ADMONITION NO. 12-01

CLASSIFICATIONS:

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

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

Failure to Comply with Rules of the Supreme Judicial Court
[S.J.C Rules 4:01, § 17(1), (5) and (6); 4:02(1); 4:03(1)]

SUMMARY:

Until 2009, the respondent was employed by law firms whose staff handled his bar registration as a matter of course. In 2009, the respondent changed firms and moved his residence, but he did not promptly notify the Board of Bar Overseers of his address changes. As a result, the respondent did not receive notice of his upcoming registration renewal, he did not register as required in the fall of 2009, and he did not receive subsequent overdue notices. He was administratively suspended for failure to register in the spring of 2010.

The respondent was not aware of his administrative suspension and continued to practice law without seeking reinstatement. After thirty days, he became subject to requirements under S.J.C. Rule 4:01, § 17, for giving notice of his suspension and certifying his compliance to the Court and bar counsel. Because he did not know of his suspension, the respondent failed to give the required notice and could not file an affidavit of compliance.

In the fall of 2011, the respondent learned that he was under administrative suspension and immediately sought reinstatement. He submitted a supporting affidavit, paid his registration and reinstatement fees, and was reinstated by the Court a few days later.

The respondent's unauthorized practice of law after his administrative suspension violated Mass. R. Prof. C. 5.5(a). The respondent's failure to fulfill his notice and compliance obligations violated S.J.C. Rule 4:01, § 17(1), (5) and (6), and Mass. R. Prof.

C. 8.4(d). The respondent's failure timely to register and inform the Board of his address changes violated S.J.C. Rule 4:02(1). His failure timely to pay his annual fees violated S.J.C. Rule 4:03(1).

The respondent had no prior discipline and was unaware of his failure to register due to turmoil at his firm and the distractions of ongoing personal problems. He received an admonition for his misconduct.

ADMONITION NO. 12-02

CLASSIFICATIONS:

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

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

Failure to Timely Communicate Basis of Fee [Mass. R. Prof. C. 1.5b]

Failure to Maintain Disputed Funds in Trust Account [Mass. R. Prof. C. 1.15b2]

SUMMARY:

The respondent received an admonition for her conduct in two cases. In the first case, a client retained the respondent in the summer of 2009 on an hourly basis to take over representation in pending divorce modification and contempt proceedings. The respondent, a solo practitioner, had never tried a case. She lacked sufficient experience and expertise to handle the matter but failed to associate herself with competent counsel. Due to her lack of trial practice experience, the respondent's pretrial preparation and her performance at the trial were inadequate. The respondent's lack of competence violated Mass. R. Prof. C. 1.1.

In the second case, a client met with the respondent twice in late 2009 to discuss a bankruptcy filing. The respondent told the client that she would handle the bankruptcy for a flat fee $1,600 plus $300 as a cost advance. She did not inform the client that she was or would be charging a fee for either meeting. The client subsequently sent the respondent $300 for the cost advance but did not pay any part of the legal fee, and the respondent took no further action in the matter. The client attempted without success to contact the respondent, who failed to return the client's telephone calls. In the spring of 2010, the client asked for the return of her $300 payment. The respondent refused, stating that she would keep the payment for her services to that point.

The client disputed the respondent's entitlement to a fee and made renewed requests and demands for a refund. The respondent did not comply; nor did she place the $300 in a trust account pending resolution of the dispute. In the fall of 2010, after written demand by the client, the respondent returned $60 and retained $40 for a credit report and $100 as a purported fee for each of the two meetings. The client brought a small claims action and obtained a $300 judgment against the respondent. After an appeal by the respondent, the claim was settled in early 2011 on her payment of $275 to the client.

The respondent's failure to explain to the client that she intended to charge a fee for consultation and to explain the basis for her fee violated Mass. R. Prof. C. 1.4(b) and 1.5(b). Her failure to respond to the client's inquiries violated Mass. R. Prof. C. 1.4(a). The respondent's failure to place $300 in a trust account after the client disputed the claimed fee violated Mass. R. Prof. C. 1.15(b)(2)(ii).

The respondent had no prior discipline. She received an admonition conditioned on an audit by the Law Office Management Assistance Program (LOMAP).

ADMONITION NO. 12-03

CLASSIFICATIONS:

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

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

SUMMARY:

In January of 2010, the respondent was contacted by a nursing home regarding an incompetent resident requiring anti-psychotic medication in a guardianship matter. The respondent was responsible for assembling and filing with the Suffolk Probate and Family Court a medical affidavit and anti-psychotic medication treatment plan and for appearing for annual review hearings. The respondent successfully gathered the proper documentation and duly filed a Motion to Reinstate Treatment Order with the probate court. The judge allowed this motion on May 11, 2010.

