 until May of 2013, the respondent worked at a large firm and the firm handled his registration renewal and paid his annual registration fee. The respondent took a hiatus from the practice of law until June of 2014 when he joined another large law firm. The respondent changed his business address to his residential address in March of 2014 but failed to update the registration records filed with the Board of Bar Overseers with his new business address when he began his job in June of 2014. The respondent relocated his residence in April of 2015 and did not update his home address with the registration department. The respondent, who was caring for his wife who was suffering from depression and two special needs children, did not pay attention to his registration status or check to confirm that his new firm was paying his registration fees. The respondent has no recollection of receiving notice of his impending administrative suspension for failing to register in March of 2015. The respondent was administratively suspended on April 30, 2015. The respondent was not aware of his administrative suspension and continued his employment at a law firm where he provided legal services to one corporate client.

In August of 2018, the respondent learned he had been administratively suspended and promptly took steps to return to active status. The respondent was reinstated on September 17, 2018.

The respondent's representation of his client while he was administratively suspended from the practice of law violated Mass. R. Prof. C. 5.5(a).

In mitigation, during the period of his administrative suspension the respondent experienced family issues which distracted him from thinking about his annual registration.

The respondent was admitted to practice in Massachusetts in 2008 and has no disciplinary history. He received an admonition for his misconduct.

ADMONITION NO. 19-14

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

SUMMARY:

In early 2017, the respondent became employed as an associate by a firm that concentrates in domestic relations matters. The firm assigned the respondent to represent a father in a child custody and support matter involving a child born out of wedlock. In mid-2017, the Child Support Division of the Massachusetts Department of Revenue (MDOR) filed a complaint with the Suffolk County Probate and Family Court on behalf of the child seeking payment of past and present child support due to the mother. During discovery, the MDOR repeatedly requested certain financial documents from the respondent and his client in order to establish the support amounts the client was obligated to pay.

The client turned over to the respondent only some of the documents requested by the MDOR. The respondent had limited experience in domestic relations matters and no experience in dealing with the Child Support Division. He did not seek guidance from the firm's supervising attorney to deal with the inadequacy of the client's responses to the MDOR's document requests. The respondent furnished partial responses to the MDOR, but he did not communicate with the client about obtaining and providing additional documents that were responsive to the MDOR's requests and that were easily obtainable.

Consequently, in mid-2018, the MDOR filed a motion to compel and for sanctions with the court for the failure to produce the requested documents. The respondent did not communicate with the client regarding this motion or file an opposition to it. The court ordered the production of documents but withheld judgment on the MDOR's request for sanctions until such time as the merits of the case were heard. Thereafter, the respondent withdrew from representation and the client found successor counsel who responded appropriately to the MDOR's document requests. No sanctions are expected to result.

The respondent's failure to adequately respond to the MDOR's repeated requests for those documents that were obtainable, his failure to consult with his client or to arrange with the client to produce the necessary documents, and his failure to advise the client of the motion to compel and for sanctions, violated Mass. R. Prof. C. 1.1, 1.3 and 1.4(a).

The respondent was admitted to practice in 2011. The respondent received an admonition for his misconduct conditioned upon attending a CLE program recommended by bar counsel.

ADMONITION NO. 19-15

CLASSIFICATION:

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

SUMMARY:

In October 2007, a husband and wife created a family trust, naming a daughter as trustee. The beneficiaries of the family trust included the husband and wife, their three adult children and two grandchildren. The couple executed a quitclaim deed transferring the family home to the family trust, reserving to themselves a life estate in the property. The real property was the sole asset of the trust. After the wife's death in 2012, the husband continued to live in the property until the fall of 2015, when he moved to an assisted-living facility.

In about October 2015, the trustee engaged the respondent to represent her in selling the real property. The respondent negotiated the purchase and sale agreement, drafted the deed, and attended the closing with the trustee. The respondent did not serve as closing attorney. At the closing on December 10, 2015, the father agreed to waive his life estate interest. The trustee received the closing proceeds and deposited the funds to trust accounts she had established for that purpose. The respondent never had custody or control of the trust funds.