By letter dated June 22, 2010, successor counsel informed the respondent that the nursing home's parent company wished to centralize their legal services for all guardianship and conservatorship matters with their office. Successor counsel requested documentation regarding each "Rogers" case and pending guardianship cases and requested the respondent's notice of withdrawal on all cases. The respondent informed successor counsel of all notices and hearings that he was aware of at the time of the transfer in representation. However, the respondent failed to file a notice of withdrawal with the court in the Suffolk guardianship matter or to ensure that the other law office filed an appearance.

On May 3, 2011, the Suffolk Probate and Family Court issued an order requiring counsel for the client to file an updated medical certificate and appropriate pleadings for review of the drug treatment plan. The order called for a review hearing on May 31, 2011. The respondent received this notice as counsel of record for the client. On May 5, 2011, an associate in the respondent's office forwarded this notice via email to the nursing home. The respondent failed to notify successor counsel of the order.

On May 31, 2011, the respondent did not appear at the review hearing. The probate court issued a Notice and Order of Case Management Conference rescheduling the hearing for July 26, 2011. The judge issued a warning to the respondent that failure to appear may result in a judgment of dismissal.

On July 26, 2011, the respondent failed to appear at the rescheduled review hearing. The court terminated the nursing home resident's drug treatment plan and the respondent was personally sanctioned in the amount of $500 for failure to appear. The respondent has paid the sanction and has withdrawn from the matter.

By failing to appear at the review hearings, the respondent failed to act with reasonable diligence and promptness in representing a client, in violation of Mass. R. Prof. C. 1.3. By failing to file a notice of withdrawal with the court and to notify successor counsel of the order requiring an updated medical certificate and pleadings for review of the drug treatment plan, the respondent violated Mass. R. Prof. C. 1.16(d).

ADMONITION NO. 12-04

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:

On December 11, 2005, the respondent was appointed the administrator of an estate with the will annexed. The estate consisted of minimal personal property and real estate located in Massachusetts. The estate's beneficiaries, who were siblings, disagreed on a number of matters related to the administration of the estate, which delayed the administration of the estate.

In 2007, the estate's real property was sold. The respondent deposited the net proceeds from the sale into an estate account, made all the distributions to the beneficiaries, and paid fees and expenses, including his fee, from the estate account. The respondent took no further action of substance to conclude the administration of the estate.

Between May 2008 and March 2010, one of the beneficiaries made several attempts to contact the respondent regarding the status of the administration of the estate. The respondent never responded to these requests for information or contacted the beneficiary's attorney.

In March 2010, the beneficiary contacted bar counsel's Attorney Consumer Assistance Program (ACAP) regarding the respondent's failure to complete the administration of the estate and respond to requests for information. An ACAP attorney spoke with the respondent, who acknowledged that he had not taken any

action in the matter since April 2008. On March 11, 2010, the respondent filed his first and final account with the probate court. The respondent failed, however, to request the issuance of a citation and did nothing further to complete the administration of the estate.

In April 2010, one of the beneficiaries filed a request for investigation with bar counsel alleging that the respondent had failed to respond to requests for information and had failed to handle the estate in a timely manner. Bar counsel initiated an investigation into the respondent's conduct. On November 16, 2011, the respondent obtained a citation for service on the beneficiaries and, on December 22, 2011, filed returns of service with the court. On January 12, 2012, the court allowed the respondent's first and final account.

The respondent's failure to request a citation from the probate court when he filed his first and final account violated Mass. R. Prof. C. 1.1. His failure to take any action of substance to complete the administration of the estate for over two years violated Mass. R. Prof. C. 1.3.

The respondent was admitted in 1984. In 2003, the respondent received an admonition for failing to reply to his client's request for an accounting, failing to keep adequate records regarding his IOLTA account, and withdrawing legal fees from his account without providing a bill to the client. AD 3-66, 19 Mass. Att'y Disc. R. 645 (2003).

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

ADMONITION NO. 12-05

CLASSIFICATION:

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

SUMMARY:

In 1998, the respondent prepared estate planning documents for a husband and wife, including reciprocal wills. The wife died in 2009, but her will was not probated. In 2011, the respondent was approached by the couple's daughter-in-law who, unbeknownst to the respondent, was in divorce proceedings with the couple's son. Upon request of the daughter-in-law, the respondent revealed the existence and content of the wills of the husband and wife. The wills contained no specific information about family assets.

By revealing confidential information of a client, the respondent violated Mass. R. Prof. C. 1.6(a).

The respondent was admitted to practice in Massachusetts in 1972 and has no prior discipline. He received an admonition for his conduct.