After the sale of the trust property, the respondent continued to represent the trustee in administering the trust. The respondent had a duty to, but failed to, take steps to ensure that the trustee promptly paid the father for his life estate interest from the net sale proceeds received by the trustee. On June 3, 2016, after the beneficiaries other than the trustee notified the respondent that they had filed suit in the Essex County Probate and Family Court seeking to remove the trustee, the trustee paid the father his share of the proceeds.

The respondent also failed to ensure that the trustee timely filed fiduciary income tax returns, and timely paid the capital gains taxes due.

The respondent's conduct violated Mass. R. Prof. C. 1.3.

The respondent, who was admitted to practice in 1990 and had no prior discipline, received an admonition for his conduct.

ADMONITION NO. 19-16

CLASSIFICATION:

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

SUMMARY:

In May 2015, the respondent was appointed temporary conservator of an elderly woman and was required to file an inventory within ninety days of his appointment. In August 2015, the respondent was appointed permanent conservator; similarly, he was then required to file an inventory within ninety days of the appointment and an account no later than fifteen months after the appointment.

The respondent failed to file his inventories and accounts as temporary and permanent conservator until February 2018, after the woman contacted bar counsel for assistance. By failing to file inventories and accounts in a timely manner, the respondent violated Mass. R. Prof. C. 1.3.

The respondent was admitted to practice in 1995 and had received no prior discipline. He received an admonition for his misconduct.

ADMONITION NO. 19-17

CLASSIFICATION:

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

SUMMARY:

In January of 2016, the respondent agreed to represent a client in determining whether she was entitled to property that, in 1972, had been bequeathed to her husband and his brother by their father's last will and testament. For over 40 years, the client's brother-in-law and his long-time girlfriend occupied the property. After the two brothers died, the brother-in-law's girlfriend contested the client's right to an equal share of the joint property. The respondent believed that the representation would involve a contested petition to partition. The respondent and client entered into a contingent fee agreement which provided that the respondent would represent the client in connection with her interests regarding her late husband's estate and his potential beneficiary rights under his father's will. The contingent fee agreement did not state that the client would be responsible for the respondent's travel time or expenses. Several months after the parties entered into the contingent fee agreement, the respondent told his client that he would also need to probate her late-husband's estate and would charge an hourly rate. The respondent settled the petition to partition matter on behalf of the client for forty percent of the proceeds of the sale of the property. She thus received $150,000. The respondent charged the agreed-upon one-third contingency fee of $50,000, approximately $4,500 to probate the estate, and about $6,600 relating to travel time and travel expenses, for a total fee of approximately $61,000. Further, encompassed in the respondent's travel time, he charged hourly for time spent on in-person consultations with the client which related to both the petition to partition and the probate matter. The respondent, therefore, charged hourly for consultations that were redundant to services he was providing under the contingency fee agreement.

By charging a separate hourly fee for the probate work and his travel time and expenses, the respondent charged extra fees for services that were covered by the contingent fee agreement. As a result, the total fee charged was clearly excessive. The respondent has made restitution.

By charging for services that were unnecessary and redundant, the respondent charged a clearly excessive fee in violation of Mass. R. Prof. C. 1.5(a).

The respondent was admitted to practice in Massachusetts in 2012 and had received no prior discipline. In mitigation, the respondent refunded a substantial sum to the client. Further, he had been admitted to the bar for just over 3 years and was inexperienced in charging contingency fees.

The respondent received an admonition for his misconduct on the condition that he attend a continuing education class designated by bar counsel on law office management and ethics.

ADMONITION NO. 19-19

CLASSIFICATION:

No Written Fee Agreement [Mass. R. Prof. C. 1.5 (b)(1)]

SUMMARY:

In March 2017, the respondent agreed to represent a client in a criminal matter pending in the District Court. The respondent and client apparently agreed to a $7,500 flat fee, but the respondent failed to communicate in writing the scope of this representation and the basis or rate of his fee at the inception of the engagement or any time thereafter. By failing to do so, the respondent violated Mass. R. Prof. C. 1.5 (b)(1).