ADMONITION 12-06

CLASSIFICATION:

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

SUMMARY:

In June of 2008, the respondent notarized a client's signature on a document, stating that the client had appeared personally before him and acknowledged that he had signed the document voluntarily for its stated purpose. The document was delivered to the respondent by the client's girlfriend. Although the client had in fact signed the document, he did not do so in the respondent's presence and he was not there when the respondent notarized it. The respondent had no wrongful intent, the document did in fact express the client's wishes, and the client later acknowledged to the respondent that he signed the document voluntarily.

By notarizing and purporting to witness the signature of a person who was not present before him, the respondent violated Mass. R. Prof. C. 8.4(c). The respondent, who had no prior discipline, received an admonition for his misconduct, conditioned upon attending a CLE program recommended by bar counsel.

ADMONITION NO. 12-07

CLASSIFICATIONS:

Unauthorized Practice of Law [Mass. R. Prof. C. 5.5(a)]
Conduct Prejudicial to the Administration of Justice [Mass. R. Prof C. 8.4(d)]
Failure to Comply with Rules of the Supreme Judicial Court [S.J.C. Rules 4:02, §1)]

SUMMARY:

The respondent was licensed to practice law in the Commonwealth and the District of Columbia. Between 2004 and 2010, the respondent was employed as an associate in a law firm that handled the respondent's registrations in both jurisdictions.

In 2009, the respondent took a temporary position as senior in-house counsel with a corporation. Unbeknownst to the respondent, her law firm, with which she remained affiliated, did not continue to file her registration forms and pay her registration fees.

In January 2010, the respondent terminated her association with the law firm, accepted a permanent position as senior in-house counsel with the corporation, and relocated to New York.

On July 26, 2010, the respondent was administratively suspended in Massachusetts for failing to file her annual registration statement and pay her registration fee. On October 1, 2010, she was suspended in the District of Columbia for failing to pay her bar dues. The respondent was unaware that she had been administratively suspended in both jurisdictions and continued to practice law as in-house counsel for the corporation.

On December 20, 2010, the respondent contacted the Board of Bar Overseers to report her change of address. She then learned that she was administratively suspended in Massachusetts, but she remained unaware that she was no longer in good standing in the District of Columbia. She discovered in June 2011 that she was also administratively suspended in the District of Columbia and immediately sought and obtained reinstatement in both Massachusetts and the District of Columbia.

By failing to notify the registration division of her new address within thirty days after her address changed, the respondent violated S.J.C. Rule 4:02, §1. By engaging in the practice of law while she was administratively suspended, the respondent violated Mass. R. Prof. C. 5.5(a) and 8.4(d).

No clients were harmed as a result of the respondent's conduct. The respondent received an admonition for her conduct.

ADMONITION NO. 12-08

CLASSIFICATIONS:

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

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 represents a client in a contentious divorce matter. On several occasions over the last two years, the respondent prepared affidavits at the client's direction, emailed drafts to the client for approval, and with the client's authorization, signed the client's name and filed the affidavits with the probate court.

An attorney cannot sign another person's name to an affidavit, or any other document signed under oath, even with authorization. By filing an affidavit that appeared to have been signed by the client under the pains and penalties of perjury, but that the respondent knew had not been signed by the client, the respondent violated Mass. R. Prof. C. 8.4(c) (conduct involving misrepresentation), 8.4(d) (conduct prejudicial to the administration of justice), and 8.4(h) (conduct adversely reflecting on fitness to practice).

The respondent was admitted to the bar in 2001 and has no prior discipline. She received an admonition for her conduct, conditioned on attendance at a CLE program designated by bar counsel.

ADMONITION NO. 12-09

CLASSIFICATIONS:

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

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

SUMMARY:

In or about April 19, 2011, a mother and her son engaged the services of the respondent to represent them in a guardianship matter. The mother was serving as the guardian of her son's child. The respondent agreed to a flat fee of $3,800 and on the same day accepted a $2,000 deposit from the clients.

A hearing in the matter was scheduled for July 11, 2011. However, shortly after the clients engaged the respondent, the clients terminated the respondent's representation. As such, the clients sought an accounting and a refund of the unearned fee. The respondent did not provide an accounting of any earned fee nor did she provide a refund to the clients.

After the clients filed a bar complaint in November of 2011, the respondent did not reply to letters from bar counsel or appear for a scheduled subpoena meeting. On February 27, 2012, the Supreme Judicial Court entered an order of immediate administrative suspension of the respondent for noncooperation, pursuant to S.J.C. Rule 4:01, § 3(2). On March 8, 2012, the respondent met with bar counsel, and on March 9, 2012, filed a written response to the grievance. On March 9, 2012, the respondent returned the $2,000 payment to the clients. On March 14, 2012, the respondent was reinstated to the practice.

The respondent's failure to provide her clients with an accounting of their fee upon their request violated Mass. R. Prof. C. 1.15(d)(1). The respondent's failure to cooperate with bar counsel's requests in a timely manner violated Mass. R. Prof. C. 8.4(g).

In mitigation, the respondent's failure to cooperate with bar counsel's investigation, and the underlying misconduct, occurred during a period of time that the respondent was suffering from a number of illnesses, some requiring hospitalizations and surgeries, as a result of which she did not pay sufficient attention to her mail. Based on the foregoing, the respondent received an admonition for her conduct, on the condition that she attend a CLE course designated by bar counsel.

ADMONITION NO. 12-10

CLASSIFICATIONS:

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

Failing to Cooperate in Bar Discipline Investigations [Mass. R. Prof. C. 8.1(b)]

SUMMARY:

The respondent was admitted to the practice of law in Massachusetts on December 23, 1980.

In 2010, the client engaged the respondent with regard to a possible guardianship of the client's father. Although the guardianship proved unnecessary, the respondent performed related estate planning work for the client and for the client's father. Towards the end of the representation, however, the respondent failed for several months to respond to the client's requests for information and for a final billing statement.

On July 28, 2011, the client filed a grievance with bar counsel, who on August 9, 2011, forwarded the grievance to the respondent and requested a reply within twenty days. The respondent failed to reply to bar counsel's initial request or to a subsequent request by bar counsel for a response to the grievance. Bar counsel consequently obtained from the Board of Bar Overseers a subpoena for the respondent's appearance on October 6, 2011. Bar counsel duly served the subpoena on the respondent, but she did not appear on October 6, 2011.

On October 11, 2011, bar counsel filed with the Supreme Judicial Court a petition for the administrative suspension of the respondent, on the grounds of her lack of cooperation with bar counsel's investigation. The Court administratively suspended the respondent effective October 13, 2011. After receiving a copy of the Order of Administrative Suspension, the respondent fully cooperated with bar counsel and was reinstated.

By failing to keep her client reasonably informed about the status of her matter and promptly reply to reasonable requests for information, the respondent violated Mass. R. Prof. C. 1.4(a).

By knowingly failing to respond to a lawful demand for information from a disciplinary authority, the respondent violated Mass. R. Prof. C. 8.1(b) and S.J.C. Rule 4:01, section 3 (1).

In mitigation, during the relevant time period, the respondent was spending significant amounts of time out of state, tending to a close family member who was suffering from a life-threatening illness. While out of state, the respondent was not receiving and reading her mail on a regular basis. The respondent also waived the fee that was owed to her by the client.

The respondent received an admonition for her misconduct.

ADMONITION NO. 12-11

CLASSIFICATIONS:

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

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

SUMMARY:

The respondent was retained by a client to represent the client in the settlement of an estate in which the client had an interest. As a result of the respondent's research and analysis, the respondent informed the client that the attorney for the representative of the estate was proposing to distribute the estate according to a formula, and in proportions that were incorrect as a matter of law. The client instructed the respondent to not advise the attorney for the representative of the estate of the respondent's analysis and then terminated the respondent's representation of the client in the matter. The discussion between the respondent and the client was confidential, including the client's response to the respondent that the respondent not disclose the substance of the discussion.

Approximately two years later as part of a discussion between the respondent and the attorney for the representative of the estate on an unrelated matter, the attorney for the estate commented about the estate in which the client had an interest. The respondent then, for the first time, disclosed to the attorney for the representative of the estate that a mistake had been made in the formula and proportions of the distribution. The respondent went on to disclose to the attorney for the representative of the estate that the respondent had advised the client of this error and that the respondent had been instructed not to disclose the error to the attorney for the representative of the estate. This was all done without the consent from the client and without any reason that might have excused the disclosure under Massachusetts Rule of Professional Conduct 1.6(b). There was no harm to the client who, by the time of disclosure had received a substantial portion of the distribution from the estate, well in excess of the share to which the client was entitled. The client was not required to disgorge this overpayment.

This disclosure of confidential information is a violation of both Massachusetts Rule of Professional Conduct 1.6 since it was done without the consent from the client and without any reason that might have excused the disclosure under Massachusetts Rule Professional Conduct 1.6(b). This disclosure is also a violation of Massachusetts Rule Professional Conduct 1.9(c) since, although the client was not damaged as a matter of law for the reason that the client ended up receiving a larger share of the estate than that to which the client was entitled, the respondent did reveal confidential information relating to the representation to the disadvantage of that former client.

Because the respondent waited approximately two years after the discovery of the error, making the disclosure at a time after the estate had been substantially distributed, and because the respondent failed to advise the client that any circumstances required or justified the disclosure by the respondent of the information, the disclosure cannot be said to have been intended to rectify a client fraud.

The respondent received an admonition for this misconduct.