The respondent was admitted to the Massachusetts bar on December 17, 1979, and has no prior disciplinary history. The respondent received an admonition for his misconduct.

ADMONITION NO. 19-20

CLASSIFICATION:

No Written Fee Arrangement [Mass. R. Prof. C. 1.5(b)(1)]

SUMMARY:

In November 2017, the client retained the respondent to represent her in connection with an eviction matter pending against her in housing court. The client paid the respondent an initial flat fee of $2,500. The respondent failed to communicate in writing the scope of the representation and the basis or rate of the fee and expenses for which the client was responsible before or within a reasonable time after commencing the representation. The respondent timely filed an answer and counterclaim, alleging that the client had properly withheld payment of rent because her apartment had become infested with bedbugs and the landlord had not remediated the infestation in a proper or timely manner. The matter went to trial and the client was awarded damages on the counterclaim.

By failing to communicate in writing the scope of the representation and the basis or rate of the fee and expenses for which the client was responsible before or within a reasonable time after commencing the representation and failing to provide a writing regarding the change to the flat fee, the respondent violated Mass. R. Prof. C. 1.5(b)(1).

The respondent was admitted to the bar in 1968. He has no previous discipline. The respondent received an admonition for this misconduct.

ADMONITION NO. 19-21

CLASSIFICATIONS:

Responsibilities Regarding Nonlawyer Assistants [Mass. R. Prof. C. 5.3(a), (b)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof. C. 8.4(d)]
Conduct Adversely Reflecting on Fitness to Practice [Mass. R. Prof. C. 8.4(h)]

SUMMARY:

The respondent represented a client seeking a temporary O-1 work visa for a prospective employee. The respondent's paralegal prepared a Form I-129, Petition for a Nonimmigrant Worker for filing with United States Citizenship and Immigration Services ("USCIS").

The respondent's paralegal signed the petition with the client's name certifying under penalties of perjury that the client had reviewed the petition and the information contained therein was complete, true, and correct. The paralegal also signed the respondent's name certifying under penalties of perjury that the respondent had reviewed the petition with the client who agreed to the answers in the petition. The client had not reviewed the petition. The paralegal filed the petition with USCIS. The respondent did not know the paralegal signed the client's and the respondent's names to the petition.

The respondent, as the lawyer with direct supervisory authority over the paralegal, failed to make reasonable efforts to ensure that the paralegal's conduct was compatible with the professional obligations of the respondent, in violation of Mass. R. Prof. C. 5.3(a) and (b). The filing of the petition with false signatures constitutes a violation of Mass. R. Prof. C. 8.4(d) and Mass. R. Prof. C. 8.4(h).

The respondent became a member of the bar in the Commonwealth in 1995. The respondent had received no prior discipline. The respondent received an admonition for his conduct on the condition that he attend a continuing legal education course designated by bar counsel.

ADMONITION NO. 19-22

CLASSIFICATION:

Unauthorized Practice of Law [Mass. R. Prof. C. 5.5(a)]

SUMMARY:

The respondent was registered as inactive with the Massachusetts Board of Bar Overseers and therefore prohibited from engaging in the practice of law. He was not admitted to practice law in any other jurisdiction. However, for a short period of time in 2019, the respondent represented a family member in a dispute with a New Hampshire business. The dispute involved his relative's claim that the business had overcharged her. At his relative's behest, the respondent called the director of the business and requested a refund. He also sent an email and a letter to the director, both of which identified him as an "Esq." In a follow-up telephone call, the director asked the respondent to direct any and all future inquiries to the law firm that generally represents the funeral home. The respondent did not pursue the matter any further.

The respondent's conduct in this matter constituted the unauthorized practice of law in violation of Mass. R. Prof. C. 5.5(a).

The respondent has been a member of the Massachusetts bar since 2008 and has received no prior discipline. He accordingly received an admonition for his misconduct.

ADMONITION NO. 19-23

CLASSIFICATIONS:

No written fee Agreement [Mass. R. Prof. C. 1.5(b)(1)]
Conflict of Interest [Mass. R. Prof. C. 1.7(b)(4)]

SUMMARY:

The respondent represented both the lender and the seller in connection with a commercial real estate sale transaction that closed on March 2, 2017. The respondent reasonably believed that in the circumstances that he could provide competent and diligent representation to each. However, the respondent failed to obtain the informed consent, confirmed in writing, from both the lender and the seller. The respondent's conduct violated Mass. R. Prof. C. 1.7(b)(4).

Also, the respondent failed to disclose the scope of the representation and the basis or rate of the fee and expenses to the seller in writing before or within a reasonable time after commencing the representation. The fee exceeded $500.00. The respondent's conduct violated Mass. R. Prof. C. 1.5(b)(1).

The respondent had no prior discipline.

Given the lack of demonstrable harm, the respondent received an admonition subject to attendance at a CLE program designated by bar counsel.

ADMONITION NO. 19-24

CLASSIFICATIONS:

Failing to Act Diligently [Mass. R. Prof. C. 1.3]
Failing to Adequately Communicate with Client [Mass. R. Prof. C. 1.4]

SUMMARY:

The respondent received an admonition for lack of diligence and failing to adequately communicate with a client in a probate matter.

A client retained the respondent in December of 2016 to represent him as a conservator and assist him in preparing required accountings and inventories. The client had been the temporary conservator and then permanent conservator of the ward from January 9, 2013 until November 9, 2014, when the ward died, ending the conservatorship. On November 24, 2015, the personal representative of the ward's estate filed a petition to require the client to render accounts to the court and the personal representative. On July 8, 2016, the client/conservator filed a first and final account, inventory and a petition for order of complete settlement which did not comply with the orders of appointment or the applicable statute. The client/conservator, who was also a lawyer and a friend of the respondent, sought the representation of the respondent because he did not understand how to fulfill his obligations to file the required accountings and inventories.

Between December 2016 and May 31, 2017, the respondent performed no work of substance on this matter. On May 31, 2017, the respondent first reviewed the court documents and discovered that a citation had not been issued with respect to the prior filings because the client/conservator failed to file separate accountings as a temporary conservator and as a permanent conservator. The respondent instructed his client/conservator to prepare separate filings. The client/conservator failed to separate the accountings as required and provided the respondent mathematically incorrect information. The respondent reviewed the documents prepared by the client/conservator however failed to adequately explain the deficiencies to the client/conservator and to assist the client/conservator in correcting the errors.

As a result of the failure of the client/conservator to file the requisite documents with the court on multiple occasions pursuant to court orders, on October 20, 2017, the personal representative filed a petition for contempt against the client/conservator. A hearing on the contempt was scheduled on November 27, 2017. The respondent failed to assist the client/conservator in preparing separate and mathematically correct accountings and inventories in advance of the contempt hearing. The respondent appeared at the contempt hearing during which the client/conservator was held in contempt. The client/conservator subsequently discharged the respondent, obtained successor counsel and, with the assistance of successor counsel, filed all outstanding documents.

By failing to diligently represent his client, the respondent violated Mass. R. Prof. C. 1.3. By failing to adequately communicate with his client about the deficiencies in the filings prepared by the client, the respondent violated Mass. R. Prof. C. 1.4.

The respondent was admitted to the bar of the Commonwealth in 1994 and had no history of discipline. He received an admonition for his misconduct.

ADMONITION NO. 19-25

CLASSIFICATION:

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

SUMMARY:

The respondent is an experienced criminal defense lawyer. In 2016, he agreed to represent a client charged with operating a motor vehicle under the influence (third offense). Following his arrest on the OUI charge, but prior to trial, the client was charged with operating a vehicle after his driver's license had been suspended. The respondent agreed to include the defense of this new and separate charge as part of his flat-fee services in the OUI case.