ADMONITION NO. 12-12

CLASSIFICATION:

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

SUMMARY:

The respondent represented a client in an immigration case and in an appeal from an adverse decision in the case. In late 2007, the respondent filed a brief on appeal that was plainly inadequate. Among other things, the respondent failed to articulate accurately the grounds for the appeal. In addition, the respondent erroneously cut and pasted irrelevant material from an earlier motion and then failed to detect and correct the errors before filing the brief. The respondent's lack of diligence in preparing the brief and in failing to detect and correct the errors violated Mass. R. Prof. C. 1.3.

The respondent had no history of discipline. In mitigation, the adverse decision was later reversed on other grounds, and the client was not ultimately harmed. The respondent received an admonition for his misconduct.

ADMONITION NO. 12-13

CLASSIFICATION:

Mass. R. Prof. C. 1.15(b)(2) [Trust Account Violation]

SUMMARY:

On multiple occasions in 2010 and 2011, the respondent failed to hold trust funds separate from his own property. In addition to deposit and disbursement of client funds, he deposited earned fees to his IOLTA account. Specifically, between August 2010 and February 2011, the respondent billed five separate clients for work he had completed on each of the client's cases. The clients paid the respondent the amounts owed on the invoices and the respondent deposited the funds into his IOLTA account. He later withdrew the funds via checks payable to himself.

The respondent's conduct in depositing earned fees into his IOLTA account violated Mass. R. Prof. C. 1.15(b)(2).

The respondent was admitted in 1966 and has no prior discipline. He has now attended 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. 12-14

CLASSIFICATION:

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

SUMMARY:

A buyer purchased property from an estate. The respondent's partner represented the seller, and another lawyer represented the lender. The lender's attorney discovered a scrivener's error that created a cloud on the title. At the closing, the lawyers agreed that the lender's attorney would hold $1,000 from the seller's proceeds in escrow to pay the costs of rectifying the error by means of a complaint for full land registration in the Land Court. The respondent agreed to take the necessary steps to remove the cloud on the title.

The respondent filed the necessary action in the Land Court. During the next several years, the Land Court required several supplementary steps, which the respondent did complete. The respondent, however, failed to file the motions necessary to conclude the matter. The buyer and the lender's counsel asked the respondent for information concerning the matter. The respondent assured the buyer and lender's counsel that he would conclude the matter, but he failed to take the steps needed to do so.

In October 2010, the buyer filed a request for investigation with the office of bar counsel. The respondent then proceeded to take the necessary action to cure the title defect and completed the registration in December 2010. He personally paid the expenses of more than $4,000 to do so and waived any claim to the funds held by buyer's counsel. The buyer was not harmed by the respondent's lack of diligence because he had not attempted to offer the property for sale in the interim.

By failing to diligently pursue the land registration, the respondent violated Mass. R. Prof. C. 1.3. The respondent received an admonition for his conduct conditioned upon an evaluation by the Law Office Management Assistance Program.

ADMONITION NO. 12-15

CLASSIFICATION:

Mass. R. Prof. C. 1.15(b)(2) [Trust Account Violation]

SUMMARY:

On multiple occasions in 2010, the respondent failed to hold trust funds separate from his own property. In addition to the deposit and disbursement of client funds, the respondent deposited personal loans to his IOLTA account. The respondent then used these personal funds to pay personal expenses directly from the IOLTA account.

The respondent's conduct in depositing personal funds into his IOLTA account and paying personal expenses from the account violated Mass. R. Prof. C. 1.15(b)(2).

The respondent was admitted in 1971 and has no prior discipline. He has now attended 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. 12-16

CLASSIFICATIONS:

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

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

Conflict Directly Adverse to Another Client [Mass. R. Prof. C. 1.7(a)]

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

SUMMARY:

In late 2006, a long-time client of the respondent's consulted him concerning serious financial issues including his failure to file a tax return for 2005 or pay state and federal taxes for 2005 and 2006. The respondent knew that the client and his wife had been separated since 2004, and that the wife was an attorney with a government agency, earning a modest income.

In early February 2007, the respondent, the husband, and the wife met at the family's home, where the respondent gave advice to both regarding their financial circumstances, including the wife's agreeing to file a joint return with her husband to reduce his tax liability. The respondent did not appreciate that the husband's and wife's interests did or might conflict, and he did not obtain the wife's consent after consultation to the representation.

On February 20, 2007, the husband signed IRS and DOR forms authorizing the respondent to represent the husband regarding the failure to file tax returns and to pay taxes for 2005 and 2006. On February 26, 2007, the respondent spoke with the wife regarding her filing a joint federal tax return and the respondent's representing her interests in negotiating with the taxing authorities. The respondent knew that if the wife filed a joint return she would assume responsibility for a tax liability in excess of $240,000. The respondent also knew that the wife expected the taxes to be paid from the sale of the marital home, which was in her husband's name. The respondent again

did not explain the advantages and disadvantages of the joint representation and did not obtain her consent to the conflict. The wife agreed to file joint federal and state returns and cosigned the IRS and DOR forms authorizing the respondent's representation.