The OUI case proceeded to a jury trial in mid-2017. The client was convicted and received a jail sentence of six months. The conviction also carried a mandatory loss of license for eight years. The eight-year license suspension was in addition to a five-year suspension the client had incurred as a result of refusing a Breathalyzer test.

An initial pretrial conference in the license-suspension case was scheduled in August 2017. At the time, the client was still serving his sentence on the OUI conviction. Accordingly, on the day of the pretrial, the client was transported by sheriff's van to the district court in which the suspended-license case was being heard. After discussing the matter with client, the respondent conferred with the assistant district attorney as to a possible plea deal that would result in a ten-day concurrent jail sentence on the charge of driving with a suspended license. Because the prosecutor wanted additional time to consider the proposal, she and the respondent agreed to continue the pretrial conference for approximately two weeks.

At some point prior to the date of the rescheduled pretrial conference, the prosecutor informed the respondent that the Commonwealth would accept the ten-day concurrent sentence. The respondent and the ADA agreed to present the deal to the court at the rescheduled pretrial conference. The respondent did not take any steps to inform the client of these developments.

As the respondent was aware at the time, a conviction on the charge of driving with a suspended license carried a further period of license suspension for the client that would be added to the end of the suspension he had incurred by virtue of the OUI conviction and his initial refusal to take the Breathalyzer. The respondent never informed the client of the additional suspension that would result from accepting the plea deal.

The court had rescheduled the pretrial conference for a date in early September 2017. On the morning of the conference, the client was informed by Department of Corrections officers that he was being transported to the district court for an appearance in the pending criminal case.

The respondent came to the district court on the morning of the scheduled pretrial and learned that the van carrying his client had not yet arrived. The respondent had a hearing scheduled in another courthouse that morning for a different client. After waiting some time for the client to arrive by sheriff's van, he decided to ask another lawyer to handle the plea, After the other lawyer agreed to cover the client's plea deal, the respondent left the courthouse to attend the hearing in his other client's matter.

When the client eventually arrived at the courthouse, the attorney whom the respondent had asked to handle the plea tender introduced himself to the client and explained that he had agreed to serve as his lawyer that morning so that the client could accept the plea deal, the terms of which he described to the client. The client had questions about the effect of a guilty plea on his license. The lawyer explained that he could not address those questions due to his lack of familiarity with the case. He also made it clear to the client that the latter had the option not to proceed with the plea deal at that time but could instead ask for another court date at which the respondent could be present. However, because the client was worried about the possible repercussions of not accepting a deal that had been previously arranged on his behalf by the respondent, he elected to proceed with the deal with the other lawyer serving as his stand-in counsel. The court promptly heard the matter, accepted the client's negotiated plea, and imposed the ten-day, concurrent sentence.

After serving the remainder of his jail sentence on the OUI, the respondent retained new counsel for the purpose of filing a motion to withdraw his guilty plea on the charge of driving with a suspended license. As grounds for such relief, the client cited the respondent's having left the courthouse to attend to another matter and the fact that the client therefore had not been afforded the opportunity to discuss the plea deal or the additional license suspension that it entailed. The court granted the motion and, with the Commonwealth's assent, continued the case without a finding.

By failing to advise the client as to the terms of the plea deal and the associated license suspension, and by failing to discuss and secure the client's advance authorization for another attorney to represent him before the court, the respondent violated Mass. R. Prof. C. 1.4(a)(1), 1.4(a)(3), and 1.4(b).

The respondent was admitted to the Massachusetts bar in 1992 and has no prior record of discipline. He received an admonition for his misconduct.