In early March 2007, the respondent sent to the husband and wife a "Memorandum of Understanding" explaining that the husband's and wife's "interests with respect to marital assets and income are both potentially and actually adverse" and advising them to consult independent counsel with "respect to their respective rights and obligations generally." The respondent sent the memorandum to the husband and wife. The wife refused to sign the memorandum, but the respondent continued to represent both the husband and the wife.

In January 2008, the respondent brought the 2005 state and federal tax returns to the wife's home for her signature. The wife signed the joint returns. By this time, the house had been sold, and the husband had spent the proceeds. The respondent believed that the wife knew that the house proceeds had been spent on other household and business expenses, but there was no specific discussion on that subject.

By August 2008, the respondent and the husband had a plan to borrow funds from a family trust for which the husband's mother served as trustee. The loan would be secured by marital assets. In August 2008, the respondent proposed a settlement with the IRS that relied on this plan. The respondent did not consult the wife before making this proposal to the IRS and obtain her agreement to the husband's use of the couple's assets as security for the loan. In fact, the wife opposed using marital assets as security for the loan.

On September 2, 2008, the wife filed *pro se* a complaint for divorce. On or about September 3, 2008, the respondent received notice that the wife had filed a divorce complaint, and informed the wife that he would no longer represent her. On September 18, 2008, the respondent withdrew from representing the wife before the IRS.

The loan from the husband's family trust did not occur because it was not allowed by the trust instrument. The probate court determined as part of the divorce proceedings that the husband was solely responsible for payments to the IRS and the DOR for tax year 2005, and the IRS relieved the wife of any obligation for the 2005 taxes due to the "innocent spouse" exemption. There was no ultimate harm and no self-dealing by the respondent.

The respondent's conduct in representing the husband and the wife when they had directly adverse interests and when his representation of one client might be materially limited by his obligations to the other client without obtaining the wife's consent after consultation violated Mass. R. Prof. C. 1.7(a) and (b). The respondent's failure to consult the wife about the terms of the proposed loan and to inform her that he was negotiating a transaction that requiring pledging the couple's marital assets violated Mass. R. Prof. C. 1.2(a) and 1.4(a) and (b).

The respondent received an admonition for his conduct in this matter.

ADMONITION NO. 12-17

CLASSIFICATIONS:

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

Violating or Circumventing a Discipline Rule [Mass. R. Prof. C. 8.4a]

SUMMARY:

In September 2011, the respondent reviewed a list compiled by the Probate Court of estates with unclaimed custodial accounts that were on the verge of escheating to the Commonwealth. The respondent hired an investigator to locate the missing heirs.

In about October 2011, the investigator located a woman who was a missing heir for one of the estates on the list. When the estate closed in 1997, approximately $37,000 in funds that were to pass to the heir was left in the custody of the Probate Court because the heir could not be located. On about October 1, 2011, the Probate Court forwarded the unclaimed funds from the estate to the Unclaimed Property Division of the state Treasurer's office.

After first speaking with the investigator and then contacting the probate court to ascertain the status of the unclaimed inheritance, on October 25, 2011, the heir's daughter spoke with the respondent. The respondent informed the daughter that he would assist her mother to obtain her unclaimed inheritance for a fee. On October 26, 2011, the respondent sent the mother a proposed fee agreement providing for a fee of 33% of the gross proceeds of the unclaimed asset.

The proposed fee was clearly excessive because the time and labor involved in claiming the asset was likely to be minimal and the work involved was primarily ministerial. The proposed fee agreement was also illegal. Under G.L. c. 200A, § 13, and 960 CMR 4.06, the respondent was prohibited from entering into the agreement within 24 months of the date the property was received by the Unclaimed Property Division and from seeking compensation of more than 10% of the value of the property. In addition, the respondent had not registered as an "heir finder" with the Division, paid a $10,000 bond, or otherwise complied with the Division regulations at 960 CMR 4.00, et seq. The respondent was unaware of these requirements when he proposed the fee arrangement.

Shortly after receiving the letter from the respondent, the daughter notified him that her mother did not intend to sign the fee agreement. The respondent made no further efforts to enter into any fee agreement with the mother or any other heirs with unclaimed assets, and did not charge any fees or collect any funds from or on behalf of any heirs.

The fee proposed by the respondent was both illegal and clearly excessive. Although the respondent did not in fact enter into the proposed fee agreement, charge or collect a fee, pursuant to Mass. R. Prof. C. 8.4(a), it is professional misconduct for a lawyer to "violate or attempt to violate the Rules of Professional Conduct". The respondent attempted to violate Rule 1.5(a) by sending the proposed fee agreement to the mother.

The respondent was admitted to the bar in 1981 and had no prior discipline. The respondent received an admonition for his conduct.

ADMONITION NO. 12-18

CLASSIFICATIONS:

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

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

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

SUMMARY:

In March 2011, a husband and wife engaged the respondent to prepare wills, durable powers of attorney, and health care proxies for them. The respondent agreed to prepare the documents for a fixed fee of $600. The wife paid the respondent $300, with the final $300 to be paid upon completion of the work. The respondent prepared the initial draft instruments, which he sent to his clients for review. In the summer of 2011, the clients returned the drafts to the respondent with suggested revisions. The respondent agreed to make the changes and to meet with the clients in two weeks to finalize the instruments. The respondent did not complete the work for the clients. In August 2011, the respondent closed his law office, and took steps to wind down his practice from his home while also working full-time in a non-legal position. Between August 2011 and February 2012, the respondent failed to respond to a number of telephone calls from his clients inquiring about the status of their estate planning documents.

In February 2012, the clients filed a request for investigation with the Office of Bar Counsel, and requested that the respondent return their file and the partial fee they had paid him. On February 17, 2012, bar counsel sent a copy of the complaint to the respondent with a letter asking him to file a written response within twenty days. The respondent did not reply to the letter, or to a number of telephone calls from bar counsel.

On February 21, 2012, another client contacted bar counsel to report that she had been trying to contact the respondent for approximately six months. The respondent had not replied to a number of telephone messages she had left him, and she could no longer reach him because his office number had been disconnected. The client was trying to obtain her file from the respondent.

On March 1, 2012, a third client contacted bar counsel. The client had hired the respondent in May 2010 to assist her with a post-divorce matter concerning the sale of her marital home. The client had not received a check for about $7,500 from her ex-husband's attorney, and had been unable to contact the respondent. The client requested that the respondent return her file and account for the distribution of the proceeds from the sale of the home.

On March 12, 2012, the Board of Bar Overseers issued a subpoena requiring the respondent to appear and answer questions and produce documents concerning the three client matters. On about April 4, 2012, in advance of the scheduled meeting with bar counsel, the respondent returned the file and a full refund of the fee to the first clients, and returned the file to the second client. The respondent also forwarded to the third client a check payable to the client that he had received from opposing counsel on about March 18, 2012 for her final distribution of the proceeds from the sale of the marital home. On April 4, 2012, the respondent agreed to send the third client her file and a written accounting of the distributions from the sale of the marital home within the next few days, but did not do so.

On May 1, 2012, the respondent met with bar counsel. The respondent agreed to send the file and the accounting to the third client within one week. The respondent did not take these actions until on or about July 20, 2012, after additional intervention by bar counsel.

The respondent's failure to act with reasonable diligence and promptness in representing his clients violated Mass. R. Prof. C. 1.3. His failure to promptly comply with reasonable requests for information from his clients violated Mass. R. Prof. C. 1.4(a). The respondent's

failure without good cause to cooperate with bar counsel's investigation violated Mass. R. Prof. C. 8.4(g) and S.J.C. Rule 4:01, § 3.

The respondent was admitted to practice in 2009 and had no prior discipline. The respondent has closed his law office, and is no longer engaged in the practice of law. The respondent received an admonition for his conduct.

ADMONITION NO. 12-19

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 was an associate in a law firm that was retained to represent a corporation as plaintiff in contract claims against a government department. The statute of limitations on filing the claims had, however, expired before the firm was engaged and suit was filed in 2004. The defendant filed a motion for summary judgment in 2007 based on the expiration of the statute of limitations.

The respondent was the associate in the firm who handled the summary judgment motion. In his opposition served on the defendant, he claimed that there existed an oral agreement to toll the statute of limitations. He supported his opposition with affidavits from his client's principals, as well as from two other witnesses who were not employed by the corporation, but who had been involved in negotiations concerning the contract issues. Because there now were disputed factual issues, the defendant withdrew the motion for summary judgment without filing it.

When the respondent was preparing the opposition, he was unable to reach one of the non-employee affiants proposed by the client's president. Without speaking with this witness, the respondent prepared an affidavit for his signature based on information provided by the client's president. At the suggestion of the client's president, the respondent sent the unexecuted affidavit to a third party who supposedly would be able to contact the witness. The respondent received back the signed affidavit, either in the mail or from his client's president, and filed it with the opposition to summary judgment without ever communicating with the affiant.

In fact, the third party had called the affiant, read or paraphrased the affidavit over the phone, and obtained the affiant's permission to sign his name for him. The respondent was aware that affidavits and other sworn documents cannot be signed by anyone except the named signatory, but was unaware that the affiant had not signed his own name. When later deposed, the affiant denied knowing some of the critical information contained in the affidavit concerning the oral tolling agreement and admitted that he had not focused on that issue when the third party called him.