ADMONITION NO. 19-26

CLASSIFICATIONS:

Conflict Directly Adverse to Another Client [Mass. R. Prof. C. 1.7(a)(b)]
Conflict with Former Client in Substantially Related Matter [Mass. R. Prof. C. 1.9(a)]
Imputed Disqualification Generally [Mass. R. Prof. C. 1.10(a)(d)]

SUMMARY:

In 2017, respondent A represented the husband and respondent B represented the wife in a divorce proceeding. Respondents A and B were practicing in separate law firms. When respondent A was engaged by the husband, she told the husband that she intended to retire in February of 2018 and would assist in transferring his case to another lawyer.

In January of 2018, while respondents A and B were still representing opposing parties in the divorce matter, respondent B approached respondent A with an offer to become of counsel to his firm after she retired from her practice. Respondents A and B then began discussing the potential association. At this point, there was a significant risk that the representation of the husband and the wife would be materially limited by the lawyers' personal interests in pursuing an employment relationship with each other. Respondent A disclosed to her client that she had been offered an employment opportunity with respondent B, but she did not explain to him the potential conflict in negotiating the employment while continuing to represent him. Respondent B did not disclose to his client that he was pursuing an employment opportunity with Respondent A. Neither lawyer sought the informed consent of the affected clients, confirmed in writing, to the continued representation, as required by Mass. R. Prof. C. 1.7(a) and (b).

In February of 2018, respondent A withdrew from representing the husband and assisted the husband in retaining new counsel. Respondent B continued to represent the wife in the divorce proceeding.

In May of 2018, while the divorce proceeding remained ongoing, respondents A and B finalized their association and respondent A began working as of counsel to respondent B's firm.

Because it was not permissible under Mass. R. Prof. C. 1.9(a) for respondent A to represent the wife in the same divorce matter in which she had previously represented the husband, and because the conflicts of any lawyer in a firm are imputed, by Mass. R. Prof. C. 1.10(a) and (d), to all the other firm lawyers, once respondent A joined respondent B's firm, both respondents were prohibited from continuing to represent the wife in the divorce matter without first obtaining the husband's written consent after consultation.

In May of 2018, the husband learned that Respondent A was working for Respondent B's firm when his counsel received a letter from Respondent B with Respondent A's name on the letterhead. The husband demanded that Respondent B withdraw from representing the wife in the divorce proceeding because of the conflict of interest. Respondent B promptly withdrew from representing the wife.

Respondents A and B violated Mass. R. Prof. C. 1.7(a) by engaging in employment discussions while representing opposing parties in a divorce without first obtaining the informed consent of each affected client, confirmed in writing.

Respondents A and B violated Mass. R. Prof. C. 1.9(a) and Mass. R. Prof. C. 1.10(a) and 1.10(d) (imputed disqualification) by continuing to represent the wife in the same divorce action in which the wife's interests were materially adverse to the interests of the husband, Respondent A's former client, without obtaining the written consent of the husband after consultation.

Respondent A was admitted to practice in 1978, and Respondent B was admitted to practice in 1988. Neither lawyer had received prior discipline. The lawyers received admonitions for their conduct, on the condition that each attend a continuing legal education course designated by bar counsel.

ADMONITION NO. 19-27

CLASSIFICATION:

No Written Fee Arrangement [Mass. R. Prof. C. 1.5(b)(1)]

SUMMARY:

In August 2017, the client retained the respondent to represent her in connection with a pending child custody dispute. The client paid the respondent an initial fee of $5,000 and later paid her an additional $7,000. The respondent failed to communicate in writing the scope of the representation and the basis or rate of the fee and expenses for which the client was responsible before or within a reasonable time after commencing the representation.

The respondent represented her client competently and diligently. In August 2018, the respondent was unable to continue the representation for personal reasons and promptly withdrew from representation.

The respondent assisted the complainant in finding successor counsel.

By failing to communicate in writing the scope of the representation and the basis or rate of the fee and expenses for which the client was responsible before or within a reasonable time after commencing the representation and failing to provide a writing regarding the change to the flat fee, the respondent violated Mass. R. Prof. C. 1.5(b)(1).

The respondent was admitted to the bar in 2001. She has no previous discipline. The respondent received an admonition for this misconduct.