The respondent's conduct in drafting, causing to be executed, and serving an affidavit on an opposing party without any personal contact with the signatory constitutes lack of reasonably necessary preparation and thoroughness in violation of Mass. R. Prof. C. 1.1 and lack of diligence in violation of Mass. R. Prof. C. 1.3.

The respondent was admitted to practice in another jurisdiction in 1995 and admitted in Massachusetts in 2006. He received an admonition for his misconduct.

ADMONITION NO. 12-20

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

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

SUMMARY:

On April 27, 2006, the client had dental surgery to remove a molar. As a result of the surgery she suffered nerve damage and lost feeling and taste in her tongue. On or about May 16, 2007, she was advised by her medical provider that she was unlikely to regain feeling in her tongue. In August 2007, she engaged the respondent to pursue a potential medical malpractice claim against the dentist.

The dentist was employed by a community health center, which was funded by the United States Department of Health and Human Services ("DHHS"). By September 2007, the respondent knew that the health center was a federally qualified health center covered by the Federal Tort Claims Act ("FTCA"), and that the client's claim would have to be filed within two years of the date of accrual of the claim, which at the latest was May 16, 2009.

On March 24, 2009, the respondent was advised by an associated lawyer that the client's claim had to be filed on or before May 16, 2009. The respondent, however, took no action to insure that the client's claim was filed on or before that date. The claim was not mailed to the DHHS until June 4, 2009. On March 17, 2010, DHHS denied the client's FTCA claim as untimely filed. The respondent failed to notify his client of the denial for several months thereafter. On September 16, 2010, the respondent sought reconsideration of the denial, but reconsideration was denied.

By failing to timely file his client's claim, the respondent violated Mass. R. Prof. C. 1.1; 1.2(a) and 1.3. By failing to promptly notify his client that her claim had been denied, the respondent violated Mass. R. Prof. C. 1.4(a).

The respondent was admitted to the bar of the Commonwealth on June 18, 1998 and has no prior discipline. In mitigation, the respondent paid the client restitution in an amount satisfactory to her. He received an admonition for his conduct.

ADMONITION NO. 12-21

CLASSISFICATION:

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

SUMMARY:

The respondent assumed inactive status with the Board of Bar Overseers on or about December 14, 2011. Commencing in April 2012, the respondent wrote several e-mails, on behalf of a client, to other attorneys. In those letters, the respondent purported to represent the client in an estate matter. The client was a friend of the respondent's and the respondent failed to consider that he was not an active attorney. One of the attorneys learned that the respondent was inactive and confronted the respondent with his inactive status. The respondent promptly resumed active status.

The respondent has been a member of the bar since 1974. By representing a client while on inactive status, he violated Mass. R. Prof. C. 5.5(a).

The respondent received an admonition for his conduct.

ADMONITION NO. 12-22

CLASSIFICATION:

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

SUMMARY:

The respondent received an admonition for preparing a will for a client ("Client A") when the instrument benefited another longtime client and personal friend of the respondent ("Client B").

In the fall of 2000, Client A, then 83 years old, asked the respondent to prepare a will for her. Client A was single and had no children. She informed the respondent that she wished to distribute her assets to certain members of a family that she had known for most of her life. The respondent prepared a will consistent with these instructions. On September 26, 2000, Client A executed the will.

In the spring of 2001, Client A again contacted the respondent. She told him that her intentions had changed and that she wished to execute a new will. The new will was to benefit a new beneficiary. The new beneficiary happened to be a longtime client and friend of the respondent ("Client B"), although Client A did not meet him through the respondent. Client A had only been friendly with Client B for less than a year when she decided to change her will.

The respondent followed Client A's instructions and prepared the new will. On May 8, 2001, Client A executed the new will at the respondent's law office. Prior to doing so, and in the presence of two witnesses, the respondent evaluated whether Client A was free of undue influence by Client B or anyone else. He concluded that no undue influence existed. The witnesses then attested to the will's execution, stating that Client A "declared to me ... that the instrument is her Last Will and that she had willingly signed and that she executed it as her free and voluntary act for purposes therein expressed."

After Client A's death in 2007, the beneficiaries of the first will contested the second will. The Probate Court made a determination that there had been undue influence by Client B and instead allowed the first will.

The respondent's preparation of the new will for Client A violated Rule 1.7(b). Although the respondent concluded that Client A was free of undue influence, he had divided loyalties when he made that assessment -- any inquiry into undue influence had the potential to harm his longtime client and friend, Client B, as the beneficiary of Client A's new will.

The respondent was admitted in 1975. He has no disciplinary history. He received an admonition for the misconduct described above.